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Jan 26 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appellate Case No. 2023-001968

The Honorable Robert J. Bonds
Beaufort County
Trial Court Case No. 2023-CP-07-01102

Strecansky and Company of the Lowcountry, Inc.,.....Respondent,

v.

Michael G. Matthews and Laurie Matthews,..... Appellants,

REPLY MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

A. Injunctive Relief is not before the Court.

Appellants creatively attempt to save their appeal by equating the trial court’s order denying Appellants’ Motion to Dismiss with an Order denying a request for an injunction. Of course, there was no motion for injunctive relief before the trial court, and a review court cannot normally review matters not brought before the trial court. It is axiomatic that a litigant is required to raise an issue fairly to the trial court, thereby giving the trial court an opportunity to rule on the issue, before seeking relief on appeal. *State v. Brannon*, 388 S.C. 498, 502, 697 S.E.2d 593, 595-96 (2010); *Risher v. S.C. Dep’t of Health & Env’t. Control*, 393 S.C. 198, 208,712 S.E. 2d 428, 433 (2011); and *Hubbard v. Rowe*, 192 S.C. 12, 5 S.E.2d 187, 189 (1939) (requiring that the party bringing an issue before the appellate court must first bring it to the attention of the lower court for issue preservation purposes).

Further, there is no evidence in the record supporting injunctive relief. Finally, if the denial of a motion to dismiss became the equivalent of a denial of injunctive relief, the appellate courts of this state would be inundated with appeals and the judicial business before the trial courts would grind to a stop.

B. Judicial Economy does not warrant Denial of the Motion to Dismiss the Appeal.

There is nothing unique about this case or its posture that create any issue of judicial economy. Nor do the cases cited by Appellants in support of their judicial economy claim support the Court retaining jurisdiction here. In *Buist v. Huggins*, 367 S.C. 268, 625 S.E.2d 636 (2006), the Supreme Court only addressed an issue of statutory interest in that case because another appealable issue was properly before the Court—the subject matter jurisdiction of the Administrative Law Court as opposed to the circuit court. Likewise, in *Southern Bell Tel. and Tel. Co. v. Hamm*, 350 S.C. 70, 409 S.E.2d 775 (1991), the appeal was after a full trial on the merits before trial court and was ancillary to the main appeal issue regarding whether or not actions of the telephone company violated a state statute.

In neither case was the collateral issue decided on appeal the sole issue on appeal. A proper issue on appeal is a prerequisite for the Court to entertain an interlocutory appeal on another issue. “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). That is not the case here.

The more applicable application of judicial economy is to refuse this appeal. As noted by the Supreme Court in an interlocutory appeal case, “[t]he procedure urged by Employer, which would postpone a remand to the agency for a final decision and instead allow an appeal from an interlocutory order and then a second appeal after the final agency decision, would result in

piecemeal appeals in agency cases that would adversely affect judicial economy and compromise informed appellate review.” *Bone v. U.S. Food Serv.*, 399 S.C. 566, 575–76, 733 S.E.2d 200, 205 (2012), *adhered to on reh'g*, 404 S.C. 67, 744 S.E.2d 552 (2013). Thus, judicial economy demands that the appeal be dismissed.

Respectfully submitted,

Dated: January 26, 2024

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Robert J. Bonds, Circuit Court Judge

Case No. 2023-CP-07-01102
Appellate Case No. 2023-001968

Michael G. Matthews and Laurie Matthews,..... Appellants,

v.

Strecansky and Company of the Lowcountry, Inc.,.....Respondent,

PROOF OF SERVICE

I certify that Respondent's Reply in Support of Motion to Dismiss was served on all counsel of record via electronic mail on January 26, 2024, and a copy of that email is attached to this certificate:

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From: Hampton, Valerie
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To: tjohnson@sc.legal; cthorndike@sc.legal; rhawk@hawkandhawk.com
Cc: Nicholson, Ned
Subject: Michael G. Matthews, et al. v. Strecansky and Company of the Lowcountry, Inc.; Case No. 2023-CP-07-01102
Attachments: Respondent's Reply in Support of Motion to Dismiss.pdf; Proof of Service - Repondent's Reply in Support of Motion to Dismiss.pdf

Counsel:

Attached for service in the referenced matter please find the following documents:

- Respondent's Reply in Support of Motion to Dismiss; and
- Proof of Service.

By separate email, you will be copied on our email to Court.

Kindest regards,

Valerie Hampton

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