

STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

**RECEIVED**

**Dec 17 2020**

**SC Court of Appeals**

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

The Honorable Robert E. Hood

Case No. 2018-CP-40-01318

---

Appellate Case No. 2019-001811

---

Best Choice Roofing & Home Improvement, Inc.,..... Appellant,

v.

Tyler Woods,.....Respondent.

---

**FINAL REPLY BRIEF OF APPELLANT BEST CHOICE ROOFING  
& HOME IMPROVEMENT, INC.**

---

Townes B. Johnson III (SC Bar# 75412)  
TOWNES B. JOHNSON III, LLC  
PO BOX 9246  
GREENVILLE, SC 29604  
PH: (864) 757-4899

*Attorney for Appellant*

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES.....ii,iii

ARGUMENT ..... 1

    I.    RESPONDENT INCORRECTLY CITES THE STANDARD OF REVIEW ..... 1

    II.   APPELLANT’S CLAIMS ARE SUFFICIENTLY RELATED AND RESPONDENT  
          WILL HAVE AN OPPORTUNITY TO REFUTE THEM.....1

    III.  THIS COURT HAS JURISDICTION OVER THIS APPEAL.....2

    IV.  RESPONDENT WILL NOT BE PREJUDICED PURSUANT TO SOUTH CAROLINA  
          LAW.....4

    V.   APPELLANT’S CLAIMS ARE NOT MADE IN BAD FAITH.....5

CONCLUSION.....6

**TABLE OF AUTHORITIES**

**STATUTES**

*S.C. Code Ann. § 14-3-330 (2018)*.....3,4  
*S.C. Code Ann. § 17-27-100.2*.....3

**RULES**

*Rule 201(a), SCACR*.....2  
*Rule 227, SCACR*.....3  
*Rule 15(a), SCRCP*.....1,5  
*Rule 15(b), SCRCP*.....4

**CASES**

*Villanueva v. United States, 662 F. 3d 124*.....1  
*ACA Fin. Guar. Corp. v. Advest, Inc., 512 F.3d 46, 56 (1st Cir. 2008)*.....1  
*Foman v. Davis, 371 U.S. 178, 182, 83 S. Ct. 227, 9 L. Ed. 2d 222 (1962)*.....1  
*Tanner v. Florence County Treasurer, 336 S.C. 552, 521 S.E.2d 153 (1999)*.....1  
*Greenville Cmty. Hotel Corp. v. Alexander Smith, Inc., 230 S.C. 239, 245, 95 S.E.2d 262 (1956)*.....1,2,3  
*Mylin v. Allen-White Pontiac, Inc., 281 S.C. 174, 314 S.E.2d 354 (Ct. App. 1984)*.....2  
*Thornton v. South Carolina Electric & Gas Corp .. 391 S.C. 297, 705 S.E.2d 475 (Ct. App. 2011)*.....2,3  
*Ex Parte Capital U-Drive-It, Inc., 369 S.C. I. 6. 630 S.E.2d 464, 467 (2006)*.....2  
*Breland v. Love Chevrolet Olds., Inc., 339 S.C. 89, 93, 529 S.E.2d 11, 13 (2000)*.....3,4  
*Mid-State Distribs, Inc., 310 S.C. at 334. 426 S.E.2d at 780*.....4

<i>Ball v. Canadian Am. Exp. Co.</i> , 314 S.C. 272, 275, 442 S.E.2d 620, 622 (Ct. App. 1994).....	4
<i>Soil Material Engineers, Inc. v. Folly Associates</i> , 293 S.C. 498, 361 S.E.2d 779 (Ct.App. 1987).	4
<i>National Time Share Sales, Inc. v. Maritime Ltd. Partnership</i> , 297 S.C. 43, 374 S.E.2d 678 (1988).....	4
<i>South Carolina State Highway Department v. Rural Land Co.</i> , 250 S.C. 12, 156 S.E.2d 333 (1967).....	4
<i>Micronics, Inc. v. S.C. Dep't of Revenue</i> , 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001).....	5
<i>Plum Creek Dev. Co., Inc. v. City of Conway</i> , 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999) ...	5
<i>Hilton Head Ctr. of South Carolina, Inc. v. Pub. Serv. Comm'n of South Carolina</i> , 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987).....	5

