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Apr 05 2024

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS
THE HONORABLE BENTLEY D. PRICE, CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2023-001853
CIVIL ACTION NO. 2021-CP-10-03090

Jared S. O'Connell and Harmony A. O'Connell,

Respondents,

versus

House Therapy Holdings, LLC; Amanda F. Dempsey; William T. Phillips;
Matthew B. Swain; Daniel Ravenel Company Sotheby's International Realty;
Artis Construction, LLC; Oceanaire, LLC; Hero Heating & Air;
Custom Climate Heating & Air, Inc.; P.J. Sanchez Masonry, LLC;
Donnix Construction, LLC; Guillen Carpentry, LLC; Charleston Exteriors, LLC;
Ashley Oak Contracting, LLC; H20 Pro, LLC; La Roca Masonry, LLC;
Apex Contractors, LLC; South Point Hardwood Floor, LLC; Bluetape Solutions, LLC;
Carolina Climate Control, LLC; Movar, LLC; ECL Design, LLC; and
Affordable Sprayfoam Insulation of the Carolinas, LLC,

Defendants,

and

Artis Construction, LLC is

Third-Party Plaintiff/Appellant,

versus

Brian R. Wells, PE, LLC; Perryman Engineering, LLC; P.J. Sanchez
Masonry, LLC; Donnix Construction, LLC; Guillen Carpentry, LLC;
Charleston Exteriors, LLC; Ashley Oak Contracting, LLC; H20 Pro, LLC;
La Roca Masonry, LLC; Apex Contractors, LLF; and South Point Hardwood
Floor, LLC,

Third-Party Defendants,

and

House Therapy Holdings, LLC; Amanda F. Dempsey; William T. Phillips;
and Matthew B. Swain,

Respondents,

versus

Carolina Climate Control, LLC; and Bluetape Solutions, LLC,

Third-Party Defendants.

**PETITION FOR REHEARING OF
APPELLANT ARTIS CONSTRUCTION, LLC**

Artis Construction, LLC, Appellant in the above-captioned appeal, respectfully petitions the Court pursuant to Rule 221(a), SCACR for a rehearing of its March 21, 2024 order dismissing the above-captioned appeal based upon the following points overlooked or misapprehended by the Court as set forth below:

ARGUMENT

The Trial Court's orders in favor of (1) Plaintiffs Jared S. O'Connell and Harmony A. O'Connell and (2) House Therapy Holdings, LLC ("HTH") and Amanda F. Dempsey, William T. Phillips, and Matthew B. Swain (the "HTH Individual Defendants") are immediately appealable under S.C. CODE ANN. § 14-3-330 because these orders grant certain relief on the merits in favor of these entities and persons and against Artis Construction.

As to HTH and the HTH Individual Defendants, the Trial Court ruled as a matter of law as to the cross-claims of Artis Construction that (1) the indemnity provision in the settlement agreement which Artis Construction sought to enforce is unenforceable and invalid; (2) Artis Construction cannot recover on its claim for breach of the settlement

agreement as a matter of law; (3) the fraud claim of Artis Construction fails as a matter of law because it did not prove damages; and (4) there was no basis for liability against the HTH Individual Defendants. The Trial Court determined the merits of Artis Construction's cross-claims and precluded the ability of Artis Construction to pursue such claims. Under S.C. CODE ANN. § 14-3-330(1), (2)(a), and (2)(c), the Trial Court's order as to HTH and the HTH Individual Defendants is thus immediately appealable.

Likewise, the Trial Court's order as to the Plaintiffs determined as a matter of law the merits of key factual disputes as to the Plaintiffs' unfair trade practices claim against Artis Construction, including that Artis Construction did act deceptively, effectively granting summary judgment to the Plaintiffs on these issues of fact and precluding Artis Construction from subsequently presenting a defense as to the essential elements of the unfair trade practices claim. See Link v. Sch. Dist. of Pickens Cnty., 302 S.C. 1, 6, 393 S.E.2d 176, 178-79 (1990) (observing an order granting partial summary judgment may be appealable under either the "involving the merits" or "substantial right" categories of section 14-3-330(1) and (2)(c)).

In dismissing the appeal, this Court respectively did not consider the substance of the orders appealed and only considered the title of the orders. The appellate courts must decide whether an order is immediately appealable by examining the nature and effect of the order to determine whether the order fits S.C. CODE ANN. § 14-3-330's parameters. Morrow v. Fundamental Long-Term Care Holdings, LLC, 412 S.C. 534, 539-40, 773 S.E.2d 144, 147 (2015). Nothing in the text or application of § 14-3-330 excludes any one procedural variety of order from its scope. An appellate court's review of a circuit court order "is not constrained by how the order is styled." Id. at 539, 773 S.E.2d at 147.

Instead, the statute's terms look to an order's substance – whether the order “affect[s] a substantial right” and is thus immediately appealable. S.C. CODE ANN. § 14-3-330(2).

