

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas
Kristi F. Curtis, Circuit Court Judge

Case No. 2018-CP-08-00266
Appellate Tracking No.: 2019-00169

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas
Kristi F. Curtis, Circuit Court Judge

Case No. 2018-CP-08-01008
Appellate Tracking No.: 2019-00170

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JAN 27 2020

SC Court of Appeals

Aracelis Santos, Appellant,

vs.

Harris Investment Holdings, L.L.C., Respondent,

MEMORANDUM IN SUPPORT OF MOTION TO CONSOLIDATE

An application for consolidation is controlled by Rule 214 of the *Appellate Court Rules*, Rule 42 in the *Rules of Civil Procedure* provides some additional guidance. Circuit court Rule 42 is nearly identical to the federal rule 42, and thus cases under the federal rule are also instructive.

Under both the state and the federal rules for consolidation, the only prerequisite for consolidation is that “the actions to be consolidated involve a common question of law or fact.” *I Am. Jur2d*, “Actions,” § 124. See *Keels v. Pierce*, 315 S.C. 339, 433 S.E.2d 902 (Ct. App. 1993):

Consolidation under Rule 42(a), SCRCPP, may be ordered whenever actions involving a common question of law or fact are pending before the court. *Ellis by Ellis v. Oliver*, 307 S.C. 365, 415 S.E.2d 400 (1992). Under a consolidation order, the parties and the pleadings are not merged, and each action retains its own identity. *Id.* Consolidation is within the broad discretion of the trial court. *Worthy v. Chalk*, 44 S.C.L. (10 Rich.) 141 (1856). The moving party has the burden of persuading the court that consolidation is desirable. *Prudential Insurance Co. v. Marine National Exchange Bank*, 55 F.R.D. 436 (E.D. Wis. 1972) An appellate court will not disturb a trial court’s ruling on a motion to consolidate absent an abuse of discretion. *Winchester v. United Insurance Co.*, 231 S.C. 288, 98 S.E.2d 530 (1957)

The only reason to deny a consolidation is when a consolidation would work a legal prejudice or delay to the party opposing it: “Notwithstanding that the conditions for consolidation have been met in a particular instance, consolidation should not be ordered where it would prejudice a substantial right of any party or where it would result in delay or confusion.” *I Am. Jur.2d*, Actions,” §122. In this case, the respondent can identify no prejudice since the application for consolidation lessens the burden on the Court and on the parties, and should respondent decide to resist consolidation, it will be for no reason other than to make the appellant’s path to judicial review as difficult, complex, and expensive as possible. In the non-jury Magistrate trial below, which took less than a day to complete from start to finish, the respondent submitted a bill supporting its claim for attorney’s fee in the amount of \$56,000.00. Appellant incurred a fee of \$2,500.00 for the same case. The award of attorney’s fees, which the Court “reduced” to \$35,887.23 is the main issue to be addressed in the appeal in Appellate Tracking Number 2019-

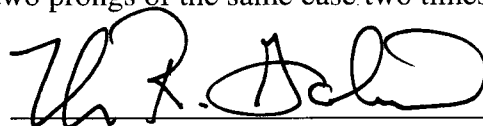
00169, yet in the appeal from the circuit court's dismissal of appellant's tort claim without prejudice, Appellate tracking Number 2019-00179, the respondent prepared the Order so it contains dicta reflecting back on the attorney's fee decision. Without the gratuitous poison pill language in the nonsuit Order, the appellant was, and is, prepared to accept her loss, dismiss her appeal, and re-file her complaint, which would end immediately one of the two cases before this Court. However, because the circuit court allowed prevailing counsel to prepare its Order without consultation or participation with appellant, the Order dismissing appellant's tort action contains *dicta* that counsel will urge bars this Court from considering the merits in the appeal on the attorney's fee award. Thus, it is impossible for this Court to evaluate either case without reference to the other. Of course, if counsel will stipulate that the language in the non-suit Order has no bearing on this Court's decision regarding the attorney's fee Order, the appellant will dismiss that appeal immediately, an offer communicated to opposing counsel several times.

Thus, the cases are inextricably bound together and involve the same parties, the same transaction, and the same claims. Respondent will, however, resist consolidation for the sole reason to burden the appellant as much as possible and confuse this Court as much as possible.

Thus, for judicial economy, and for clarity, the two cases should be consolidated to relieve the appellant from the burden of preparing 30 identical records on appeal and 30 briefs on the identical case and relieve this Court from deciding two prongs of the same case two times.

Respectfully submitted,

January 23, 2020



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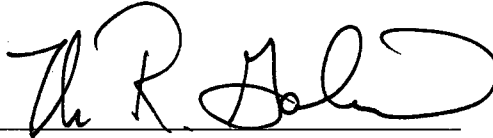
vs.

Harris Investment Holdings, L.L.C., Respondent,

PROOF OF SERVICE

I certify that I have served the Motion for Consolidation and the Memorandum in Support on the Respondent, Harris Investment Holdings, L.L.C., by depositing a copy of it in the United States Mail, postage prepaid, on January 23, 2020, addressed to the attorneys of record, Merritt Abney, 151 Meeting Street, Sixth Floor, Charleston, S. C. 29401-2239.

January 23, 2020



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January 23, 2020

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Hon. Jenny A. Kitchings,
Clerk of Court
ATTN.: Latoya Burns
S. C. Court of Appeals
P. O. Box 11629
Columbia, S. C. 29211

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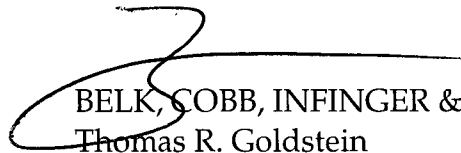
Re: Aracelis Santos v. Harris Investment Holdings, L.L.C.
Case Nos.: 2018-CP-08-00266 and 2018-CP-08-01008; Appellate Tracking
Numbers 2019-00169 and 2019-001170

Dear Ms. Kitchings,

On January 3, I wrote to the Court and requested a 30-day extension to file our initial brief. (We received the final transcript of hearing on December 14, 2019.) I now realize that I should have included a check for \$100.00 as opposed to \$50.00 because this case is filed as two cases even though it involves the same parties and the same transaction. I am, therefore, enclosing an additional \$50.00 to cover this fee.

The January 3rd request for extension brought home to me the realization that two matters pending in the same case simultaneously will cause all sorts of confusion and needless expense for duplication, and for that reason, I am also enclosing a Motion to Consolidate (and six copies), along with a check for \$100.00, to request leave of Court to submit one Record on Appeal and one brief on each case combined. I ask that you file the original with the Court and return a clocked copy to me in the envelope provided. By copy of this letter, I am providing a copy to opposing counsel. With kind regards, I am

Very truly yours,

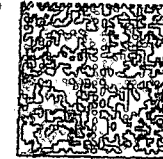

BELK, COBB, INFINGER & GOLDSTEIN, P.A.
Thomas R. Goldstein

TRG/

enclosure: Motion to Consolidate, certificate of service, check No. 19027, and return envelope

cc: Merritt Abney, Esq. (with enclosure)

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