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**Mar 12 2021**  
**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY  
In the Circuit Court

Alison Renee Lee, Circuit Court Judge

Appellate Case No. 2020-001187

Lower Court Case No. 2020-CP-40-03848

Patricia Ford.....Appellant,

v.

Tarheel Capital.....Respondent.

**RESPONDENT’S MOTION TO DISMISS THE APPEAL**

Pursuant to Rule 240, SCACR, Respondent Tarheel Capital Corporation d/b/a Wendy’s Company XYZ, incorrectly styled above, by and through the undersigned attorneys, moves to dismiss the appeal filed by Appellant Patricia Ford.

A party may take an appeal “from any final judgment, appealable order[,] or decision.” Rule 201(a), SCACR. But “[o]nly a party aggrieved by an order, judgment, sentence[,] or decision may appeal.” Rule 201(b), SCACR. Indeed, appellate jurisdiction in South Carolina is limited to correcting errors of law and reviewing the following:

- (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 the appointment of a receiver.

S.C. Code Ann. § 14-3-330(1)–(4) (2017); see also S.C. Code Ann. § 14-3-430 (2017) (“Upon an appeal under item (3) of [s]ection 14-3-330 the court may review any intermediate order involving the merits and necessarily affecting the order appealed from.”).

The common thread in the rules governing appellate jurisdiction is the existence of an order or judgment from the lower court. See I’On, LLC v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (recognizing “the long-established preservation requirement that the losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments”). Here, however, that key ingredient is missing. Cf. Rule 203(d)(1)(B)(ii), SCACR (requiring the appealing party to file “[a] copy of the order(s) and judgment(s) to be challenged on appeal”). Appellant is trying to appeal a settlement agreement she signed after a successful mediation. See Ex. A, Notice of Appeal. A settlement agreement, of course, is not appealable because it is not a ruling from the court.

To be fair, the circuit court did enter an order dismissing the case after receiving notice that the parties settled at mediation. See Ex. B, Form 4 Order of Dismissal. Nevertheless, Appellant

did not the circuit court to reconsider its order dismissing the case. See I'On, LLC, 338 S.C. at 422, 526 S.E.2d at 724. In any event, Respondent has filed a motion to compel settlement in the circuit court. See Ex. C, Def.'s Mot. to Compel Settlement; cf. Rule 43(k), SCRCP. If unhappy with the circuit court's ruling on the motion, Appellant is free to take an appeal from that order. But the Court must have an order to review. Because no such order exists, the case is not ripe for the Court's review.

In sum, the Court should dismiss the appeal because Appellant's change of heart on the settlement agreement reached between the parties, standing alone, is not appealable. Therefore, under the current posture, the Court lacks appellate jurisdiction to hear this case.

Respectfully submitted,

/s/J. Michael Montgomery \_\_\_\_\_

Rebecca Laffitte

SC Bar No. 3105

J. Michael Montgomery

SC Bar No. 74930

Vordman Carlisle Traywick, III

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*Attorneys for Respondent Tarheel Capital  
Corporation d/b/a Wendy's XYZ Company*

Columbia, South Carolina  
March 12, 2021

*Patricia Ford v. Tarheel Capital*

App. No. 2020-01187

# **Exhibit A**

NOTICE OF APPEAL AND SETTLEMENT AGREEMENT

Respondent's Motion to Dismiss the Appeal

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**SC Court of Appeals**

**FORM 1  
NOTICE OF APPEAL IN A CIVIL CASE**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

Case No. 2020-CP-40-03848

Patricia Ford,  
Plaintiff,

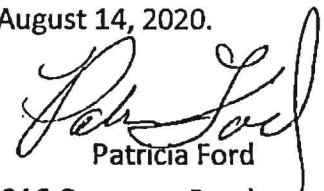
v.

Tarheel Capital/Wendy's  
Defendant,

**NOTICE OF APPEAL**

Patricia Ford appeals the order of H. Ronald Stanley at 1415 Park Street dated August 14, 2020. Appellant received written notice of entry of this order August 14, 2020.

August 25, 2020



Patricia Ford

1216 Congaree Road  
Hopkins SC 29061  
Plaintiff

THE STATE OF SOUTH CAROLINA of Appeals  
In The Court of Appeals  
[In The Supreme Court]

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SC Court of Appeals

APPEAL FROM RICHARD COUNTY  
Court of Common Pleas

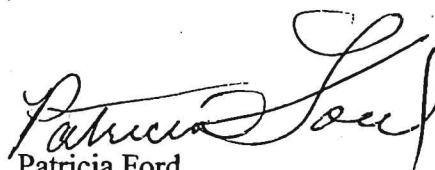
Appellate Case No. docket 2020-001187

Patricia Ford,  
Plaintiff,

v.

Tarheel Capital  
Respondent

A copy of the appeal docket #2020 CP 4003848 is being forward this was done on the August 14, 2020 at the Attorney David J. Miller and John Mobley Office. Forward to Court basic on the Order Filed December 29, 2020.

  
Patricia Ford  
1216 Congaree Road  
Hopkins SC 29061  
(803) 414-4960  
Pro se

Filed January 5, 2021

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JAN 05 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA

COUNTY OF Richland

PATRICIA FORD,

Plaintiff,

vs.

TARHEEL CAPITAL/WENDY'S  
Defendant.