Consequently, because the appealability of an order hinges on its “nature and effect” rather than on its title, Tillman v. Tillman, 420 S.C. 246, 250, 801 S.E.2d 757, 760 (Ct. App. 2017), “the question of whether an order is immediately appealable is determined on a case-by-case basis.” Stone v. Thompson, 426 S.C. 291, 295, 826 S.E.2d 868, 870 (2019); see also Wetzell v. Woodside Dev. Ltd. P’ship, 364 S.C. 589, 592, 615 S.E.2d 437, 438 (2005) (noting courts must consider the *effect* of the order, not its label, in determining appealability). Courts must evaluate “the particular circumstances” of each order and case to decide an order’s appealability. See Stone, 426 S.C. at 295, 826 S.E.2d at 870.

The Trial Court’s orders in this case may be labeled as a denial of a motion for summary judgment, but the label does not reflect the true nature of the appealed orders. The orders instead grant summary judgment against Artis Construction and in favor of HTH, the HTH Individual Defendants, and the Plaintiffs. Because the effect of the orders is to grant summary judgment, they are immediately appealable. See Atl. Specialty Ins. Co. v. City of Coll. Park, 357 Ga. App. 556, 559 n.5, 851 S.E.2d 189, 192 n.5 (2020), rev'd on other grounds, 313 Ga. 294, 869 S.E.2d 492 (2022) (holding that although the trial court's order by its express terms denied summary judgment and therefore was interlocutory, review of the order's substance revealed that the order appealed from was more in line with that of a declaratory judgment ruling which in substance granted judgment as a matter of law for which appellant was authorized to seek a direct and immediate appeal).

CONCLUSION

For the reasons set forth herein, Appellant Artis Construction respectfully requests that the Court grant its Petition for Rehearing, withdraw the order dismissing the appeal, determine that the appealed orders are immediately appealable under S.C. CODE ANN. § 14-3-330(1), (2)(a), and (2)(c), and allow the appeal to proceed on the merits.

Respectfully submitted,

/s Carmen V. Ganjehsani
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ATTORNEYS FOR APPELLANT
ARTIS CONSTRUCTION, LLC

April 5, 2024.

Apr 05 2024**CERTIFICATE OF SERVICE**

I, the undersigned, an employee of Richardson Plowden & Robinson, P.A., for Appellant, Artis Construction, LLC, do hereby certify that I have this date served the foregoing Petition for Rehearing, dated April 5, 2024 pursuant to Section (d)(1) of the Supreme Court's Order dated May 6, 2022 on the following counsel of record using the primary email addresses listed in the Attorney Information System (if applicable):

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**ATTORNEYS FOR CROSS-CLAIM
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HOUSE THERAPY HOLDINGS, LLC,
AMANDA F. DEMPSEY, WILLIAM T.
PHILLIPS, AND
MATTHEW B. SWAIN**

A copy of the sent email is enclosed with this Certificate of Service.

/s/ Carmen V. Ganjehsani


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ATTORNEYS FOR APPELLANT

Date: April 5, 2024.

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Cc: [Cameron Berthelsen](#); [James Elliott](#)
Subject: 2023-001853 O'Connell v. Artis Construction, LLC
Date: Friday, April 5, 2024 1:45:13 PM
Attachments: [2023-001853 O'Connell v. Artis \(Petition for Rehearing\) \(3314564\).pdf](#)

Pursuant to the Supreme Court's Order dated May 6, 2022, please find served upon you the Petition for Rehearing in the above-referenced appeal on behalf of the Appellant Artis Construction, LLC.

Thank you,
Carmen Ganjehsani

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April 5, 2024

Via hand delivery and e-mail (ctappfilings@sccourts.org)

The Honorable Jenny Abbott Kitchings
Clerk of Court, S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED
Apr 05 2024
SC Court of Appeals

Re: O'Connell v. Artis Construction, LLC
Appellate Case No. 2023-001853
RPR File No.: 08606-00090

Dear Ms. Kitchings:

Enclosed for filing is the Petition for Rehearing on behalf of Appellant Artis Construction, LLC in the above-referenced case, along with our Certificate of Service. We are also filing this Petition electronically with the Court of Appeals via e-mail at ctappfilings@sccourts.org pursuant to Section (b)(2) of the Supreme Court's May 6, 2022 Order.

Also enclosed is our firm's check in the amount of \$50.00 for the filing fee in this matter.

We have served this Petition for Rehearing on counsel for Respondents upon their primary email addresses listed in the Attorney Information System.

Should you have any questions regarding this matter, please do not hesitate to call.

Sincerely,

/s Carmen V. Ganjehsani

Carmen V. Ganjehsani

Enclosures

The Honorable Jenny Abbott Kitchings

April 5, 2024

Page 2

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