

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Robert E. Hood

Case No. 2018-CP-40-01318

Appellate Case No. 2019-001811

RECEIVED
MAR 05 2020
SC Court of Appeals

Best Choice Roofing & Home Improvement, Inc.,..... Appellant,

v.

Tyler Woods,.....Respondent.

APPELLANT’S RETURN TO RESPONDENT’S MOTION TO DISMISS

Pursuant to Rule 240 SCACR, Plaintiff/Appellant Best Choice Roofing & Home Improvement, Inc ("BCR") submits its Return to Defendant/Respondent Tyler Woods' ("Woods" or "Respondent") Motion to Dismiss.

BACKGROUND

On or about March 8, 2018, BCR brought this action against Woods for a breach of non-compete and confidentiality provisions in his employment agreement with BCR. On or about June 11, 2018, Woods filed both his Motion to Dismiss and his Answer and Counterclaims. On July 11, 2018, BCR filed its reply to Woods' counterclaims. After engaging in written discovery, BCR on December 18, 2018, filed a motion to amend the Complaint to withdraw its cause of action for breach of non-compete and confidentiality provision of the employment agreement and add new causes of action against Woods for

fraud, negligent misrepresentation, unfair trade practices and conversion. As of December 18, 2018, the case had not been placed on any jury trial rosters and the parties had not mediated.

The next day, on December 19, 2018, Woods filed a motion for Summary Judgment as to Plaintiffs original Complaint and as to its counterclaims. A motion hearing was held on January 30, 2019 before the Honorable Robert E. Hood, and, on February 19, 2019, the Court issued its Order granting Woods' motion for Summary Judgment and denying BCR's Motion to Amend. On February 28, 2019, BCR filed its motion to Reconsider, Alter or Amend Judge Hood's February 19, 2019 Order. On March 20, 2019, the Court issued a revised Order granting Woods' motion for Summary Judgment and denying BCR's Motion to Amend. On March 28, 2019, BCR filed a Revised Motion to Reconsider, Alter or Amend and on October 22, 2019, the Honorable Robert E. Hood denied BCR's motion. This appeal ensued.

ANALYSIS

Rule 201(a) of the South Carolina Appellate Court Rules states, in relevant part:

- (a) Judgments, Orders and Decisions Subject to Appeal. Appeal may be taken, as provided by law, from any final judgment, appealable order or decision. The procedure for petitioning for a writ of certiorari to review final judgments in post-conviction relief cases is provided by Rule 243.

Rule 201 (a), SCACR (emphasis added).

An interlocutory order not governed by a specialized appealability statute is immediately appealable only if it fits into one of the categories listed in South Carolina Code section 14-3-330, which governs South Carolina appellate jurisdiction. *Thornton v. South Carolina Electric & Gas*

Corp. 391 S.C. 297, 705 S.E.2d 475 (Ct. App. 2011) (citing *Ex Parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 630 S.E.2d 464, 467 (2006)).

South Carolina Code section 14-3-330 states, in relevant part:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases. and shall review upon appeal:

(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;

(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action[.]

South Carolina Code Ann. § 14-3-330 (2018)

This Court has held that orders granting summary judgment may generally "be immediately appealable under either the 'involving the merits' or 'substantial right' categories of section 14-3-330(1) and (2)(c)." *Thornton*, 391 S.C. at 300, 705 S.E.2d at 477 (citing *Link v. Sch. Dist. of Pickens Cty.*, 302 S.C. 1, 6, 393 S.E.2d 176, 178-79 (1990)).

An order "involves the merits" when it finally determines a substantial matter forming the whole or a part of some cause of action or defense. *Mid-State Distribs., Inc. v. Century Imps., Inc.*, 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993); see also *Nauful v. Milligan*, 258 S.C. 139, 187 S.E.2d 511 (1972) (holding that order granting partial summary judgment on the issue of liability was appealable); *Thornton*, 391 S.C. at 306-07" 705 S.E.2d at 480.

An order “affects a substantial right . . . if the order removes a material issue from the case, thereby preventing the issue from being litigated on the merits and preventing the party from seeking to correct any errors in the order during or after trial.” *Thornton*, 39 I S.C. at 304, 705 S.E.2d at 479; *see also Breland v. Love Chevrolet Olds., Inc.*, 339 S.C. 89, 93, 529 S.E.2d 11, 13 (2000) (“Immediate appeals under [14-3-330(2)(c)] have been allowed in situations where the substantial right could not be vindicated on appeal after the case.”).

