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Feb 23 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Honorable R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2020-_____

Case No. 2019-CP-04-00752

Robert Ayers, Paul Barkal, Susan Barkal, Gloria Bennett, Kurt
Blaettler, Vandy Kim, Glenn Kornett, Gudrun Kornett, David Larson,
Lucye Larson, Florence Lince, Mike Lince, Michael McGraw, Diane
Bernat, and William Schaidle, Plaintiffs / Respondents,

v.

Chris Dixon; Samuel J. Dixon; Black Harbor Wealth Management, LLC;
Faw Casson & Co., LLP; Shurwest, LLC; and Pacific Life Insurance
Company, Defendants,

of whom Shurwest, LLC is the Appellant.

and

Shurwest, LLC, Third-Party Plaintiff / Appellant,

v.

MJSM Financial, LLC and Melanie
Schulze-Miller Third-Party Defendant / Respondent.

And

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Appellate Case No. 2020-_____

Case No. 2019-CP-04-02151

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William and Karen Rich, Plaintiffs / Respondents,

v.

J. Christopher Dixon; Christopher J. Dixon; Black Harbor
Wealth Management, LLC; and Shurwest, LLC, Defendants,

of whom Shurwest, LLC is the Appellant.

and

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Case No. 2019-CP-04-00479

Elizabeth Billings, Pamela Bott, Devon and Barbara Corley,
Thomas Dantzler, Jane Downing, Thomas and Laura Eliason,
Dennis Ellis, Bobby Floyd, Steven Ganley, Stanley Hix, Suzanne
Hofford, Robert Johnson, Jerome and Robin Karnowski, Jerry and
Kerry Kelley, Christine Lawson, Robert Manning, Diane Mayfield
Kelley McGraw Gray, Jeff Mitchell, Fred Myette, Mary Orem,
Drucilla Perry, Dennis and Maxine Pierson "Dennis and Maxine
Pierson living Trust," Earl Switzer, Alan Weeks, John and Mary
Wendorf, and Virginia Howard, Plaintiffs / Respondents,

v.

Chris Dixon; Black Harbor Wealth Management, LLC; Faw Casson
& Co., LLP; and Shurwest, LLC, Defendants,

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v.

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MOTION TO CONSOLIDATE

Pursuant to Rules 214 and 240, SCACR, Shurwest, LLC moves to consolidate these three appeals.

These three appeals all arise from the same set of facts. In 2019, Future Income Payments, LLC was indicted in the District of South Carolina by federal officials for running a Ponzi scheme. That criminal indictment led to myriad lawsuits, including these three. In short, the plaintiffs in all three cases allege that Chris Dixon and his company, Black Harbor Wealth Management, LLC, gave them bad financial advice regarding Future Income Payments, LLC's product, and that Dixon got his advice from Shurwest. Shurwest denied that it did anything wrong, but said if it did, Melanie Schulze-Miller and her company (MJSM Financial, LLC) were liable to Shurwest because Schulze-Miller and her company (not Shurwest) recommended Future Income Payments, LLC's product without Shurwest's knowledge (which had in fact refused to endorse Future Income Payments, LLC's product).

These three appeals followed similar procedural paths in circuit court. First, Shurwest moved to dismiss each case based on lack of personal jurisdiction. The circuit court denied those motions in essentially identical orders. Next, when it answered the complaints, Shurwest also filed third-party complaints against Schulze-Miller and MJSM Financial, LLC. The plaintiffs in each case moved to strike or sever the third-party complaints, and Schulze-Miller and MJSM Financial, LLC moved to dismiss the third-party complaints. The circuit court granted all of the motions to strike and to dismiss, again in essentially identical orders. Now, Shurwest has appealed in each case.

Because these three appeals arise from the same set of facts and followed similar procedural paths, they now raise the same legal questions in this Court. First, they raise the issue of personal jurisdiction, as the circuit court held that Shurwest was subject to both general and specific jurisdiction in South Carolina.* Second, they involve the third-party complaint and whether it can proceed not only as part of this case but also whether it can proceed at all, after the circuit court held Shurwest's claims were barred and would complicate the litigation.

This is therefore precisely the situation Rule 214 covers: "where the same question is involved in two or more appeals in different cases." *See also Wooten v. Wooten*, 364 S.C. 532, 538, 615 S.E.2d 98, 101 (2005) (consolidating "two appeals for review and resolution" under Rule 214). Consolidation makes sense here. There is no need to brief this case three times and have three panels of this Court address these issues. One set of briefs and one panel are sufficient. That will ensure the best use of the parties' and the Court's resources, and it will eliminate the risk of inconsistent decisions.

These three appeals should accordingly be consolidated for all purposes.

* Although orders denying motions to dismiss for lack of personal jurisdiction are typically not immediately appealable, a personal jurisdiction question "can be considered when other appealable issues are presented to an appellate court." *QZO, Inc. v. Moyer*, 358 S.C. 246, 252, 594 S.E.2d 541, 545 (Ct. App. 2004).

Respectfully submitted,

s/ Wm. Grayson Lambert

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CERTIFICATE OF SERVICE

I certify that the MOTION TO CONSOLIDATE was served on all counsel of record via electronic mail, pursuant to Supreme Court Order 2020-03-20-01, § (g)(3), on February 23, 2021, and a copy of that electronic mail is attached to this certificate:

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Subject: Ayers, Billings, and Rich Appeals - Motion to Consolidate
Attachments: Ayers, Billings, and Rich - Motion to Consolidate.pdf

Counsel:

Please find attached a motion to consolidate these three appeals.

Regards,
Grayson