

THE STATE OF SOUTH CAROLINA

APPEAL FROM GEORGETOWN COUNTY

Court of Common Pleas

The Honorable Steven H. John

RECEIVED

OCT 14 2022

SC Court of Appeals

APPELLATE CASE NO. 2022-000811

Ernest F. Middleton, III, and Joyce J. Middleton, Michael J. Farrar and Diana Farrar, Robert H. Hunt and Jeane M. Sullivan, the Colony Homeowners Association, Inc., and Keep It Green, Inc., Respondents,

v.

Georgetown County and Benjamin F. Goff, Sr., Trustee of the Benjamin F. Goff 2004 Revocable Trust dated June 18, 2004, Defendants,

Of whom Benjamin F. Goff, Sr., Trustee of the Benjamin F. Goff 2004 Revocable Trust dated June 18, 2004 is the Appellant.

MOTION IN OPPOSITION TO
RESPONDENTS' MOTION TO DISMISS APPEAL

Benjamin F. Goff, Sr., Trustee
18 Powers Farm Road
Randolph, MA 02368
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goff-chem@juno.com
Pro Se for Appellant

MOTION IN OPPOSITION TO MOTION TO DISMISS APPEAL

Now comes the Appellant, Benjamin F. Goff, Sr., Trustee of the Benjamin F. Goff 2004 Revocable Trust, dated June 18, 2004, to request this honorable court to deny the Respondents' Motion to Dismiss Appeal pursuant to S.C. Code Ann. § 14-3-330(1) and S.C. Code Ann. § 14-3-330(2)(a). The Order on Appeal in this case, affects the merits and prevents a proper judgment from being rendered in the action from which an appeal might to taken, and the Appellant cannot seek review of the current order from the Lower Court. Moreover, this order effectively discontinues the lawsuit against the County Council and elected members and substitutes the Appellant, thus bringing the order under paragraph S.C. Code Ann. § 14-3-330(2)(a).

The Appellant's Motion to Dismiss, in essence, was to redesignate him as a party-in-interest, as required by S.C. Code Ann. § 15-53-80 of Uniform Declaratory Judgment Act (UDJA) or an involuntary plaintiff in accordance with Rule 19(a)(2), SCRPC. It was not a motion to dismiss the case in which there were no facts sufficient for a cause of action against the Appellant. In this appeal, the Appellant is challenging the Order denying to dismiss him as a Defendant and finding an unstated "fairly read" cause of action, where admittedly no claims were made against the Appellant in the Respondents' Complaint. In a Stipulation of Dismissal, the Lower Court allowed the accused County Council and elected members to be released and the unaccused and inadvertently or deliberately designated Appellant as a defendant and be charged with an unspecified cause of action. Consequently, the Appellant is being sued for having submitted a rezoning application that was accepted by the Planning Department, recommended by the Planning Commission and approved adopted into ordinances by the County Council. Pursuant to Rule 201(a), S.C. App. Ct. R., Subject to Appeal: Appeal may be taken, as provided by law, from any final judgment, appealable order or decision.

The Respondents Motion to Dismiss the Appeal simply because it is interlocutory is not supported any facts or evidence to dispute that this appealable interlocutory order does not affect the merit of the case, the substantial rights of the Appellant and will prevent an appeal of a final judgment. In support of this motion, the defendant states the following:


1. This interlocutory appeal of the Lower Court Order is based on the grounds that it involves the merits of the legal action and the Appellant will suffer substantial harm to rights and prevents a judgment from which an appeal might be taken, if the order is not corrected until the case is over pursuant to S.C. Code Ann. § 14-3-330(1) and S.C. Code Ann. § 14-3-330(2)(a).
2. The right to appeal in this case is controlled by S.C. Code Ann. § 14-3-330 (1976 & Supp.1994). Only two of its provisions are potentially applicable to this matter. First, § 14-3-330(1) allows the appeal of an interlocutory order "involving the merits." To involve the merits, the order must "finally determine some substantial matter forming the whole or part of some cause of action or defense.
3. Under S.C. Code Ann. § 14-3-330(2), an order which affects a substantial right and in effect determines the action and prevents a judgment from which an appeal may be taken is immediately appealable.
4. An intermediate/interlocutory order is immediately appealable only if it involves the merits of the case or affects a substantial right. S.C. Code Ann. § 14-3-330 (1976).
5. The Stipulation of Dismissal pursuant to Rule 41, SCRCPP between the County Council's and Respondents' lawyers that dismissed, without prejudice, any and all claims against the County Council and elected members was not signed by the Appellant.
6. There are no facts stated in the Respondents' Complaint that constitutes a fairly read cause of action against the Appellant, pursuant to Rule 12(b)(6), SCRCPP.

