

**THE STATE OF SOUTH CAROLINA**  
**In the Court of Appeals**

**APPEAL FROM CHARLESTON COUNTY**  
Court of Common Pleas

The Hon. Deadra L. Jefferson, Circuit Court Judge

Case No. 2016-CP-10-2955

Appellate Case No. 2020-000875

**RECEIVED**

**Aug 17 2020**

**SC Court of Appeals**

TCC of Charleston, Inc. ....Plaintiff/Respondent

v.

Concord and Cumberland, LLC, Concord & Cumberland HPR, Leo Hall, Diane Hall, Bea H. Smith, Margaret C. Pope, William D. Foster, Jr., Gene G. Foster, Mattison J. MacGillivray, Teresa MacGillivray, Pamela L. Vaughn, Nelia A. Patricio, Trustee of the Nelia A. Patricio Revocable Trust Agreement, Stuart D. Reeves, Edward T. Strom, Barbara K. Henderson, James R. Clarke, Paul A. Brim, Robert K. Seidl, Jennifer M. Seidl, Robert Kenneth Seidl, II, M. Bert Storey, Thomas R. Mather, 304 Concord & Cumberland, LLC, Marion M. Simpson, f/k/a/ Marion Moore McDonald Simpson, Kathy Gardner, Gregory J. Gardner, Freeman Waterfront Properties, LLC, Jo-Ann Cooper, Betty Y. Segal, Robert M. Levin, Bonita K. Levin, Donald D. Leonard, Beby L. Beatty, Mattellen, LLC, and Thomas R. Debnam, Trustee of the Trust Agreement of Thomas, R. Debnam.....Defendants

Of Which Concord & Cumberland HPR is the .....Appellant

**REPLY IN SUPPORT OF MOTION TO DISMISS APPEAL**

**EPTING & RANNIK, LLC**  
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*ATTORNEY FOR RESPONDENT*

Respondent TCC of Charleston, Inc. (“TCC”) provides this brief reply in support of its motion to dismiss this appeal.

**I. Argument**

**A. Non-Appealable Arbitration Award**

The trial court’s orders did not confirm the arbitration award or enter judgment; they simply denied a motion to vacate. Such orders are not immediately appealable. S.C. Code § 15-48-200(a) (listing appealable arbitration orders); *Heffner v. Destiny, Inc.*, 321 S.C. 536, 537, 471 S.E.2d 135, 136 (1995). No confirmation has taken place.

**B. No Final Resolution of Cause of Action**

It is long-settled that a single cause of action must proceed in a single action. *See Lawton v. N.Y. Life Ins. Co.*, 181 S.C. 230, 232, 186 S.E. 909, 910 (1936) (“The rule against splitting is that a single cause of action, claim or demand cannot be split up or divided so as to be made the subject of different actions” (internal quotation omitted)).

In this case, an arbitration award was entered in favor of TCC and against Appellant Concord & Cumberland HPR (“the HPR”). As a prevailing party in that arbitration, TCC requested the Panel award its attorneys’ fees. The HPR successfully argued that issue was not for the arbitrators, but for the court to decide; the question of the award of fees is pending before the Master in Equity. There can be no appeal, as relief is not yet fully adjudicated on this cause of action.

**C. Matters Still Pending in the Trial Court**

It is not merely that there is yet to be final adjudication of this cause of action, but also that remaining claims between TCC and the HPR are likewise not fully adjudicated, as is apparent from the trial court order dated August 11, 2020. **Exh. A.** The HPR has filed motions

for summary judgment and to deposit funds with the court. Defendant Betty Beatty has also filed for summary judgment. The August 11, 2020 order referred this case to the Master for resolution of these and other issues and granted TCC leave to amend its pleading to assert a new cause of action against the defendants.

In short, the case is proceeding in the trial court and should not be delayed in any part by the HPR's premature appeal.<sup>1</sup>

## II. Conclusion

The subject orders are not immediately appealable, and this appeal must be dismissed.

Respectfully submitted,

**EPTING & RANNIK, LLC**

This 17th day of August, 2020  
Charleston, SC

/s/ Jaan Rannik  
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*ATTORNEY FOR TCC OF CHARLESTON, INC.*

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<sup>1</sup> The HPR accuses TCC of delay. TCC is the prevailing party seeking to collect a multi-million-dollar award. Delay is not in TCC's interest.

