

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Court of Common Pleas
L. Casey Manning, Circuit Court Judge

2018-CP-40-5641

Appellate Case No. 2019-001224

RECEIVED
SEP 16 2019
SC Court of Appeals

Ronald I. Paul Appellant,

v.

South Carolina Department of Transportation; Paul D. de Holczer, individually and as a partner of the law firm of Moses, Koon & Brackett, PC; Michael H. Quinn, individually and as senior lawyer of Quinn Law Firm, LLC; J. Charles Ormand, Jr., individually and as partner of the law Firm of Holler, Dennis, Corbett, Ormand, Plant & Garner; Oscar K. Rucker, in his individual capacity as Director Rights of Way South Carolina Department of Transportation; Macie M. Gresham, in her individual capacity as Eastern Region Right of Way Program Manager South Carolina Department of Transportation; Natalie J. Moore, in her individual capacity as assistant chief counsel South Carolina Department of Transportation; Respondents.

Moses & Brackett, PC's f/k/a Moses, Koon & Brackett, PC,
Return to Appellant's Motion to
Hold Appeal in Abeyance

The Circuit Court held that Moses & Brackett, PC, f/k/a Moses, Koon & Brackett, PC, (hereinafter MKB) is not a party to this action because the Complaint was devoid of allegations that identified MKB as a party-defendant. An order was entered that addressed only the MKB

party/jurisdiction issue, making that order a final and immediately appealable order. (Exhibit C to MKB Motion to Dismiss Appeal.)¹ A separate order was also entered that decided motions made by other parties that did not include or involve MKB. (Exhibit A to MKB Motion to Dismiss Appeal.) Appellant then filed one motion for reconsideration that expressly identified as its subject the order entered as to other defendants (not the MKB order). The motion for reconsideration is likewise devoid of references to the MKB order. (Exhibit D to MKB Motion to Dismiss Appeal.)

After the motion for reconsideration was denied without a hearing, Appellant filed one Notice of Appeal purportedly appealing the two separate orders. (Exhibits A and C to MKB Motion to Dismiss Appeal.) Apparently thinking that the motion for reconsideration, contrary to its content, included the MKB order, Appellant did not serve his Notice of Appeal as to the MKB final and immediately appealable order within the allowable time.

MKB filed and served a Motion to Dismiss Appeal on the ground that without a timely Notice of Appeal this Court has no jurisdiction to entertain the appeal of the MKB order.

Appellant has now filed a motion to hold the appeal in abeyance while the circuit court decides other motions that involve only the non-MKB party-defendants.

MKB does not wish to suffer a delay in having its Motion to Dismiss Appeal decided. MKB does not wish to have its simple and straightforward issue – party/not a party- overwhelmed by the several substantive issues being contested by Appellant and the other parties (Rucker, Gresham, Quinn) including matters of summary judgment and discovery. Granting MKB's

¹ When granting a pre-trial order has the effect of granting a motion to dismiss under Rule 12(b)(5), it ends the action as to the dismissed person and is a final and immediately appealable order. Wetzel v. Woodside Dev. Ltd. P'ship., 364 S.C. 589, 615 S.E.2d 437 (2005) See also Murphy v. Owens-Corning Fiberglass Corp., 346 S.C. 37, 550 S.E.2d 589 (Ct. App. 2001), affirmed 356 S.C. 592, 590 S.E.2d 479 (2003).

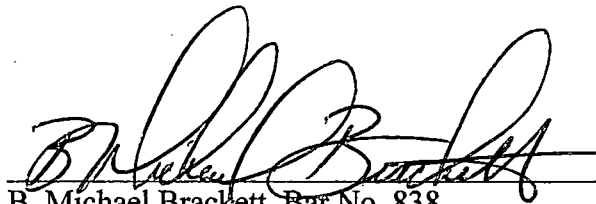
Motion to Dismiss Appeal will not impact Appellant's appeals from the Rucker/Gresham/Quinn orders.

MKB opposes Appellant's Motion to Hold Appeal in Abeyance insofar as it attempts to lump together Appellant's appeal of the MKB order with the appeals of two or more other orders related to the Rucker, Gresham, Quinn parties, when the MKB order and the Rucker/Gresham/Quinn orders do not have overlapping issues.

Conclusion

Respondent Moses & Brackett, PC f/k/a Moses, Koon & Brackett, PC, opposes Appellant's Motion to Hold Appeal in Abeyance and respectfully requests that said motion be denied and that the pending Motion to Dismiss Appeal be decided at the Court's earliest opportunity.

September 13, 2019



B. Michael Brackett, Bar No. 838

Moses & Brackett, PC

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Columbia, SC 29223

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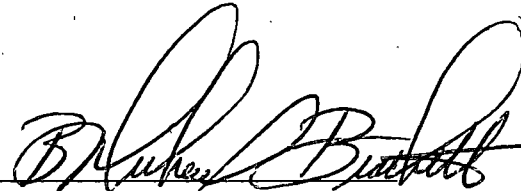
Certificate of Service

The undersigned, as attorney for Moses & Brackett, PC, formerly known as Moses, Koon & Brackett, PC, hereby certifies that I have served the below-named persons by mail with a copy of the foregoing Return to Appellant's Motion to Hold Appeal in Abeyance, postage prepaid and return address clearly indicated on said envelope, on this 13th day of September, 2019, at the following addresses:

Ronald I. Paul
P.O. Box 4353
Columbia, SC 29240

Andrew F. Lindemann, Esquire
P.O. Box 6923
Columbia, SC 29260

Michael H. Quinn, Esquire
P.O. Box 6903
Columbia, SC 29260

A handwritten signature in black ink, appearing to read "B. Michael Brackett", written over a horizontal line.

B. Michael Brackett, Bar No. 838
133 Brookspring Road
Columbia, SC 29223
Attorney for Moses & Brackett, PC

Moses & Brackett, PC
133 Brookspring Road
Columbia, SC 29223

September 13, 2019

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

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Re: Paul v. SCDOT, et al.
Appellate Case No. 2019-001224

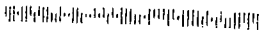
Dear Ms. Kitchings:

Enclosed for filing please find the original and six copies of Respondent Moses & Brackett, PC's (formerly known as Moses, Koon & Brackett, PC) Return to Appellant's Motion to Hold Appeal in Abeyance. By copy of this letter, a copy of the enclosed Return has been served on Appellant and other attorneys appearing in the appeal as identified below. A certificate of service is enclosed.

Very truly yours,


B. Michael Brackett

cc. Michael H. Quinn, Esquire
Andrew F. Lindemann, Esquire
Ronald I. Paul



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Mike Brackett, Esq.
133 Brookspring Rd.
Columbia, SC 29223

Honorable Jenny Abbot Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
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