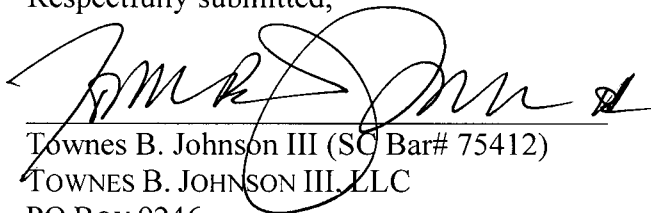
This case is governed by South Carolina Code section 14-3-330 and the caselaw concerning same. Under section 14-3-330 and South Carolina caselaw, BCR’s appeal is proper if the trial court’s order either “involves the merits” or “affects a substantial right.” S.C. Code Ann. § 14-3-330 (2018); *Mid-State Distribs, Inc.*, 310 S.C. at 334. 426 S.E.2d at 780; *Breland*, 339 S.C. at 93, 529 S.E.2d at 13.

In the case at hand, the trial court’s order “involves the merits” as it finally determined all of BCR’s case with the dismissal of the original causes of action and the prohibition from being able to amend its complaint and bring causes of action in line with the facts of the case. It further “involves the merits” as BCR’s ability to pursue its causes of action are a defense to Woods’ counterclaim for frivolous proceeding. The trial court’s order additionally “affects a substantial right” as it removed all BCR’s claims from the case by not allowing the causes of action to conform to the evidence; especially when Woods would not be prejudiced by the grant of leave to amend.

CONCLUSION

As the trial court’s order “involves the merits” and “affects a substantial right” under South Carolina Code section 14-3-330, this Court should deny Respondent’s Motion to Dismiss.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Townes B. Johnson III', written over a horizontal line.

Townes B. Johnson III (SC Bar# 75412)

TOWNES B. JOHNSON III, LLC

PO Box 9246

GREENVILLE, SC 29604

PH: (864) 757-4899

Attorney for Appellant

March 3, 2020
Greenville, SC

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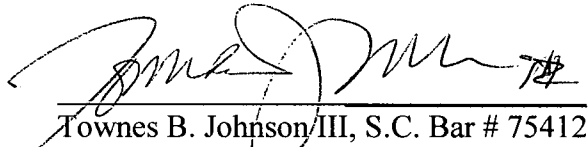
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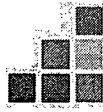
PROOF OF SERVICE

The undersigned hereby certifies that a true copy of Appellant's Return to Respondent's Motion to Dismiss in the above-referenced case has been served on all parties of record by mailing a copy of same in the United States mail, postage prepaid this 3rd day of March 2020, addressed as follows:

Nekki Shutt, Esq.
Burnette Shutt & McDaniel, P.A.
P.O. Box 1929
Columbia, SC 29202



Townes B. Johnson III, S.C. Bar # 75412
TOWNES B. JOHNSON III LLC
PO Box 9246
Greenville, S.C. 29604
(864) 757-4899
tjohnson@sc.legal
Attorney for Appellant



TOWNES B. JOHNSON III, LLC

ATTORNEY AT LAW

March 3, 2020

Townes B. Johnson III
(864) 757-4899
tjohnson@sc.legal

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

**Re: Best Choice Roofing & Home Improvement, Inc. v. Tyler Woods
Appellate Case No. 2019-001811**

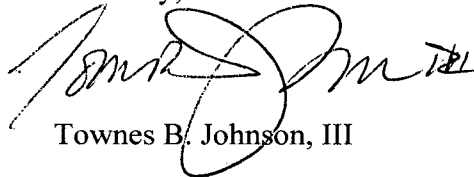
Dear Ms. Kitchings:

Enclosed for filing, please find the following in the above-referenced matter:

- (1) the original and six (6) copies of Appellant's Return to Respondent's Motion to Dismiss; and
- (2) the original and one (1) copy of Appellant's Proof of Service.

Once filed, please return a file-stamped copy of the Appellant's Return to Respondent's Motion to Dismiss and Proof of Service in the enclosed prepaid envelope.

Sincerely,



Townes B. Johnson, III

cc: Nekki Shutt, Esq., Attorney for Respondent

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TBJ

PO Box 9246
Greenville, SC 29604



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Columbia, SC 29211