) IN THE COURT OF COMMON PLEAS

) Docket # 2020 CP4003848

) SETTLEMENT AGREEMENT

1. A mediated settlement conference was held on August 14, 2020.
2. As a result of this conference, this case is settled. The terms and conditions of the Settlement are as follows:
  - (a) The Defendant or the carrier for the Defendant has agreed to pay unto the Plaintiff the sum of \$25,000.00, as settlement of a disputed claim, payment to be made within 10 days from receipt of the completed Medicare form and a completed W-9 from plaintiff's counsel. the date of mediation.
  - (b) The case shall be dismissed with prejudice and each party shall pay their own costs and expenses.
  - (c) Settlement shall reflect a non-fault settlement without admission of any fault. Settlement documents to be in a form and content satisfactory to the attorneys for both parties. The Settlement Agreement will be drafted by counsel for the Defendant.
  - (d) Any and all subrogation liens shall be the sole responsibility of the Plaintiff and Plaintiff shall covenant and agree to hold the Defendant and their agents, carriers, attorneys and assigns harmless therefrom.

DATE: August 14, 2020

*(e) The insurance carrier for the defendant will pay all cost of mediation.*

Patricia Ford  
Plaintiff

[Signature]  
Attorney for the Plaintiff

\_\_\_\_\_  
Attorney for the Defendants

*Patricia Ford v. Tarheel Capital*

App. No. 2020-01187

# **Exhibit B**

FORM 4 ORDER OF DISMISSAL

Respondent's Motion to Dismiss the Appeal

Patricia Ford et al  
PLAINTIFF(S)

Tar Heel Capital Corporation et al  
DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (*CHECK REASON*):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  
 Other
- ACTION STRICKEN (*CHECK REASON*):**  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (*CHECK APPLICABLE BOX*):**  
 Affirmed;  Reversed;  Remanded;  
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court:

Case Fully Settled at Mediation

**ORDER INFORMATION**

This order  ends  does not end the case.

See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 09/01/2020 .

Company Xyz  
Tar Heel Capital Corporation  
Wendys

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCF.

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Richland Common Pleas

**Case Caption:** Patricia Ford , plaintiff, et al vs Tar Heel Capital Corporation ,  
defendant, et al

**Case Number:** 2020CP4003848

**Type:** Order/Electronic Form 4

IT IS SO ORDERED!

s/ Alison Renee Lee, Chief Administrative Judge  
for 2020

*Patricia Ford v. Tarheel Capital*

App. No. 2020-01187

# **Exhibit C**

DEFENDANT'S MOTION TO COMPEL SETTLEMENT

Respondent's Motion to Dismiss the Appeal

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )  
  
Patricia Ford and Cleveland Ford, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
Tarheel Capital Corporation d/b/a )  
Wendy's, Company XYZ, )  
 )  
Defendants. )  
 )

IN THE COURT OF COMMON PLEAS

Civil Action No. 2020-CP-40-03848

**NOTICE OF MOTION AND MOTION  
TO COMPEL SETTLEMENT**

TO: JOHN T. MOBLEY, ESQUIRE, OF THE JOHN MOBLEY LAW FIRM, P.A.,  
ATTORNEY FOR THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the defendant, Tarheel Corporation d/b/a Wendy's Company XYZ, will move before the Presiding Judge of the Richland County Court of Common Pleas at 10:00 a.m. on the Tenth (10th) day after service hereof or as soon thereafter as counsel may be heard, for an Order compelling the plaintiffs to accept the settlement check for the amount agreed-upon by the parties and sign the General Receipt and Release Agreement.

The basis for this motion is that the plaintiffs and defendant mediated this matter on August 14, 2020, and agreed to settle pursuant to the Settlement Agreement, which is attached as **Exhibit A**. Importantly, both plaintiffs signed this Settlement Agreement. The Settlement Agreement provides that the defendant will pay \$25,000 to the plaintiffs in exchange for a Release in favor of the defendant, Tarheel Capital Corporation d/b/a Wendy's, Company XYZ, Employers Mutual Casualty Co., EMC Insurance Companies, their agents, officers, insurers, servants and employees, from any and all causes of action resulting from the alleged incident that occurred on November 11, 2017.

EMC Insurance Companies mailed the settlement check to the plaintiffs' counsel, and the undersigned sent the Release and Voluntary Stipulation of Dismissal to the plaintiff's counsel on August 21, 2020 via e-mail. On August 25, 2020, the undersigned received notice that the plaintiffs now refuse to sign the Release and wish to no longer honor the settlement.

For the foregoing reasons, the defendant believes it is entitled to an Order compelling settlement and requiring the plaintiffs to sign the General Receipt and Release Agreement and accept the settlement check in the amount of \$25,000.

Respectfully submitted,

ROBINSON GRAY STEPP & LAFFITTE, L.L.C.

By: s/ J. Michael Montgomery  
Rebecca Laffitte  
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J. Michael Montgomery  
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(803) 929-1400

Attorneys for Defendant Tarheel Capital Corporation d/b/a  
Wendy's, Company XYZ

Columbia, South Carolina

September 1, 2020

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**Mar 12 2021**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY  
In the Circuit Court

Alison Renee Lee, Circuit Court Judge

Appellate Case No. 2020-001187

Lower Court Case No. 2020-CP-40-03848

Patricia Ford.....Appellant,

v.

Tarheel Capital.....Respondent.

**PROOF OF SERVICE**

Pursuant to Rule 262(b), SCACR, I certify that I have served a copy of Respondent Tarheel Capital Corporation d/b/a Wendy’s XYZ Company’s Motion to Dismiss the Appeal on Appellant Patricia Ford by U.S. Mail on March 12, 2021 at the following address:

Patricia Ford  
1216 Congaree Road  
Hopkins, South Carolina 29061

*(Signature page to follow)*

/s/J. Michael Montgomery

Rebecca Laffitte

J. Michael Montgomery

Vordman Carlisle Traywick, III

Rachel M. Hutchens

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Corporation d/b/a Wendy's XYZ Company*

Columbia, South Carolina

March 12, 2021