# EXHIBIT A

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 ) FOR THE NINTH JUDICIAL CIRCUIT  
COUNTY OF CHARLESTON )

TCC OF CHARLESTON, INC. )  
 )  
Plaintiff, )

Case No.: 2016-CP-10-2955

v. )

CONCORD AND CUMERLAND, LLC., )  
CONCORD & CUMBERLAND HPR, )  
LEO HALL, DIANE HALL, BEA H. )  
SMITH, MARGARET C. POPE, )  
WILLIAM D. FOSTER, JR., GENE G. )  
FOSTER, MATTISON J. )  
MACGILLIVRAY, TERESA )  
MACGILLIVRAY, PAMELA L. )  
VAUGHN, NELIA A. PATRICIO, Trustee )  
of the Nelia A. Patricio Revocable Trust )  
Agreement, STUART D. REEVES, )  
EDWARD T. STROM, BARBARA K. )  
HENDERSON, JAMES R. CLARKE, )  
PAUL A. BRIM, ROBERT K. SEIDL, )  
JENNIFER M. SEIDL, ROBERT )  
KENNETH SEIDL, II, M. BERT )  
STOREY, THOMAS R. MATHER, )  
EDWARD T. STROM, 304 CONCORD & )  
CUMBERLAND, LLC, MARION M. )  
SIMPSON F/K/A MARION MOORE )  
MCDONALD SIMPSON, KATHY )  
GARDNER, GREGORY J. GARDNER, )  
FREEMAN WATERFRONT )  
PROPERTIES, LLC, JO-ANN COOPER, )  
BETTY Y. SEGAL, ROBERT M. LEVIN )  
AND BONITA K. LEVIN, DONALD D. )  
LEONARD, BETTY L. BEATTY, )  
MATTELLEN, LLC, AND THOMAS R. )  
DEBNAM, Trustee of the Trust Agreement )  
of Thomas R. Debnam, )  
 )  
 )  
Defendants. )

**PROPOSED ORDER ON PENDING  
MOTIONS AND ORDER OF  
REFERENCE**

This case was filed June 6, 2016. A stay was consented to and entered on January 30, 2017 to allow for arbitration; following arbitration, there was no consent to move the case forward prior to the entry of Judge Jefferson's May 1, 2020 order.

Before this Court are (i) TCC of Charleston, Inc.'s ("TCC's") motion to amend the complaint based on the arbitration award and the order of May 1, 2020, (ii) summary judgment motions by the Concord & Cumberland HPR ("the HPR") and Ms. Betty Beatty ("Ms. Beatty") respectively, and (iii) the HPR's motion to deposit funds with the Court. The Court has also been made aware of discovery served by TCC following the lifting of the stay.

Rule 15(b) provides that leave to amend a pleading should be freely given, and the Court grants TCC's motion to amend. Given the pending amendment, pending discovery requests, and the lack of a final judgment, the Court finds it would be inappropriate to consider the remaining motions at this time.

Further, it appears to the Court that the parties' disputes are best decided by the Master in Equity, who should entertain the present motions at the appropriate time along with such other issues as exist or arise between the parties.

**NOW THEREFORE:**

1. TCC's motion to amend is granted;
2. This matter is referred to the Master in Equity for all purposes, including for a decision at the appropriate time on the HPR's and Ms. Beatty's motions for summary judgment and the HPR's motion to deposit funds.

**AND IT IS SO ORDERED!**

This \_\_\_\_ day of \_\_\_\_\_, 2020

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The Hon. Jennifer B. McCoy  
Judge, Ninth Judicial Circuit



Charleston Common Pleas

**Case Caption:** Tcc Of Charleston Inc VS Concord And Cumberland Llc , defendant,  
et al  
**Case Number:** 2016CP1002955  
**Type:** Order/Other

So Ordered

s/Jennifer B. McCoy #2764

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Of Which Concord & Cumberland HPR is the .....Appellant

PROOF OF SERVICE

I certify that I have served Respondent’s Reply in Support of Motion to Dismiss Appeal on opposing counsel via e-mail, on August 17, 2020, addressed to Appellant’s attorney of record, **Cordes Ford, Esq.,** at Cordes.Ford@wbd-us.com. A copy of the e-mail is attached to this Proof of Service as Exhibit A.

**Angela Gross**

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**From:** Angela Gross  
**Sent:** Monday, August 17, 2020 11:46 AM  
**To:** Ford, Cordes; Jaan Rannik; Buckley, Edward D. (Ed)  
**Cc:** Walden, Andrew; Andrew K. Epting; Daigle, Jason; Grimball, Henry  
**Subject:** TCC of Charleston v. Concord and Cumberland / Appeal No. 20-000875  
**Attachments:** 2020 08 17 - Reply in Support of Motion to Dismiss (TCC v. Concord - 2020-00875).pdf;  
EXH A - 2020 08 11 - Order Granting Motion to Amend and Refer to MIE (TCC v. Concord - 20-000875).pdf

Counselors:

Attached for service please find Respondent's Reply in Support of Motion to Dismiss in the above-matter which will be filed with the SC Court of Appeals through the AIS e-filing system today.

A proof of service will follow under separate email.

*Angela*

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