



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Circuit Court

The Honorable William H. Seals, Jr., Common Pleas Judge

Case No. 2020-CP-26-04144

Appellate Case No. 2022-001606

Ray Wallauer, Carol Wallauer,
John White and Pam White.....Respondents,

v.

Advantage Solar, LLC.....Appellant.

APPELLANT’S MEMORANDUM IN SUPPORT OF APPEALABILITY OF ORDER

INTRODUCTION

The Appellant, Advantage Solar, LLC, is providing this Memorandum in response to the Court’s request for briefing on whether the Order Denying Defendant Advantage Solar’s Motion to Sever of the Honorable William H. Seals, Jr. dated October 19, 2022 (the “Order”) is immediately appealable. Advantage Solar, for the reasons specified below, maintains that the Order on appeal is immediately appealable because it affects a substantial right of the Appellant.

I. BACKGROUND FACTS

Respondents (and Plaintiffs below) Ray and Carol Wallauer and John and Pam White filed the underlying lawsuit based upon the alleged conduct of Defendants in selling and installing two different solar panel systems on their respective homes. Ultimately, both couples became dissatisfied

with the respective solar systems and ultimately filed suit together asserting four causes for breach of the contract, fraudulent action(s) related to such breach, and for purported violation of the South Carolina Unfair Trade Practices Act. The Wallauers' claims and the damages they seek and those of the Whites, however, arise out of wholly separate dealings between each respective couple and one or more of the Defendants, different contracts, and separate solar systems installed at their different residences.

Specifically, in mid-2018, Defendant Accelerate Solar, LLC provided the Wallauers with a proposal for installation of a solar system on their Surfside Beach home, located at 1816 Glasgow Circle, Surfside Beach, South Carolina. On August 6, 2018, the Wallauers entered into a contract with Accelerate Solar for the installation of that solar system for a total cost of \$64,900. John and Pam White filed suit based upon the alleged conduct of Defendants in selling and installing a solar panel system on their home, located at 574 Crusade Circle, Conway, South Carolina. On November 30, 2018, Accelerate Solar provided a proposal for a solar system to be installed on the Whites' home. On December 3, 2018, John White entered into a contract with Accelerate Solar for installation of that solar system on the Whites' home in Conway for a total price of \$36,875.00. Later both the Wallauers and the Whites became dissatisfied with their solar systems and filed suit together in one action.

Advantage and other Defendants thereafter defended the claims, including by engaging in discovery. As is unfortunately common, that process was fraught with delays, motions, and the like. It became clear the Wallauers' and Whites' respective claims had nothing to do with one another.

On July 6, 2022, Advantage filed a Motion to Sever the case into two separate actions; one with the Wallauers as Plaintiffs and the other with the Whites as Plaintiffs, because their claims were based upon separate facts, contracts, and dealings with one or more Defendants, and each couple

sought different damages allegedly arising from those distinct factual bases. A hearing for the Motion was later set (after multiple delays) to October 19, 2022. On October 17, 2022, Defendants deposed the Whites. They testified that their claims in the case had nothing to do with the Wallauers' claims and each couples' respective damages (sought) were likewise unrelated. The lower court heard the Motion on October 19, 2022, and denied it via Form 4 later that day. The lower court found that there "is 'a common question of law or fact' inherent in both Plaintiffs' claims, [and], [e]ven if severed, these cases could bleed into each other through the punitive damages aspect." Defendant deposed the Wallauers the next day, and they, like the Whites, testified their claims and damages had nothing to do with those of their Co-Plaintiffs.

On November 16, 2022 Advantage filed the instant appeal.

II. LAW & ANALYSIS

The determination of whether a party may immediately appeal an order issued prior to trial is primarily governed by S.C. Code Ann. § 14-3-330. *Hagood v. Sommerville*, 362 S.C. 191, 195, 607 S.E.2d 707, 708 (2005). An appeal normally is restricted to being pursued after a party has obtained a final judgment. *Id.*; *Mid-State Distributors, Inv. v. Century Importers, Inc.*, 310 S.C. 330, 335, 426 S.E.2d 777, 781 (1993).

