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Dec 28 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Diane S. Goodstein, Circuit Judge

Appellate Case No. 2022-001673

The Eaglewood Retreat Homeowners Association, Inc.,.....Respondent,

v.

Jason Patno.....Appellant.

RETURN TO MOTION TO DISMISS

Appellant (hereinafter “Patno”) hereby submits this return to Respondent (hereinafter “the HOA”)’s motion to dismiss. The motion should be denied.

Patno appeals the grant of a preliminary injunction and the denial of his motion to dismiss.¹ “An order granting a preliminary injunction is immediately appealable under S.C. Code Ann. § 14-3-330(4)”; thus, Patno has brought a proper appeal of an immediately appealable order. Poynter Invs. Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 694 S.E.2d 15, 18 (2010); accord Curtis v. State, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001). The HOA seems to agree and appears to recognize the appealability of the preliminary injunction.

¹ The circuit court filed multiple, seemingly contradictory orders, orders which state that they both grant and deny the motion for a preliminary injunction and do the same with the motion to dismiss. In an email message, the circuit judge’s law clerk clarified that what the judge intended was to grant the preliminary injunction and to deny the motion to dismiss.

The denial of Patno’s motion to dismiss the HOA’s complaint is properly before the court in this appeal because “[an] order that is not directly appealable may be considered if there is an appealable issue before the court.” Edge v. State Farm Mut. Auto. Ins. Co., 366 S.C. 511, 517, 623 S.E.2d 387, 390 (2005). This allows our appellate courts to exercise jurisdiction over multiple issues raised by an appellant where at least one of those issues is properly appealable. Briggs v. Richardson, 273 S.C. 376, 379 & n.1, 256 S.E.2d 544, 546 & n.1 (1979) (considering appeal from denial of motion for more definite statement and noting “[w]hile not normally appealable, this issue is before the Court due to the appealability of the first issue”); Cox v. Woodmen of World Ins. Co., 347 S.C. 460, 469, 556 S.E.2d 397, 402 (Ct. App. 2001) (considering appeal from denial of Rule 12(b)(8) motion to dismiss and explaining that “an order that is not directly appealable will be considered if there is an appealable issue before the court”).

This companion appellate review most often occurs where the ordinarily unappealable issue is significantly connected with an appealable issue that is properly before the court. Brown v. County of Berkeley, 366 S.C. 354, 362 n. 5, 622 S.E.2d 533, 538 n. 5 (2005) (holding that interlocutory orders may be considered on appeal when they are companion to reviewable issues, but finding orders at issue lacked a sufficient “nexus or companionship” to justify the exercise of immediate appellate review); Morris v. Anderson County, 349 S.C. 607, 610-11, 564 S.E.2d 649, 651 (2002) (appellate court may consider an unappealable order along with an appealable issue where such a ruling will avoid unnecessary litigation); Queen’s Grant II Horizontal Property Regime v. Greenwood Dev. Corp., 368 S.C. 342, 628 S.E.2d 902, 918 & n.

20 (Ct. App. 2006) (dismissing cross-appeal of denial of summary judgment, stating “we may entertain appeals from interlocutory orders not ordinarily appealable when they are companion to reviewable issues,” citing cases adhering to this rule); Pitts v. Jackson Nat’l Life Ins. Co., 352 S.C. 319, 338, 574 S.E.2d 502, 511-12 (Ct. App. 2002) (entertaining an appeal from a denial of summary judgment because it was so closely connected with other issues properly before the court).

Here, such a close nexus is present. Patno’s chief argument against the preliminary injunction was that the HOA had failed to allege or demonstrate that Patno’s actions had put *the HOA* (as opposed to members of the HOA) in any danger of suffering any harm at all, much less irreparable harm. Patno’s principal argument in support of his motion to dismiss was that the HOA had failed to allege any circumstances under which *the HOA* (as opposed to its members) had suffered any damage or was threatened with any harm. And the HOA was plainly not entitled to a preliminary injunction if it failed to plead facts sufficient to constitute a cause of action. One of the requirements to obtain a preliminary injunction is that “[t]he plaintiff’s complaint must allege facts sufficient to constitute a cause of action for injunction[.]” AJG Holdings, LLC v. Dunn, 382 S.C. 43, 674 S.E.2d 505, 508 (Ct. App. 2009).

Here, there is a sufficient “nexus or companionship” with the order granting the preliminary injunction to justify the exercise of immediate appellate review of the denial of the motion to dismiss. Brown, 366 S.C. at 362 n. 5. The grant of the preliminary injunction and the denial of the motion to dismiss are all bound up together. It is in the interest of efficiency and of consistency in the proceedings below that the

court review the denial of the motion to dismiss along with the grant of the preliminary injunction.

WHEREFORE, Appellant prays that Respondent's motion to dismiss be denied.

Respectfully submitted,

/s/ Andrew S. Radeker

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December 25, 2022

Drew Radeker

From: Goodstein, Diane S. Law Clerk (Amy Saukas) <DGoodsteinLC@sccourts.org>
Sent: Monday, October 17, 2022 10:56 AM
To: Drew Radeker; Derek F. Dean; Goodstein, Diane S.
Cc: Goodstein, Diane S. Secretary (Karen Parker); Rhonda Schaub; Sarah Larabee
Subject: RE: Eaglewood Retreat HOA v. Patno, 2022-CP-10-02694

Counsel:

The preliminary injunction was granted, however the order that was granted was not the exact one that counsel submitted. All of the motions to dismiss were denied and the order denying the preliminary injunction was denied.

Does this clarify any questions?

Amy Saukas
Law Clerk for the Honorable Diane S. Goodstein
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From: Drew Radeker <Drew@harrisonfirm.com>
Sent: Monday, October 17, 2022 10:40 AM
To: Derek F. Dean <dfdean@charlestonattorneys.net>; Goodstein, Diane S. Law Clerk (Amy Saukas) <DGoodsteinLC@sccourts.org>; Goodstein, Diane S. <DGoodsteinJ@sccourts.org>
Cc: Goodstein, Diane S. Secretary (Karen Parker) <DGoodsteinSC@sccourts.org>; Rhonda Schaub <Rhonda@harrisonfirm.com>; Sarah Larabee <sarah@harrisonfirm.com>
Subject: RE: Eaglewood Retreat HOA v. Patno, 2022-CP-10-02694

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Judge Goodstein:

Some disagreement and confusion among counsel in this case has arisen concerning the attached orders, which were all filed within minutes of one another. I read these orders as denying the injunction motion and dismissing the case, and I figured that the order that states it grants the temporary injunction was filed through a clerical error, since it was inconsistent with the other orders. Opposing counsel takes the position that the temporary injunction was granted and the motion to dismiss was denied.

In any event, if Your Honor could give us any clarification, we would be most appreciative.

Thank you.

Drew Radeker

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PROOF OF SERVICE

I certify that I have served the foregoing return on the date given below by emailing it to counsel for the Respondent(s) at the address(es) noted below.

Derek F. Dean, Esq., at dfdean@charlestonattorneys.net

Respectfully submitted,

/s/ Andrew S. Radeker
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