

IN THE SUPREME COURT OF THE STATE OF DELAWARE

EMERITUS CORPORATION,	§	
	§	No. 524, 2011
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court of
	§	the State of Delaware in and for
v.	§	New Castle County
	§	
DANIEL J. McDONALD,	§	
EXECUTOR OF THE ESTATE OF	§	
JAMES McDONALD,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: September 28, 2011

Decided: September 30, 2011

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices.

ORDER

This 30th day of September 2011, upon consideration of the notice and supplemental notice of interlocutory appeal, it appears to the Court that:

(1) On February 24, 2010, plaintiff below/appellee, Daniel J. McDonald, Executor of the Estate of James McDonald (“McDonald”), filed a personal injury complaint against defendant below/appellant, Emeritus Corporation (“Emeritus”). On August 15, 2011, Emeritus filed a motion to dismiss.

(2) At a hearing on August 29, 2011, the Superior Court denied Emeritus’ motion to dismiss “with the understanding that [McDonald] will

file an Amended Complaint and [Emeritus] will have ten business days to respond.”¹ Thereafter, McDonald filed a motion to amend the complaint and Emeritus filed a response in opposition to the motion to amend.

(3) On September 20, 2011, Emeritus filed an application asking the Superior Court to certify its August 29, 2011 denial of the motion to dismiss. It appears that, at a hearing on September 23, 2011, the Superior Court granted McDonald’s motion to amend the complaint and denied Emeritus’ application for certification of the August 29, 2011 denial of the motion to dismiss. The Superior Court also indicated that a written decision would follow.

(4) On September 27, 2011, Emeritus petitioned this Court pursuant to Supreme Court Rule 42, to accept an interlocutory appeal from the Superior Court’s August 29, 2011 denial of the motion to dismiss. Thereafter, Emeritus filed a supplemental notice of interlocutory appeal submitting the Superior Court’s written decision of September 27, 2011 that formally denied Emeritus’ motion to dismiss and application for certification

¹ See docket at 27, *McDonald v. Emeritus Corp.*, Del. Super., C.A. No. N10C-023-199 (Aug. 29, 2011) (filing of judicial action form).

of an interlocutory appeal and granted McDonald's motion to amend the complaint.²

(5) Applications for interlocutory review are addressed to the sound discretion of this Court and are granted only in exceptional circumstances. Having examined the Superior Court's August 29, 2011 bench ruling and September 27, 2011 decision according to the criteria set forth in Supreme Court Rule 42, we have concluded that exceptional circumstances meriting interlocutory review do not exist in this case.

NOW, THEREFORE, IT IS HEREBY ORDERED that the interlocutory appeal is REFUSED.

BY THE COURT:

/s/ Randy J. Holland
Justice

² See *id.* at 39, (Sep. 27, 2011) (filing of decision on the motion to amend complaint, motion to dismiss and application for certification of an interlocutory appeal).