

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

Brian M. Gibbons, Circuit Judge

Appellate Case No. 2023-001980

Jenna Robbins,.....Appellant,

v.

Imfi3, LLC, D/B/A The Indigo At Cross Creek, Taft Management Group, Taft Family Ventures, and Southern-EEZ Landscaping, LLC, Defendants,

Southern Horticulture Group, LLC d/b/a Southern-EEZ Landscaping, Intervenor/Contested-Status Defendant,

Of whom Southern Horticulture Group, LLC d/b/a Southern-EEZ Landscaping a/k/a Southern-EEZ Landscaping, LLC is the.....Respondent.

APPELLANT’S MEMORANDUM CONCERNING APPEALABILITY

Appellant Jenna Robbins, per the court’s direction, submits this memorandum on appealability. This appeal is proper.

This is an appeal from an order that denied the Appellant’s motion to alter or amend a judgment to reflect that the Respondent is the same entity against which judgment for Appellant has already been rendered. The trial court noted this decision sounds under Rule 60, SCRCP. The denial of a motion under Rule 60 is immediately appealable. E.g., Sadisco of Greenville, Inc. v. Greenville Cnty. Bd. of Zoning Appeals, 340 S.C. 57, 530 S.E.2d 383 (2000).

The Supreme Court of South Carolina has treated the denial of a motion to amend the way a defendant is named in a judgment (the same kind of decision we have here) as immediately appealable. The Court has decided the merits of such an appeal and did not dismiss it for lack of appealability. Tunstall v. Lerner Shops, Inc. was “an appeal from an order refusing a motion to amend a judgment record in which the defendant was named as ‘The Lerner Shops, Incorporated,’ so that the record when amended should designate the defendant as ‘Lerner Stores Corporation.’” 160 S.C. 557, 558, 159 S.E. 386 (1931). If the order had not been immediately appealable, the Court would have had to dismiss the appeal and remand for further proceedings, but the Court instead reached the merits of the appeal and reversed the denial of the motion. Id. at 558-67.

The other decisions reached in the appealed order (grant of a motion to compel discovery, denial of a motion for protection from discovery, and denial of a motion to dismiss) are not subject to immediate, interlocutory appeal on their own. They are before the court under the doctrine that “[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). An appellate court may choose to hear such an issue 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 the motions to dismiss unreviewable because they 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) (holding that the appellate court may, as a matter of discretion, consider an unappealable order along with an appealable issue where such a ruling will avoid unnecessary litigation, but declining to address the appeal based on concerns of creating an impermissible advisory ruling); 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).

In the case at bar, as the language of the appealed order reveals, the lower court’s rationale for its decisions on these companion issues is entirely dependent on its decision to deny the Plaintiff’s motion to amend the judgment to reflect the technical, registered name of the subject defendant. The court may (and should) review these decisions along with the main decision subject of this appeal.

An immediately appealable decision is before the court in this case.

Respectfully submitted,

/s/ Andrew S. Radeker

Andrew S. Radeker

S.C. Bar No. 73743

Radeker Law, P.A.

Post Office Box 6903

Columbia, South Carolina 29260

(803) 500-0891

drew@radekerlaw.com

and

Kyle J. White

S.C. Bar No. 101426

Drew Bradshaw

S.C. Bar No. 100548

White Davis and White Law Firm, PA

Post Office Box 1346

Anderson, South Carolina 29622

(864) 231-8090

kyle@wdwlawfirm.com

drew@wdwlawfirm.com

Attorneys for Appellant

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PROOF OF SERVICE

I certify that I have served the foregoing memorandum on the date given below by emailing it to all counsel of record in the underlying action at the address(es) noted below.

- Brian E. Wolfe, Esq., at bwolfe@wolfegunst.com
- Robert C. Gunst, Jr., Esq., at rgunst@wolfegunst.com
- Joshua R. Hinson, Esq., at jhinson@wolfegunst.com
- Mark S. Barrow, Esq., at msb@swblaw.com
- Adam M. Crain, Esq., at amc@swblaw.com

/s/ Andrew S. Radeker
Andrew S. Radeker, S.C. Bar No. 73743
Attorney for Appellant

January 19, 2024