

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Honorable William H. Seals, Jr., Circuit Court Judge

Case No. 2023-CP-26-00053

Paint Design, LLC, Appellant,

v.

Westgate Myrtle Beach, LLC a/k/a Westgate Resorts, Ltd.
and RNR Construction, LLC, Respondents.

MOTION TO DISMISS APPEAL

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, Respondent Westgate Myrtle Beach, LLC (“Westgate”) request this Court to dismiss this appeal. As discussed herein, the trial court’s order denying Appellant’s motion to amend its complaint is interlocutory. Thus, this appeal is not properly before the Court. Accordingly, the appeal should be dismissed, and this matter returned to the trial court to proceed with litigation. See Rule 221, SCACR.

PROCEDURAL HISTORY

By way of background, this case arises out of a construction project in Horry County, South Carolina. On or about October 25, 2021, Westgate entered into a general contractor’s agreement with Defendant RNR Construction, LLC (“RNR”) for the purpose of hiring RNR to furnish labor, materials, equipment and/or other services for the Hotel 2nd Floor Room Conversion project (“Project”). Second Amended Verified Complaint at ¶ 6. On or about October 22, 2021, RNR

entered into a subcontract agreement (“Subcontract”) with the Plaintiff. Id. at ¶ 7. On July 8, 2022, Plaintiff filed a mechanic’s lien on Westgate’s property. See Id. at ¶ 12. On January 4, 2023, Plaintiff filed a Lis Pendens with the trial court. See Id. at ¶ 15. On January 5, 2023, Plaintiff filed its original Verified Complaint, in which it included quantum meruit and unjust enrichment causes of action against Westgate. See Verified Complaint. Westgate filed a Motion to Dismiss on February 1, 2023. See Motion to Dismiss. On March 3, 2023, Plaintiff filed its Amended Verified Complaint, in which it asserted quantum meruit, unjust enrichment, mechanic’s lien enforcement, and civil conspiracy causes of action against Westgate. See Amended Verified Complaint. On March 29, 2023, Westgate filed a Motion to Dismiss the quantum meruit, unjust enrichment, mechanic’s lien enforcement, and civil conspiracy claims asserted in Plaintiff’s Amended Verified Complaint. See Motion to Dismiss, March 29, 2023. Westgate’s Motion to Dismiss was heard before this court by the Honorable William H. Seals Jr. on May 9, 2023. On May 10, 2023, the trial court issued an Order granting Westgate’s Motion to Dismiss as to the claims of quantum meruit, unjust enrichment, mechanic’s lien, and civil conspiracy asserted in Plaintiff’s Amended Complaint. See Form 4 Order, May 10, 2023. Plaintiff filed a Notice of Motion and Motion to Amend Its Amended Complaint (“MFLTA”) on May 22, 2023, in which Plaintiff requests leave to Amend its Complaint to add the quantum merit cause of action. See Plaintiff’s Notice of Motion and Motion to Amend its Amended Complaint, May 22, 2023. On August 15, 2023, the trial court denied Plaintiff’s MFLTA. Order, August 15, 2023. Thereafter, on August 24, 2023, pursuant to Rule 59 of the South Carolina Rules of Civil Procedure, Plaintiff filed its third Motion to Reconsider, this time asking the Court to reverse its denial of Plaintiff’s MFLTA. Plaintiff Paint Design, LLC’s Motion to Reconsider Pursuant to Rule 59, SCRPC, August 24, 2023. On September 27, 2023, the trial court issued a more formal order denying

Plaintiff's MFLTA. Order Denying Plaintiff Paint Design, LLC's Notice of Motion and Motion to Amend its Amended Complaint, September 27, 2023. In its September 27, 2023 Order, the trial court found in its discretion that allowing Appellant to amend its complaint to add a quantum meruit claim against Westgate would be futile. Id. On October 5, 2023, Plaintiff filed its fourth Motion to Reconsider pursuant to Rules 52 and 59 of the South Carolina Rules of Civil Procedure. Plaintiff Paint Design, LLC's Motion to Reconsider Pursuant to Rules 52 and 59, SCRPC, October 5, 2024. Plaintiff's fourth Motion to Reconsider asked the trial court to change its decision, despite offering no new law or argument in support of its Motion. Id. On January 3, 2024 the trial court denied Plaintiff's fourth motion to reconsider. Order, January 3, 2024. After dismissal of Appellant's claims against Westgate, and the trial court's decisions denying all Appellant's motions, Appellant's claims against Defendant RNR Construction, LLC remain pending. On January 30, 2024, Appellant served its notice of appeal. In its notice of appeal to this Court, each issue raised by Appellant arises from the trial court's denial of Plaintiff's MFLTA.