## ARGUMENT

### **I. RESPONDENT INCORRECTLY CITES THE STANDARD OF REVIEW**

In his Initial Brief, Respondent cites the United States Court of Appeals, First Circuit opinion of Villanueva v. United States, 662 F. 3d 124, for the proposition that the appellate court defers to the trial court's denial of a motion to amend if any adequate reason for the decision is apparent on the record. See Respondent's Brief, pg. 8. The grounds for denial of a motion to amend in the First Circuit are vastly different than the grounds for denial in the State of South Carolina. See e.g. *ACA Fin. Guar. Corp. v. Advest, Inc.*, 512 F.3d 46, 56 (1st Cir. 2008) (quoting *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 9 L. Ed. 2d 222 (1962) (*Grounds for denial include `undue delay, bad faith or dilatory motive ... repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party ... [and] futility of amendment.`*)). In South Carolina, the standard is whether there is prejudice resulting from a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it. See *Tanner v. Florence County Treasurer*, 336 S.C. 552, 521 S.E.2d 153 (1999).

### **II. APPELLANT'S CLAIMS ARE SUFFICIENTLY RELATED AND RESPONDENT WILL HAVE AN OPPORTUNITY TO REFUTE THEM**

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), SCRCF*. In his Initial Brief, Respondent cites Greenville Cmty. Hotel Corp. v. Alexander Smith, Inc., 230 S.C. 239, for the proposition that the trial court has no authority to allow a party to amend a pleading with an "amendment" which substitutes the original complaint with a "wholly unrelated cause of action." See Respondent's Brief, pg. 8. *Greenville Cmty. Hotel Corp.*, however, holds that "[t]he limitation of the power of amendment under subdivision (d) to such as "does not change substantially the claim or defense" is applicable only to amendments

*proposed while the court is hearing the evidence, or after it has heard it.” See Greenville Cmty. Hotel Corp. v. Alexander Smith, Inc., 230 S.C. 239, 245, 95 S.E.2d 262 (1956) (emphasis added).*

In the matter at hand, the parties are early in the discovery phase of litigation and there has been no allegation raised by either Respondent or the Court that Respondent would not have an opportunity to refute Appellant’s claims. This is vastly different than the amendments contemplated in Greenville Cmty. Hotel Corp. and Mylin which were amendments to conform raised at trial. *See e.g. Id and See e.g. Mylin v. Allen-White Pontiac, Inc., 281 S.C. 174, 314 S.E.2d 354 (Ct. App. 1984).* Furthermore, the nexus of facts between Appellant’s original claims and amended claims are sufficiently related to one another as they both arise out of the same transaction – Respondent’s relocation to Atlanta, Georgia for employment with Appellant.

For the reasons set forth in Appellant’s Brief, the Court abused its discretion in failing to grant Appellant’s Motion to Amend.

### **III. THIS COURT HAS JURISDICTION OVER THIS APPEAL**

Rule 201(a) of the South Carolina Appellate Court Rules states, in relevant part:

- (a) Judgments, Orders and Decisions Subject to Appeal. Appeal may be taken, as provided by law, from any final judgment, appealable order or decision. The procedure for petitioning for a writ of certiorari to review final judgments in post-conviction relief cases is provided by Rule 243.

Rule 201(a), SCACR.

An interlocutory order not governed by a specialized appealability statute is immediately appealable only if it fits into one of the categories listed in South Carolina Code section 14-3-330, which governs South Carolina appellate jurisdiction. *Thornton v. South Carolina Electric & Gas Corp. . 391 S.C. 297, 705 S.E.2d 475 (Ct. App. 2011) (citing Ex Parte Capital U-Drive-It, Inc., 369 S.C. I. 6. 630 S.E.2d 464, 467 (2006)).*

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases. and shall review upon appeal:

- (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;
- (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action[.]
- (3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and
- (4) An Interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing appointment of a receiver.

*S.C. Code Ann. § 14-3-330 (2018)*

An order “affects a substantial right . . . if the order removes a material issue from the case, thereby preventing the issue from being litigated on the merits and preventing the party from seeking to correct any errors in the order during or after trial.” *Thornton*, 39 I S.C. at 304, 705 S.E.2d at 479; *see also Breland v. Love Chevrolet Olds., Inc.*, 339 S.C. 89, 93, 529 S.E.2d 11, 13 (2000) (“Immediate appeals under [14-3-330(2)(c)] have been allowed in situations where the substantial right could not be vindicated on appeal after the case.”).

In this case, Appellant's right to appeal is not limited by a specialized court rule or appealability statute such as Rule 227, SCACR1 or South Carolina Code section 17-27-100.2 Appellant's right to appeal is thus governed by South Carolina Code section 14-3-330.