7. The Order states that the court finds that Respondents' Complaint alleges facts sufficient to establish a controversy and state a cause of action for declaratory judgment; whereas, the controversy, if any, was specifically between the County Council and Respondents.
8. The Order states that the Appellant was properly named as a defendant in this declaratory judgment action which is in contradiction of S.C. Code Ann. § 15-53-80.
9. Statements made by the Respondents' lawyer in an Email message, a Letter and the Transcript on Record summarily states that her clients have no specific claims against the Appellant.
10. Pursuant to Rule 19(a)(2), SCRPC, the Appellant should have been named as an "Involuntary Plaintiff" or "Party-in-Interest" pursuant to S.C. Code Ann. § 15-53-80.
11. The Lower Court, though informed, did not consider that the finding of a fairly read cause of action against the Appellant was directly contrary to the position of the Respondents' clients.
12. Respondents motion are statements of a mere legal conclusions that are insufficient to state a cause for dismissal without facts or evidence.

Wherefore, Benjamin F. Goff, Trustee, requests this honorable court to deny the Respondents' Motion to Dismiss Appeal. This interlocutory order is appealable because it affects the merits of the case, will prevent an appeal of a final judgment and will cause substantial harm to the rights of the Appellant. A Memorandum of Law in support of the Motion in Opposition to the Motion to Dismiss Appeal is attached.

Respectfully Submitted,

Date: October 11, 2022


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Pro Se for Appellant

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v.

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Of whom Benjamin F. Goff, Sr., Trustee of the Benjamin F. Goff 2004 Revocable Trust dated June 18, 2004 is the Appellant.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Motion and Memorandum of Law in Opposition to Respondents' Motion to Dismiss Appeal in the above referenced case was served upon counsel of record by mailing a copy in an envelope properly addressed with postage prepaid on October 11, 2022 to the following:

Cynthia Ranck Person, Esq.
Keep It Green Advocacy, Inc.
P.O. Box 1922
Pawleys Island, SC 29585
Attorney for Respondents

H. Thomas Morgan, Jr., Esq.
Smith Robinson, Holler Dubose and Morgan, LLC
Post Office Drawer 39
Camden, SC 29020
Attorney for Georgetown County


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OCT 14 2022

SC Court of Appeals

October 11, 2022

The Honorable Jenny Abbott Kitchings
S.C. Court Administration
Clerk, Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: Ernest Middleton, III, et al, Respondents v. Benjamin F. Goff, Sr., Trustee, Appellant,
Appellate Case No. 2022-000811

Dear Ms. Kitchings:

Please find for filing are an original and six copies to two separate returns to motions filed in the referenced case:

Respondents:


1. Motion in Opposition to Respondents' Motion to Dismiss Appeal;
2. Memorandum of Law in Opposition to Respondents' Motion to Dismiss Appeal;
3. Appendix to Memorandum of Law in Opposition to Respondents' Motion to Dismiss Appeal;
4. Certificate of Service.

Defendant Georgetown County:

1. Motion in Opposition to Motion to be Designated as a Respondent;
2. Memorandum of Law in Opposition to Motion in Opposition to Motion to be Designated as a Respondent;
3. Certificate of Service.

Thank you for your consideration.

Respectfully Submitted,


Benjamin F. Goff, Sr., Trustee

cc: Cynthia Ranck Person, Esq.
H. Thomas Morgan, Jr., Esq.