ARGUMENT

- a. AN ORDER DENYING A MOTION TO AMEND IS NOT IMMEDIATELY APPEALABLE

A trial court's order denying a motion to amend a pleading is interlocutory. Baldwin Const. Co., Inc. v. Graham, 357 S.C. 227, 230, 593 S.E.2d 146, 147 (2004). "Absent some specialized statute, determining if an interlocutory order is immediately appealable depends on whether the order falls within one of the several categories of appealable judgments, decrees, or orders listed in S.C. Code Ann. § 14-3-330." Id. at 230, 593 S.E.2d at 147. No specialized statute exists making the trial court's order denying Appellant's MFLTA immediately appealable. Therefore, Appellant may only appeal the trial court's order denying its MFLTA if it falls within a section of S.C. Code Ann. § 14-4-330.

Our courts have interpreted the language of S.C. Code Ann. § 14-4-330(2) to mean only final judgments and certain interlocutory orders are immediately appealable. Thus, when a final judgment has not been rendered, as in this case, the inquiry becomes whether an interlocutory order is immediately appealable. Under § 14-4-330, this Court may “review upon appeal ... an order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses to new trial or (c) strikes out an answer or any part thereof of a pleading in any action.” S.C. Code Ann. §14-4-330. The trial court’s order denying Appellant’s MFLTA does not fall within one of the several judgments, decrees or orders listed in § 14-4-330(2). For example, the trial court’s order does not determine the action because Appellant still has claims pending against Defendant RNR. At most, subsection (c) of § 14-4-330(2) applies, but the trial court did not strike out any pleadings, it refused to allow Appellant to file a pleading, therefore subsection (c) does not apply. See Baldwin supra at 230 (discussing § 14-4-330 and distinguishing between a judge striking a pleading and refusing to allow a pleading).

Because an order denying a motion to amend a complaint is not immediately appealable, this appeal must be dismissed.

b. APPELLANT’S APPEAL SHOULD BE DISMISSED AS UNTIMELY

Alternatively, to dismissing this appeal because the order appealed is not immediately appealable, if this Court determines that the trial court’s order denying Appellant’s MFLTA is immediately appealable, this appeal should be dismissed because Appellant’s notice of appeal was not timely filed or served.

Rule 203(b)(1) requires that a “notice of appeal shall be served on all respondents within thirty (30) days after receipt of a written notice of entry of the order or judgment. The trial court

issued its order denying Appellant's MFLTA on September 27, 2023. Order, September 27, 2023. Thereafter, Appellant filed its fourth motion to reconsider on October 5, 2023, but Plaintiff's fourth motion to reconsider did not include any new arguments or provide any new law for the trial court to consider. In other words, Appellant simply repeated the arguments from its MFLTA and its prior motions to reconsider.

Typically, a motion to reconsider stays the time for serving a notice of appeal, but if the motion to reconsider fails to raise new arguments or identify law that the trial court previously failed to consider, the time for serving a notice of appeal is not stayed. Because Appellant's fourth motion to reconsider did not raise any new issues for the trial court to consider, Appellant's fourth motion to reconsider did not stay the time for Appellant to serve a notice of appeal, therefore the time for Appellant to serve a notice of appeal began to run on September 27, 2023. Appellant did not serve its notice of appeal until January 30, 2024; therefore Appellant's notice of appeal was not timely served, and this appeal should be dismissed as untimely.

Because the Order appealed by Appellant is interlocutory, the errors asserted by Appellant are not immediately appealable, and this appeal should be dismissed.

Respectfully submitted,

By: /s/ Don R. Terry

Don R. Terry (SC Bar No. 101395)

Windle Terry Bimbo

150 Milestone Way, Suite C

Greenville, SC 29615

Voice: (864) 484-3428

Fax: (704) 626-6446

dterry@wtbconstructionlaw.com

Attorney for Respondents

July 29, 2024
Greenville, SC

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PROOF OF SERVICE

I certify that I have served the **MOTION TO DISMISS APPEAL** upon Appellant Paint Design, LLC by email transmission on July 29, 2024, addressed to their attorney of record, Howell V. Bellamy, III, of Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, P.A., email address hbellamyiii@bellamylaw.com, P.O. Box 357, Myrtle Beach, South Carolina 29578.

/s/ Don R. Terry

Don R. Terry (SC Bar No. 101395)

Windle Terry Bimbo

150 Milestone Way, Suite C

Greenville, SC 29615

Voice: (864) 484-3428

Fax: (704) 626-6446

dterry@wtbconstructionlaw.com

Attorney for Respondents