

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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FEB 10 2020

APPEAL FROM YORK COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

Appellate Case No. 2019-001948

Alfred and Mary Jenkins..... Petitioners

v.

Ferrara-Buist Company, LLC d/b/a Custom Crafted Homes .....Respondent

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**REPLY TO RETURN TO  
WRIT OF CERTIORARI**

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February 7, 2020.

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Other Counsel of Record:

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Attorneys for Respondent

I. **THE FAILURE OF THE COURT OF APPEALS EVEN TO CONSIDER ITS JURISDICTION CONFLICTS WITH A LONG LINE OF DECISIONS OF THIS COURT AND INVOKES SUBSTANTIAL CONSTITUTIONAL ISSUES.**

In its Return at pages 2-3, the Respondent asserts that none of the considerations of Rule 242(b) applies to this Petition. This is incorrect. The following considerations of Rule 242(b) apply:

- (3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.
- (4) Where substantial constitutional issues are directly involved.

First, this Court has issued numerous decisions stating that S.C. Code §14-3-330 defines the jurisdiction of the appellate courts, and that cases that do not satisfy the requirements of the statute are not immediately appealable. *See, e.g., Ex Parte Wilson*, 625 S.E.2d 205, 367 S.C. 7 (2005) (holding that “South Carolina Code Ann. § 14-3-330 (1976 & Supp. 2004) addresses appellate jurisdiction” and that only cases that meet the statutory requirements are immediately appealable); *Cox v. Lunsford*, 272 S.C. 527, 252 S.E.2d 918 (1979) (“The jurisdiction of a court . . . over the subject matter of a proceeding depends upon the authority granted by the Constitution and the laws of the state and is fundamental”) (*quoting Harden v. South Carolina Highway Dept.*, 266 S.C. 119, 221 S.E.2d 851, 853 (1976)). By failing to determine its jurisdiction over the appeal, the Court of Appeals’ decision is in conflict with prior decisions of this Court.

Second, there certainly is a substantial constitutional issue if the Court of Appeals ignores the legislature’s prescription of its jurisdiction. The South Carolina Constitution, Art. V, §9 provides: “The Court of Appeals shall have such jurisdiction as the General Assembly shall prescribe by general law. . .” The General Assembly prescribed limited jurisdiction for appeals, as set forth in S.C. Code §14-3-330. By failing to ascertain whether it had jurisdiction over the

interlocutory appeal, the Court of Appeals violated the South Carolina Constitution, which expressly limits its jurisdiction to that prescribed by the legislature. In turn, this invokes concerns regarding constitutional separation of powers. *See*, S.C. Constitution Art. I, §8 providing for separation of powers of the legislative, executive, and judicial powers of the government. *See also*, *Hampton v. Haley*, 743 S.E.2d 258, 403 S.C. 395 (S.C. 2013) (enforcing the separation of powers provisions of the South Carolina Constitution).

Thus, two of the considerations of Rule 242(b) apply to this Petition, and strongly suggest this Court grant review of the Petition.

**II. THE COURT OF APPEALS DID NOT IN ANY WAY ADDRESS ITS JURISDICTION UNDER S.C. CODE §14-3-330 AND THEREFORE MUST BE REVERSED.**

Despite the indisputable fact that the Court of Appeals does not even mention S.C. Code §14-3-330 anywhere in its Opinion, Respondent includes the puzzling heading in its Return that “the Court of Appeals correctly held S.C. Code Ann. §14-3-330 provided jurisdiction to review the trial court’s order.” This false assertion highlights the problem, which is that the Court of Appeals failed to address its jurisdiction at all.

If the Court of Appeals had determined its jurisdiction under S.C. Code Ann. §14-3-330, as required by the Constitution and decisions of this Court, the determination that it *lacked* jurisdiction was an easy one. As set forth in the Petition, this case is so obviously not a final decision that a contrary contention is just disingenuous. The Order of the master in equity that was appealed did not finally determine anything. It simply decided that the Respondent was not entitled to a security fund for its unproven claims in the underlying case. Nothing was awarded in the order that was appealed.

**III. THE RESPONDENT WILL GET A TRIAL BY JURY WHEN THE CASE IS REMANDED AND CAN PROCEED IN THE TRIAL COURT.**

The Respondent's arguments regarding its right to a jury trial completely miss the point. The Respondent will get a jury trial when the case is remanded and the trial can proceed. At this point, the case has not yet begun, and the only decision that has been made is the equitable determination of whether the Respondent was entitled to a fund to secure its unproven claims. The lower court correctly held that it was not. When the litigation of the underlying issues can begin, the Respondent will be entitled to its jury trial. Petitioners welcome the opportunity to prove their claims.

**CONCLUSION**

The factors to be considered under Rule 242(b) strongly favor this Court to grant review of the Petition. The Court of Appeals failed to determine its jurisdiction over the appeal and did not undertake any analysis of the jurisdictional statute passed by the legislature. The underlying order is interlocutory and is not immediately appealable. Finally, when the case is remanded, both parties will be entitled to a full litigation, including a trial by jury, if the case is not decided by dispositive motion. Accordingly, this Court should reverse and remand for the underlying trial to begin.

Respectfully submitted,

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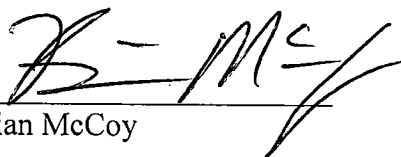
**PROOF OF SERVICE**

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I certify that I have served a copy of the Reply to the counsel of record for Respondent as indicated below on the date indicated by First Class United States Mail, postage prepaid, addressed as follows:

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Columbia SC 29201-3206

