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Mar 27 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Edward W. Miller, Circuit Court Judge
Case No.: 2021-CP-23-04140

Appellate Case No. 2022-000576

Gregory Muxlow and Charlotte Muxlow,

Appellants,

v.

Scottsdale Insurance Company; South Wind Ranch Holdings, LLC; Ronald
Hakala; and Ashley Black;

Respondents.

**RETURN TO APPELLANTS' MOTION TO CONSOLIDATE APPEAL OF
RESPONDENTS SOUTH WIND RANCH HOLDINGS, LLC; RONALD
HAKALA; AND ASHLEY BLACK**

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Attorney for Respondents

Respondents South Wind Ranch Holdings, LLC, Ronald Hakala, and Ashley Black (collectively “Respondents”) respectfully submit this Return to the Motion to Consolidate Appeals. Respondents adopt the factual history as recited within the Return of Respondent Scottsdale Insurance Company.

Rule 214, SCACR, provides “[w]here there is more than one appeal from the same order, judgment, decision or decree, or where the same question is involved in two or more appeals in different cases, the appellate court may, in its discretion, order the appeal to be consolidated.” The two appeals which Appellants seek to combine (2023-000081 and 2022-0000576) simply do not meet this criteria.

As noted in the Respondents’ brief, Appellants filed the underlying lawsuit (Case No. 2021-CP-23-00416) (the “Underlying Action”) based on their agreement to rent an event space in Travelers Rest, South Carolina. While the Underlying Action lawsuit was ongoing, Appellants also filed a declaratory judgment action against Respondents’ insurance company (the “Declaratory Judgment Action”), even though Appellants were undeniably not a party to that insurance contract. Summary judgment was granted against the Appellants on the merits of the Underlying Action and the Declaratory Judgment Action was dismissed for various reasons, including a lack of damages and that the claim was not ripe for adjudication.

If the matters were as interrelated as Appellants claim, then Appellants should have amended the Underlying Action rather than filing a separate action. The reason they did not do so is that these are two separate actions which were resolved for very different reasons. As noted within the appeal of the Declaratory Judgment Action, Appellants lacked standing to even assert such claims, as they were seeking a declaration in relation to my clients’ insurance policy. And not only were Appellants not party to the insurance policy, but they had not established damages.

In fact, it is Respondents' position that the appeal of the Declaratory Judgment Action has been rendered moot by the fact that summary judgment was granted in the Underlying Action. Unless the appeal of the Underlying Action is successful, there are no damages to justify the Declaratory Judgment Action.

Finally, as is clear from the pleadings and the appellate briefs, the two actions involve very different issues on appeal – the Declaratory Judgment Action dealing with issues of ripeness, standing, and justiciability, the Underlying Action dealing with issues of contract, sufficiency of pleadings, and evidentiary standards.

CONCLUSION

For the reasons set forth above, Respondents respectfully ask that the Court deny Appellants' Motion to Consolidate.

Respectfully Submitted,

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s/K. Jay Anthony

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Respondents.

PROOF OF SERVICE

I certify that on this date, March 27, 2023, I filed a copy of the Respondent's Response to Appellant's Motion to Consolidate, with the South Carolina Court of Appeals via electronic filing, to ctappfilings@sccourts.org and served a copy on Appellants via electronic service, addressed to the attorneys of record below:

(Addresses and Signature Page Follow)

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South Carolina Court of Appeals

Clerk of Court

Via email: ctappfilings@scscourts.org

**Re: Christian Wienands, et al vs. South Wind Ranch, et al
2023-000081**

Dear Sir or Madam:

Attached to this e-mail, please find a copy of Respondent's Response to Appellants Motion to Consolidate in the above listed matter.

Thank you for your assistance in this matter.

Best Regards,

Julianna Wolfla
Paralegal to K. Jay Anthony

:jw
Enclosure