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Nov 10 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master-in-Equity

Case No. 2017-CP-10-06111
Appellate Case No. 2022-001359
Appellate Case No. 2022-001538

Maybank Holding's, LLC,

Appellant,

v.

James Island Center, LLC,

Respondent.

v.

Richard D. Tuorto, Chandler Frierson,
Natalie Myers, John R. Hibbits, Jr. and
Elizabeth A. Hibbits,

Appellants.

MOTION FOR CONSOLIDATION

Pursuant to Rules 214 and 240, SCACR, Appellants Maybank Holding's, LLC, Richard D. Tuorto, Chandler Frierson, Natalie Myers, John R. Hibbits, Jr. and Elizabeth A. Hibbits ("Appellants") hereby move for an order consolidating Appellate Case No. 2022-001538 with the previously filed Appellate Case No. 2022-001359 on the grounds that the two separate notices of

appeal arise from the same civil action and involve common factual and legal matters so that judicial economy would be served by consolidation.

BACKGROUND

The notices of appeal filed in Appellate Case No. 2022-001538 and Appellate Case No. 2022-001359 are from orders entered by the Honorable Mikell R. Scarborough Master-in-Equity for Charleston County (“Master-in-Equity”) in consolidated civil actions arising from a dispute between a commercial tenant and landlord that came before the Master-in-Equity for a non-jury trial on February 23-25, 2022, April 14-15, 2022, and May 8-9, 2022. The Appellants and Respondent in both matters are the same and are similarly aligned as Appellants and Respondent. Counsel of record are the same in both matters.

The notice of appeal filed in Appellate Case No. 2022-001538 are from six pre- and post-trial orders issued by the Master-in-Equity in the consolidated civil actions, including the following:

- Order Granting Partial Summary Judgment to James Island Center, LLC filed on December 30, 2021;¹
- Order Granting Partial Summary Judgment to James Island Center, LLC on Fraud Causes of Action filed on February 2, 2022;²
- Order of Judgment Against Maybank Holding’s, LLC, Richard D. Tuorto, Jr., Chandler Frierson, Natalie Myers n/k/a Natalie Frierson, John Hibbits, Jr. and Elizabeth A. Hibbits filed on July 27, 2022;
- Order of Judgment filed on August 1, 2022;

¹ The Master-in-Equity did not address Appellants’ timely Motion to Alter, Amend, Modify, and Correct the Order Granting Partial Summary Judgment filed on January 10, 2022, until the Order Denying Plaintiff’s Motion to Reconsider the Judgment Against Plaintiff and the Grant of Defendant James Island Center’s Motion for Partial Summary Judgment filed on September 9, 2022.

² The Master-in-Equity similarly did not address Appellants’ timely Motion to Alter, Amend, and Reconsider Order Granting Partial Summary Judgment to Defendant on Plaintiff’s Fraud Causes of Action filed on February 14, 2022, until the Order Denying Plaintiff’s Motion to Reconsider the Judgment Against Plaintiff and the Grant of Defendant James Island Center’s Motion for Partial Summary Judgment filed on September 9, 2022.

- Order Denying Plaintiff's Motion to Reconsider the Judgment Against Plaintiff and the Grant of Defendant James Island Center's Motions for Partial Summary Judgment filed on September 9, 2022;
- Amended Order of Judgment filed on September 22, 2022.

After the Master-in-Equity's issuance of the post-trial Order of Judgment filed on August 1, 2022, Respondent filed a request for an award of attorneys' fees and costs arising from a commercial lease at issue in the consolidated civil actions. In support of the request, Respondent submitted a copy of its legal invoices to the Master-in-Equity for *in camera* review and provided Appellants with a copy of the invoices that redacted all written descriptions of the work performed.

At a hearing held on September 7, 2022, the Master-in-Equity ordered Respondent to provide Appellants with a copy of the legal invoices that redacted only actually privileged information prior to disposition of Respondents' request for an award of attorneys' fees and costs. Prior to Respondent's compliance with the order, however, the Master-in-Equity filed an Amended Order of Judgment granting Respondent's request for an award of attorneys' fees and amending the Order of Judgment filed on August 1, 2022, reflecting an award of attorneys' fees and costs. As a result, Appellants filed a Motion for Rule to Show Cause and to Reconsider the Amended Order of Judgment on September 27, 2022.

Out of an abundance of caution to ensure preservation of all grounds for appeal, Appellants filed a notice of appeal of the six pre- and post-trial orders issued by the Master-in-Equity on September 28, 2022, in Appellate Case No. 2022-001538. On October 20, 2022, the Master-in-Equity then issued an Order denying Appellants' Motion for a Rule to Show Cause and to Reconsider the Amended Order of Judgment. On October 26, 2022, Appellants then filed a notice

of appeal of the Order denying Appellants' Motion for a Rule to Show Cause and to Reconsider the Amended Order of Judgment in Appellate Case No. 2022-001538.

ARGUMENT

As the orders appealed in Appellate Case No. 2022-001538 and Appellate Case No. 2022-001359 arise from the same consolidated civil actions and involve common factual and legal matters, Appellants hereby move that this appellate court consolidate the two separate appeals in the interests of judicial economy.

**BARNWELL WHALEY PATTERSON
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PROOF OF SERVICE

I certify that I have served the Motion for Consolidation on James Island Center, LLC by depositing a copy of it in the United States Mail, postage prepaid, on November 10, 2022, addressed to its attorney of record as follows:

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November 10, 2022