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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-In-Equity

Appellate Case No. 2024-000788
Appellate Case No. 2024-000753
Civil Case No.: 2019-CP-10-01108

Balfour Beatty Construction, LLC, Appellant,

v.

Library Associates, LLC; and Metropolitan Life Insurance Company, a New York Corporation, Defendants,

And

Library Associates, LLC, Third-Party Plaintiff,

v.

Lithko Contracting, LLC, Guy M. Beaty, Inc., Bernard MMC, LLC, Gulf Stream Construction Company, Inc., Precision Walls, Inc., Palmetto Automatic Sprinkler Company, Inc., Cook & Boardman, LLC, Strong Tower Construction, LLC d/b/a Koch Corporation, Watson Electrical Construction Co., LLC, Trimark Foodcraft, LLC, Pleasant Places, Inc., David Allen Company, Inc., Premier Exteriors, LLC, Warco Construction, Inc., Old North State Masonry, LLC, Tom Rochester & Associates d/b/a Southeastern Architectural Systems, Forton Company, LLC, Low Country Case & Millwork, Inc., Quantum Coatings, LLC, Balfour Beatty Construction Group, Inc., Third-Party Defendants.

Of which Strong Tower Construction, LLC, Watson Electrical Construction Co., LLC, Low Country Case & Millwork, Inc. and Library Associates, LLC are the Respondents.

**MOTION TO DISMISS APPEAL AS TO LOW COUNTRY CASE & MILLWORK, INC.,
CONSOLIDATE THE APPEAL, AND HOLD APPEALS IN ABEYANCE**

Appellant Balfour Beatty Construction, LLC (“Balfour”) moves the Court for an Order:

1. Dismissing Balfour’s appeal of the Honorable Mikell R. Scarborough’s order granting summary judgment in favor of Low Country Case & Millwork, Inc. (“Low Country”) (filed September 9, 2021) and the Honorable Mikell R. Scarborough’s order denying Balfour’s Motion to Alter or Amend the Order granting summary judgment in favor of Low Country (filed April 4, 2024);
2. Consolidating Balfour’s appeal of the Honorable Mikell R. Scarborough’s order granting partial summary judgment in favor of Watson Electrical Construction Co., LLC (“Watson”) (filed September 13, 2021) and the Honorable Mikell R. Scarborough’s order denying Balfour’s Motion to Alter or Amend the order granting partial summary judgment in favor of Watson (filed April 12, 2024) with Balfour’s appeal of the order granting partial summary judgment in favor of Strong Tower Construction, LLC (“Strong Tower”) (filed September 9, 2021) and the order denying Balfour’s Motion to Alter or Amend the order granting partial summary judgment in favor of Strong Tower (filed April 4, 2024); and
3. Holding the pending appeals in abeyance until the Court issues an order ruling on this Motion.

I. Motion to Dismiss Appeal as to Low Country

Balfour moves, pursuant to Rule 260(c), SCACR, to dismiss its appeal of the order granting summary judgment in favor of Low Country and the order denying Balfour’s Motion to Alter or Amend the Order granting summary judgment in favor of Low Country. The basis for this Motion is that Balfour no longer wishes to proceed with its appeal of the orders granting summary judgment in favor of Low Country. Neither Balfour, nor Low Country have filed an initial brief. There are no outstanding motions related to Low Country and no cross-appeal was filed by Low Country. Therefore, Low Country will not be prejudiced by the dismissal of appeal of the orders granting summary judgment in favor of Low Country. Accordingly, Balfour respectfully requests that its appeal of the orders granting summary judgment in favor of Low Country be dismissed and that no costs or fees be taxed to either party.

II. Motion to Consolidate

Balfour moves the Court, pursuant to Rule 241, SCACR, to consolidate Balfour’s appeal of the order granting partial summary judgment in favor of Watson and the order denying the Motion to Alter or Amend the order granting partial summary judgment in favor of Watson with Balfour’s appeal of the order granting partial summary judgment in favor of Strong Tower and the order denying Balfour’s Motion to Alter or Amend the order granting partial summary judgment in favor of Strong Tower.

Those appeals arise out of disputes related to the construction of the Hotel Bennett (the “Project”). The Project was owned by Library Associates, LLC (“Library”). Balfour served as the Construction Manager for the Project and executed subcontracts with Strong Tower and Watson (collectively referred to herein as the “Subcontractors”) for work related to the Project.

The lower court granted partial summary judgment in favor of Strong Tower and Watson on their respective claims for breach of the subcontracts and awarded Strong Tower and Watson attorneys’ fees. The issues likely to be raised in Balfour’s appeal of the lower court’s orders granting partial summary judgment in favor of the Subcontractors are similar. However, Balfour’s appeal of the orders granting partial summary judgment in favor of Watson is paired presently with Balfour’s appeal of the orders and rulings issued by the lower court in favor of Library in the course of the trial and post-trial proceedings.

Although the pending appeals all arise from disputes related to the same construction project, the likely issues in the Subcontractor appeals are substantially different from the issues Balfour anticipates raising in the appeal of the orders issued in favor of Library. For example, the Library appeal (Appellate Case No. 2024-000788) will likely involve issues related to the lower court’s award of punitive damages to Library following the trial of the underlying action and the lower court’s rulings as to Library’s post-trial election of a remedy. In contrast, the Subcontractor

appeals relate to pre-trial orders granting partial summary judgement in favor of the Subcontractors.

Consolidating the Strong Tower and Watson appeals will result in two appeals:

1. Balfour's appeal of the orders in favor of the Subcontractors;
and
2. Balfour's appeal of the orders in favor of the Project Owner
(Library).

This proposed structure for the pending appeals allows for a more efficient organization and analysis of the issues on appeal. Accordingly, Balfour requests the Court exercise its discretion and consolidate the appeal of orders in favor of Watson and Strong Tower into a single appeal.

III. Request to Hold Appeals in Abeyance pending the resolution of this Motion

Balfour respectfully requests the Court hold the pending appeals (Appellate Case No. 2024-000753 and Appellate Case No. 2024-000788) in abeyance pursuant to Rule 263(b), SCACR. Presently, Balfour's Initial Brief and Designation of Matter to be included in the Record on Appeal in the appeal related to the orders granting partial summary judgment in favor of Strong Tower (Appellate Case No. 2024-000753) are due to be filed with the Court on Friday, August 2, 2024. The Initial Brief and Designation of Matter to be included in the Record on Appeal in the appeal related to the orders granting partial summary judgment in favor of Watson and the orders related to the lower court's findings in favor of Library (Appellate Case No. 2024-000788) are due to be filed with the Court on Wednesday, August 21, 2024. Balfour requests the Court hold the briefing schedule in both appeals in abeyance while the Court considers Balfour's Motion to Consolidate and restructure the pending appeals.

CONCLUSION

Based on the foregoing, Balfour requests the Court issue an order:

- A. Dismissing the Appeal of the orders related to Low Country only;

- B. Consolidating appeals of the orders in favor of Watson and Strong Tower into a single appeal; and
- C. Holding the current briefing schedule in the pending appeals in abeyance while the Court considers Balfour's request to restructure the status of the pending appeals.

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August 1, 2024
Columbia, South Carolina

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PROOF OF SERVICE

The undersigned hereby certifies that on August 1, 2024, a copy of **Appellant's Motion to Dismiss Appeal as to Low Country Case & Millwork, Inc., Consolidate the Appeal, and Hold in**

Abeyance was served on all counsel of record via email containing the above referenced document to counsel's individual AIS email addresses:

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August 1, 2024
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