

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Sep 14 2020

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Robin B. Stilwell, Circuit Court Judge

Mary Kimbrell.....Appellant,

v.

Walmart Stores, Inc., Claims Management, Inc., and Josh
Johnson.....Respondents.

Appellate Case No. 2020-000668

INITIAL BRIEF OF APPELLANT

Joshua T. Hawkins, S.C. Bar #78470
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ARGUMENT

In its brief, the respondent argues that the appellant's argument on appeal is moot because the circuit court granted the plaintiff's motion to amend the pleadings. The appellant agrees that the circuit court's recent ruling – made after the appellant filed her initial brief – effectively moots the issues before this Court, insofar as that ruling allowed the appellant to amend her complaint to include the allegations that the appellant sought to include in her 2019 action. The appellant, however, stands by the arguments set forth in her initial brief.

As South Carolina courts have recognized, there is no requirement to restore a case stricken pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure. *Maxwell v. Genez*, 356 S.C. 617, 621, 591 S.E.2d 26 (2003) citing *Green v. Lewis Truck Lines, Inc.*, 314 S.C. 303, 443 S.E. 2d 906 (1994). Additionally, while the South Carolina Rules of Civil Procedure, “do not clearly provide that striking a case pursuant to Rule 40(j) is a dismissal, there is a basis in [South Carolina] law for considering a case stricken pursuant to the rule as the equivalent of dismissed.” *Goodwin v. Landquest Development, LLC*, 414 S.C. 623, 631-32, 779 S.E.2d 826 (Ct. App. 2015). Because the original action in this case was dismissed when it was stricken from the roster pursuant to Rule 40(j), there was no action pending at the time that the appellant filed the new action against the respondents. As a result, Rule 12(b)(8) should have prohibited the respondents from restoring the first action.

CONCLUSION

For the foregoing reasons, the appellant respectfully submits that the Circuit Court erred in restoring the stricken pleadings. However, as the Circuit Court has now allowed the appellant to amend her pleadings to include the allegations contained in the second action, the appellant agrees with the respondent that the issues before this court are effectively moot.

Respectfully submitted,

s/Helena Jedziniak

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PROOF OF SERVICE

I certify that I have served the Initial Reply Brief of Appellant on Respondent's counsel of record electronically by Email to the address indicated below, on September 14, 2020.

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Ms. Jenny Abbot Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: *Mary Kimbrell v. Walmart Stores, Inc., Claims Management, Inc., and Josh Johnson*
Appellate Case No.: 2020-000668

Dear Ms. Kitchings:

Please find enclosed for filing Appellant's Initial Reply Brief in the above-referenced case, along with a Proof of Service upon Respondent.

Should you have any other questions, please do not hesitate to contact our office.

Sincerely,

Monica Brody
Paralegal



Enclosures

Copy (with Proof of Service):

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