Under section 14-3-330 and South Carolina caselaw, Appellant's appeal is proper if the trial court's order either “involves the merits” or “affects a substantial right.” S.C. Code Ann. § 14-

3-330 (2018); *Mid-State Distribs, Inc.*, 310 S.C. at 334. 426 S.E.2d at 780; *Breland*, 339 S.C. at 93, 529 S.E.2d at 13.

In the case at hand, the trial court's order "affects a substantial right" of Appellant to be granted leave to amend its Complaint to clarify the facts of the case. In no way would Respondent be prejudiced had BCR been granted such leave. Respondent would have been given notice of the amended claims and the opportunity to refute them.

#### **IV. RESPONDENT WILL NOT BE PREJUDICED PURSUANT TO SOUTH CAROLINA LAW**

In his Initial Brief, Respondent cites *Ball v. Canadian Am. Exp. Co.*, 314 S.C. 272, for the proposition that "[p]rejudice occurs when the amendment states a new claim or defense which would require the opposing party to introduce additional or different evidence to prevail in the amended action". See Respondent's Brief, pg. 12. *Ball v. Canadian Am. Exp. Co.*, however, is expressly discussing motions to amend pleadings to conform to proof, under Rule 15(b) SCRCPP, at or after trial as follows:

*Motions to amend pleadings to conform to proof* may be made upon motion of any party at any time, even after judgment, and are within the sound discretion of the trial judge. See Rule 15(b), SCRCPP. Ordinarily, amendments to conform to proof should be liberally allowed. *Soil Material Engineers, Inc. v. Folly Associates*, 293 S.C. 498, 361 S.E.2d 779 (Ct.App. 1987). However, if late amendment of the pleadings would cause prejudice to the opposing party, the court should either deny the amendment or grant a continuance reasonably necessary to allow the opposing party to meet the amendment. *National Time Share Sales, Inc. v. Maritime Ltd. Partnership*, 297 S.C. 43, 374 S.E.2d 678 (1988). Prejudice occurs when the amendment states a new claim or defense which would require the opposing party to introduce additional or different evidence to prevail in the amended action. See, e.g., *South Carolina State Highway Department v. Rural Land Co.*, 250 S.C. 12, 156 S.E.2d 333 (1967).

See *Ball v. Canadian Am. Exp. Co.*, 314 S.C. 272, 275, 442 S.E.2d 620, 622 (Ct. App. 1994).

Unlike in *Ball*, in the matter at hand, as the parties had not engaged in any discovery other than written discovery, had not mediated the case and the case was not on any jury trial dockets as

of Appellant's filing of its Motion to Amend, the motion is under Rule 15(a) SCRCPP and there is no lack of notice and Respondent will have ample time to refute Appellant's claims. Respondent, accordingly, would suffer no prejudice pursuant to South Carolina law and Appellant's Motion to Amend should be freely given.

#### **V. APPELLANT'S CLAIMS ARE NOT MADE IN BAD FAITH**

It is the long-standing policy of South Carolina that our Courts favor the resolution of cases on the merits. *See e.g. Micronics, Inc. v. S.C. Dep't of Revenue*, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001). Appellant, through its amendment, seeks to have all claims and controversies be and between it and Respondent arising out of the transaction that is the subject of Appellant's initial complaint resolved on the merits in the pending case between the parties so that Appellant is not later barred from bringing those claims. *See Plum Creek Dev. Co., Inc. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999) (*quoting Hilton Head Ctr. of South Carolina, Inc. v. Pub. Serv. Comm'n of South Carolina*, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987)) ("Under the doctrine of res judicata, '[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit.'"). For the foregoing reasons, seeking to amend so that all matters can be resolved on the merits and so that you do not lose your ability to bring a cause of action is not pursued in bad faith.

**CONCLUSION**

For the foregoing reasons, Appellant Best Choice Roofing & Home Improvement, Inc. respectfully asks this Court to reverse the Circuit Court’s Orders of February 19, 2019, March 20, 2019 and October 22, 2019 and allow Appellant Best Choice Roofing & Home Improvement, Inc. to amend its Complaint.

Respectfully submitted,



---

Townes B. Johnson III (SC Bar# 75412)  
TOWNES B. JOHNSON III, LLC  
PO Box 9246  
GREENVILLE, SC 29604  
PH: (864) 757-4899

*Attorney for Appellant*

December 17, 2020  
Greenville, SC