

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

RECEIVED

Nov 24 2020

SC Court of Appeals

Stephan Shugart,

Appellant,

vs.

Historic Hospitality, LLC; Shah Investments,
LLC; Shah Enterprises, LLC; Southern Hotel
Properties, LLC,

Respondents.

CASE NO.: 2020-001453

**RESPONDENT SHAH ENTERPRISES,
LLC'S MOTION TO DISMISS FROM
THE COURT OF APPEALS CAPTION
AND PLEADINGS PURSUANT TO
RULE 15, SCRPC**

PLEASE TAKE NOTICE that the Defendant, by and through their undersigned attorney, shall, and hereby does, move this Honorable Court pursuant to Rule 15(b)(d) of the South Carolina Rules of Civil Procedure for an order to dismiss Shah Enterprises, LLC from the appeal and caption.

STANDARD OF REVIEW

Rule 15(a), SCRPC, provides in relevant part that "a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party." Rule 15(a), SCRPC. "The prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it." Parker v. Spartanburg Sanitary Sewer Dist., 362 S.C. 276, 286, 607 S.E.2d 711, 716-17 (Ct. App. 2005). It is well established that the decision whether to grant or deny a Rule 15(a) motion is within the sound discretion of the trial judge, and that "the party opposing the motion has the burden of establishing prejudice." Foggie v. CSX Transportation, Inc., 313 S.C. 98, 103, 431 S.E.2d 587, 590 (1993); City of North Myrtle Beach v. Lewis-Davis, 360 S.C. 225, 232-33,

599 S.E.2d 462, 465 (Ct. App. 2004); Pruitt v. Bowers, 330 S.C. 483, 499 S.E.2d 250, 253 (Ct. App. 1998).

FACTUAL AND PROCEDURAL HISTORY

This lawsuit stems from an accident that occurred on September 29, 2016, as indicated in Plaintiff's Complaint (incorporated herein as "Attachment A"). Plaintiff alleges he was exiting the hotel property when he struck a low branch causing him to go unconscious and fall to the ground. In no part of his complaint did he ever allege that Shah Enterprises, LLC had any association, control, possession, or duty involving Hotel Aiken or its grounds. Hotel Aiken is located at 235 Richland Ave W, Aiken, SC 29801. Shah Enterprises, LLC is a business entity which controls 106, 108, 108-A and 110 Laurens Street, Aiken, SC 29803. These addresses, respectively, are leased by retail stores with no association to Hotel Aiken. Please see Affidavit of Neel Shah attached as Exhibit B.

ARGUMENT

The appeal that has been filed relates to a co-defendant and does not relate to Defendant Shah Enterprises, LLC. Shaw Enterprises, LLC was dismissed six (6) months prior upon consent of the plaintiff. On February 3, 2020 Defendant Shaw Enterprises, LLC filed a motion to be dismissed upon grounds that it did not own, operate, manage or have any relationship with or interest in Hotel Aiken. Memo in Support was filed February 18, 2020. Motion was heard by the Honorable Judge Michael Nettles.

After hearing arguments, pro-se plaintiff was convinced and agreed to dismiss Defendant Shaw Enterprises, LLC from the suit and to only proceed against the other Defendants. The court found in its Order:

Based upon the evidence, memorandum, and affidavits provided, Shah Enterprises, LLC has no ownership or control of Hotel Aiken, the premises upon which the

alleged injury took place. Therefore, Plaintiff has not stated facts sufficient to constitute a cause of action against Defendant Shah Enterprises, LLC.

See Order of Honorable Michael G. Nettles, # 2140, attached hereto as “Exhibit A.”

Consent Order was filed on March 10th and electronically signed the same day By Judge Nettles.

CONCLUSION

For all of the foregoing reasons, Defendant Shaw Enterprises respectfully requests that it be removed from the appeal caption pursuant to Rule 12.

CANGELOSI & ASSOCIATES LAW FIRM, LLC

s/ Trevor A. Cangelosi

Trevor A. Cangelosi (Bar No.: 78015)

Lonnie R. Doles, Jr. (Bar No.: 101718)

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Attorneys for Defendant Shah Enterprises, LLC

Mt. Pleasant, South Carolina
November 24, 2020

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Stephan Shugart,

Plaintiff,

vs.

Historic Hospitality, LLC; Shah Investments,
LLC; Shah Enterprises, LLC; Southern Hotel
Properties, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

CASE NO.: 2019-CP-02-02426

**CONSENT ORDER TO DISMISS SHAH
ENTERPRISES, LLC**

This matter comes before me upon agreement of the parties for an Order dismissing Defendant Shah Enterprises, LLC as they are not a proper party to this action.

“In deciding whether a claim should be dismissed pursuant to Rule 12(b)(6), SCRPC, this court should consider whether [Plaintiff] has state[d] facts sufficient to constitute a cause of action.” *Paradis v. Charleston Cty. Sch. Dist.*, 424 S.C. 603, 613, 819 S.E.2d 147, 152–53 (Ct. App. 2018), reh'g denied (Oct. 18, 2018).

Based upon the evidence, memorandum, and affidavits provided, Shah Enterprises, LLC has no ownership or control of Hotel Aiken, the premises upon which the alleged injury took place. Therefore, Plaintiff has not stated facts sufficient to constitute a cause of action against Defendant Shah Enterprises, LLC. For good cause shown, it is therefore,

ORDERED, ADJUDGED AND DECREED that the Defendant Shah Enterprises, LLC be dismissed as parties to this action.

[SIGNATURE PAGE TO FOLLOW]

AND IT IS SO ORDERED this ____ day of _____, 2020.

The Hon. Michael Nettles

Aiken, South Carolina

WE SO MOVE:

ROSS, CANGELOSI & ASSOCIATES

s/ Trevor A. Cangelosi _____
Trevor A. Cangelosi, Esq.
Attorney for Defendant Shah Enterprises, LLC

WE SO CONSENT:

PLAINTIFF

s/ Stephan Shugart _____
Stephan Shugart
Plaintiff



Aiken Common Pleas

Case Caption: Stephan Shugart VS Historic Hospitality Llc , defendant, et al

Case Number: 2019CP0202426

Type: Order/Dismissal

So Ordered

s/ The Honorable Michael G. Nettles #2140

CANGELOSI & ASSOCIATES LAW FIRM,
LLC

Trevor A. Cangelosi
trevor@cangelosilawfirm.com
c: (843) 345-3471

November 24, 2020

RECEIVED

Nov 24 2020

SC Court of Appeals

VIA E-MAIL: ctappfilings@sccourts.org

Clerk of Court
Court of Appeals

Re: Case Name: Stephan Shugart v. Historic Hospitality, LLC, et Al.
Case No.: 2020-001453

To Whom it May Concern:

Enclosed please find Respondent, Shah Enterprises, LLC, Motion to Dismiss from the Court of Appeals Caption and Pleadings regarding the above matter.

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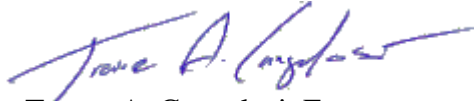
Should you have any questions or concerns, please do not hesitate to contact my office.

[SIGNATURE PAGE TO FOLLOW]

1242 White Flat Road
Mount Pleasant, SC 29464

Humbly and Gratefully yours,

CANGELOSI & ASSOCIATES LAW FIRM, LLC

A handwritten signature in blue ink, appearing to read "Trevor A. Cangelosi", with a long horizontal flourish extending to the right.

Trevor A. Cangelosi, Esq.

TAC/afb