

**RECEIVED**  
**May 21 2021**  
**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM UNION COUNTY  
Court of Common Pleas  
William A. McKinnon, Circuit Court Judge

Civil Action No. 2019-CP-4400054

Dwayne Thompson, ..... Respondent,

v.

Rolling Fog Vapor Company, LLC,

Of whom LG Chem, Ltd. and LG Chem America, Inc. are  
the.....

Appellants.

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**NOTICE OF APPEAL**

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LG Chem, Ltd. (“LG Chem”) and LG Chem America, Inc. (“LGCAI”) timely appeal the lower court’s Orders denying (1) LG Chem’s Renewed Motion to Dismiss and Quash Service of Process; (2) LG Chem’s Motion to Reconsider March 19, 2021 Order Denying its Renewed Motion to Dismiss and Quash Service of Process; (3) LGCAI’s Renewed Motion to Dismiss; and (4) LGCAI’s Motion to Reconsider March 19, 2021 Order Denying its Renewed Motion to Dismiss. Copies of the written orders are attached as **Exhibit A**. Appellants received written notice of the entry of the Orders denying LG Chem’s and LGCAI’s Motions to Reconsider March 19, 2021 Orders Denying their Renewed Motions to Dismiss on April 21, 2021. *See* Rule 203(b)(1), SCAR; Rule 59(f), SCRCF.

As the Supreme Court recently reiterated, whether an order is immediately appealable *must be determined on a case-by-case basis*. *Stone v. Thompson*, 426 S.C. 291, 295, 826 S.E.2d 868,

870 (2019) (emphasis added). For interlocutory orders, the appealability statute permits appellate jurisdiction when the order either involves the merits or affects a substantial right. S.C. Code Ann. § 14-3-330. In relevant part, the statute explains that an order affects a substantial right when it “(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.” S.C. Code Ann. § 14-3-330(2).

In interpreting this language, the Supreme Court has stated that an order “involves the merits” when it “finally determine[s] some substantial matter forming the whole or part of some cause of action or defense.” *Mid-State Distribs., Inc. v. Century Importers, Inc.*, 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993) (quoting *Jefferson v. Gene’s Used Cars, Inc.*, 295 S.C. 317, 318, 368 S.E.2d 456, 456 (1988)). Moreover, an order affects a substantial right “in situations where the substantial right could not be vindicated on appeal after the case,” such as for orders affecting the “mode of trial.” *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 93, 529 S.E.2d 11, 13 (2000).

Although the Supreme Court first held in 1993 that “the denial of a motion to dismiss under Rule 12(b)(2), SCRCPP, is interlocutory and not directly appealable,” *Mid-State Distribs.*, 310 S.C. at 336, 426 S.E.2d at 781, Appellants raised several arguments to the lower court that were not before the *Mid-State* court. Importantly, in *Mid-State*, the Supreme Court’s opinion focused solely on whether the subject order was sufficiently final such that it “involved the merits.” *Id.* at 336–37, 426 S.E.2d at 780–81. The court **did not** expressly address whether a ruling that the defendant had sufficient minimum contacts—such that exercising personal jurisdiction would comport with due process—implicated a substantial right. *Mid-State* expressly overruled two prior cases to the extent they conflicted with the current definition of “involving the merits.” Notably, however, the

court *did not* expressly overrule *Keller v. Keller*, 296 S.C. 411, 373 S.E.2d 692 (Ct. App. 1988), which permitted an interlocutory appeal from an order denying a motion to dismiss for lack of personal jurisdiction when the sufficiency of minimum contacts was at issue. Finally, *Mid-State* is also factually inapposite due to the entirely different procedural posture there.