S.C. Code Ann. § 14-3-330(2) allows the immediate appeal of "[a]n order affecting a substantial right made in an action where such order (a) in effect determines the action and prevents a judgement 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." The Court has recognized that "substantial right" encompasses many things beyond. *See e.g. Hagood*, 362 S.C. at 197, 607 S.E.2d at 710 (Finding order granting a motion to disqualify a party's attorney in a civil case affects a substantial right and may be immediately appealed because "[s]uch an order

implicitly falls within the statutory definition of a substantial right under Section 14-3-330(2)(a).”); Creed v. Stokes, 285 S.C. 542, 331 S.E.2d 351 (1985)(order referring a case to the master affects the mode of trial, a substantial right, impacting a party’s right to trial by jury). Here, the Order affects a substantial right of Advantage – the right to a fair trial on the merits involving only those parties who should be part of that particular action as allowed under the South Carolina Rules of Civil Procedure. Stated differently, Advantage has a substantial right to defend itself at trial without undue prejudice. That is why the Rules of Civil Procedure, namely Rules 20(a) and 23, mandate that Plaintiffs meet certain criteria before being allowed to pursue their separate claims in a single action. Here, as argued to the lower court, those requirements were not met nor attempted to be met in this case. The result is that Plaintiffs with separate contracts, damages, and facts upon which their claims rely are going to be allowed to try them together in a single trial, much to the prejudice of Defendants, who, most notably, are contending with defending Unfair Trade Practices claim(s). Advantage, and the other Defendants below for that matter, have a substantial right to a fair trial where their opposition must prove their case through the evidence, and the trier of the case is not unduly influenced, confused, or otherwise prejudiced by the inclusion of two cases in one.

III. CONCLUSION

The Order on appeal is immediately appealable under the law as it affects a substantial right of the Appellant. Not allowing appeal of the Order until after a trial will not serve judicial economy as the lower court and Respondent contend. Therefore, Appellant respectfully requests the Court allow its appeal to move forward and resolve it on the merits before this matter proceeds to trial.

[signature page to follow]

Respectfully Submitted,

SMITH HUDSON LAW, LLC

/s/ Joseph O. Smith

Joseph O. Smith (S.C. Bar No. 77475)

Joshua J. Hudson (S.C. Bar No. 100311)

200 N. Main Street, Ste. 301-C

Greenville, SC 29601

Phone: (864) 908-3912

jsmith@smithhudsonlaw.com

jhudson@smithhudsonlaw.com

Attorneys for Appellant

February 6, 2023

Greenville, South Carolina

RECEIVED

Feb 06 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Circuit Court

The Honorable William H. Seals, Jr., Common Pleas Judge

Case No. 2020-CP-26-04144

Appellate Case No. 2022-001606

Ray Wallauer, Carol Wallauer,
John White and Pam White.....Respondents,

v.

Advantage Solar, LLC.....Appellant.

PROOF OF SERVICE

I certify that I have served the Memorandum in Support of Appealability of Order on the above-named Respondents by via electronic mail, on February 6, 2023, addressed to counsel of record as follows.

Gene M. Connell, Jr., Esq.
Kelaher, Connell & Connor, P.C.
P.O. Box 14547
Surfside Beach, SC 29587-4547
gconnell@classactlaw.net
Attorneys for Respondents

Robert Buffington, Esq.
Buffington Law Firm, LLC
2411 N. Oak St., Ste. 301-J
Myrtle Beach, SC 29677
bobby@bufflawfirm.com
**Attorneys for Defendant
Dividend Solar Finance, LLC**

(Signature page follows)

SMITH HUDSON LAW, LLC

/s/ Joseph O. Smith

Joseph O. Smith (S.C. Bar No. 77475)

Joshua J. Hudson (S.C. Bar No. 100311)

200 N. Main Street, Ste. 301-C

Greenville, SC 29601

Phone: (864) 908-3912

jsmith@smithhudsonlaw.com

jhudson@smithhudsonlaw.com

Attorneys for Appellant

February 6, 2023

Greenville, South Carolina