THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Roger M. Young, Sr., Circuit Court Judge

Court of Appeals Case No. 2020-000232

Case No. 2017-CP-10-3768

Charleston Laboratories, Inc. ..... Appellant,

v.

Womble, Carlyle, Sandridge & Rice, LLP ..... Respondent.

RESPONDENT'S RETURN TO APPELLANT'S MOTION TO STRIKE

Pursuant to Rule 240(e) of the South Carolina Appellate Court Rules, Respondent Womble, Carlyle, Sandridge & Rice, LLP ("Womble") files this Return to Appellant Charleston Laboratories, Inc.'s ("Appellant") Motion to Strike filed June 2, 2020.

In its motion, Appellant seeks an order from this Court striking the additional sustaining grounds outlined in Womble's Initial Brief. Appellant contends that because the trial court's grant of summary judgment did not rely on any of these grounds, this Court should strike these arguments because the denial of summary judgment is not immediately appealable. Appellant's position misinterprets South Carolina law regarding appealability and additional sustaining grounds.

First, Appellant cites no case holding that a respondent may not raise additional sustaining grounds on appeal because there is none. Appellant cites only *Fisher v. Stevens*, 355 S.C. 290, 584 S.E.2d 149 (Ct. App. 2003), for the proposition that "[t]he denial of a motion for summary judgment is not directly appealable, even after final judgment." However, the procedural posture of this case is completely different from *Fisher*. In this case, the order on appeal is an order granting summary judgment, not denying it. Accordingly, the rationale for prohibiting an appeal from the denial of summary judgment is inapplicable. *See, e.g.*, *Ballenger v. Bowen*, 313 S.C. 476, 477–78, 443 S.E.2d 379, 380 (1994) ("[T]he denial of summary judgment does not finally determine anything about the merits of the case and does not have the effect of striking any defense since that defense may be raised again later in the proceedings. Therefore, an order denying a motion for summary judgment is not appealable.").

Further, Appellant ignores the large body of appellate cases addressing our courts' treatment of additional sustaining grounds, which are directly contrary to Appellant's argument. It is well settled under South Carolina law that this Court can affirm of the lower court's order on any ground that appears in the record. *See* Rule 220(c), SCACR ("The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal."). As the respondent, Womble is free to raise and argue additional grounds that support affirmance of the trial court's ruling, even if the grounds were never submitted to or ruled on by the trial court. *See I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 536 S.E.2d 716 (2000) ("Under the present rules, a respondent—the 'winner' in the lower court—may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court.").

Finally and most importantly, the exact argument raised in Appellant's motion has already been examined and rejected by this Court. *See Sims v. Amisub of S.C., Inc.*, 408 S.C. 202, 214, 758 S.E.2d 187, 194 (Ct. App. 2014), *aff'd*, 414 S.C. 109, 777 S.E.2d 379 (2015) (relying upon *I'On, Ballenger*, and Rule 220(c), SCACR to hold that defendants who obtained summary judgment based upon an estoppel defense but not as to their statute of limitations defense could still raise the statute of limitations defense as an additional sustaining ground on appeal).

CONCLUSION

For the foregoing reasons, this Court should deny Appellant's Motion to Strike.

Respectfully,

s/Robert E. Stepp
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June 5, 2020

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PROOF OF SERVICE

I certify that I have caused the **Respondent's Return to Appellant's Motion to Strike** to be served on Appellant Charleston Laboratories, Inc., via email as provided in the South Carolina Supreme Court Amended Order dated May 29, 2020, regarding the operation of the Appellate Courts During the Corona Virus Emergency, to Appellant's attorneys of record Ronald L. Richter, Jr., Esquire, Scott M. Mongillo, Esquire and Eric S. Bland, Esquire via their respective AIS registered email addresses. Copy of service email attached herewith.

By: s/Robert E. Stepp

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ATTORNEYS FOR RESPONDENT

June 5, 2020

From:	Cynthia D. Nygord
To:	Ronnie Richter; Scott Mongillo; Eric S. Bland
Cc:	Bobby Stepp; Benjamin Gooding; Jasmine D. Smith; Cynthia D. Nygord; Savannah Leyton; {F29855}.Clients@f8eed.imanage.work
Subject:	Charleston Labs, Inc. v. Womble Carlyle Sandridge & Rice, LLP - Return to Motion to Strike [IMAN-CLIENTS.FID29855]
Date:	Friday, June 5, 2020 10:54:48 AM
Attachments:	image001.png image002.png Respondent"s Return to Appellant"s Motion to Strike.pdf Proof of Service - Respondent"s Return to Appellant"s Motion to Strike.pdf

Dear Counsel,

Attached for service upon you via electronic mail is Respondent's Return to Appellant's Motion to Strike.

The Proof of Service with a copy of this email attached will follow in a separate email.

Please let me know if you have any difficulties opening the attachments.

With kindest regards,
Cyndi Nygord

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