South Carolina courts have previously indicated that an order implicating a party's constitutional rights is immediately appealable because it affects a substantial right. *See, e.g., Bateman v. Rouse*, 358 S.C. 667, 675, 596 S.E.2d 386, 390 (Ct. App. 2004). Here, the Appellants' constitutional guarantee of due process is at issue when the trial court finds sufficient minimum contacts and denies a motion to dismiss for lack of personal jurisdiction on that basis. The constitutional ramifications are heightened after the United States Supreme Court recently revisited the issue of personal jurisdiction in *Ford Motor Co. v. Montana Eighth Judicial District Court*, 141 S. Ct. 1017 (2021), on Thursday, March 25, 2021, and reiterated the continued vitality of the precedents and principles supporting LG Chem's and LGCAI's motions to dismiss based on lack of personal jurisdiction, principles that are contrary to prior South Carolina Supreme Court precedent in *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 90, 666 S.E.2d 218, 222-23 (2008) (basing jurisdiction on a finding that "Sumatra has minimum contacts with the United States as a whole and, via the stream of commerce theory, the State has shown Sumatra has minimum contacts with South Carolina").

If the Appellants are unable to immediately appeal the trial court's rulings, their only appellate remedy would otherwise be to appeal the final judgment following a trial years in the future, all the while being compelled to litigate in the absence of minimum contacts required to support personal jurisdiction under U.S. Supreme Court precedent.

Finally, South Carolina courts have frequently looked to North Carolina law for guidance on questions regarding whether an order is immediately appealable. *See, e.g., Salmonsens v. CGD, Inc.*, 377 S.C. 442, 451, 661 S.E.2d 81, 86–87 (2008); *Hagood v. Sommerville*, 362 S.C. 191, 197, 607 S.E.2d 707, 710 (2005); *Shields v. Martin Marietta Corp.*, 303 S.C. 469, 470, 402 S.E.2d 482, 483 (1991); *Pocisk v. Sea Coast Constr. of Beaufort*, 380 S.C. 584, 589, 671 S.E.2d 98, 101 (Ct. App. 2008) (all looking to North Carolina case law on immediate appeal questions). North Carolina’s appealability statute is similar to South Carolina’s and also permits interlocutory appeals of orders “affecting a substantial right.” *See* N.C. Gen. Stat. Ann. § 7A-27(b)(3). Although the North Carolina statutory language has an additional provision permitting “immediate appeal from an adverse ruling as to the jurisdiction of the court over the person or property of the defendant,” N.C. Gen. Stat. § 1-277(b), the North Carolina courts have interpreted this right to be *limited* to where the appeal raises questions concerning due process and minimum contacts, finding that those are the questions *affecting a substantial right*. As the North Carolina Court of Appeals explained in *Hardee ex rel. White v. Lowe’s Companies, Inc.*, 640 S.E.2d 445, 2007 WL 329176 (N.C. Ct. App. 2007) (table), this is because a substantial right exists when the interlocutory order denying a motion to dismiss for lack of personal jurisdiction “raises questions concerning due process and minimum contacts.” *Id.* at \*2; *see also A.R. Haire, Inc. v. St. Denis*, 625 S.E.2d 894, 898 (N.C. Ct. App. 2006) (“Although this appeal is interlocutory, we note that it affects a substantial right which is one of the exceptions to the rule barring an immediate appeal from an interlocutory order. Indeed, motions to dismiss for lack of personal jurisdiction affect a substantial right and are immediately appealable.”) (citations omitted). This rule ensures that parties who have less than minimum contacts with the state “will never be forced to trial against their wishes,” “promotes judicial economy[,] and protects the constitutional rights of foreign

defendants.” *Love v. Moore*, 291 S.E.2d 141, 146 (N.C. 1982). The same concerns and points support appealability under South Carolina’s appealability statute, which also permits immediate appeals “affecting a substantial right.”

Therefore, in light of the foregoing authorities and the requirement that appealability must be determined on a case-by-case basis, immediate appeal of the lower court’s order is proper. However, to the extent the Court has any doubt or concern regarding appealability, Appellants respectfully request the opportunity to provide more fulsome briefing and analysis regarding the propriety of immediate appeal under these facts.

Respectfully submitted,

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