

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

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APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS
The Honorable Bentley D. Price, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2024-001161
Case No. 2021-CP-10-03090

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

Respondents,

v.

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, LLC; Custom Climate Heating & Air, Inc.; P.J.
Sanchez Masonry, LLC; Donnix Construction, LLC; Guillen Carpentry, LLC; Charleston
Exteriors, LLC; Ashley Oak Contracting, LLC; H2O 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,

Third-Party Plaintiff/Petitioner,

v.

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; H2O Pro, LLC; La Roca Masonry, LLC; Apex Contractors, LLC; 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,

v.

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

Third Party Defendants.

RESPONDENTS JARED S. O'CONNELL AND HARMONY A. O'CONNELL'S RETURN TO
PETITIONER'S PETITION FOR WRIT OF CERTIORARI

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COUNTER-STATEMENT OF THE QUESTION PRESENTED

Did the Court of Appeals properly dismiss Artis’s appeal of the trial court’s Orders Denying Artis’s Motions for Summary Judgment when the Supreme Court has clearly held that an order denying a motion for summary judgment is not immediately appealable as it does not finally determine anything about the merits of the case or strike a defense of the case, regardless of what may be said in the order denying summary judgment?

COUNTER-STATEMENT OF THE CASE

This construction defect case was commenced by Jared S. O’Connell and Harmony A. O’Connell (hereinafter “O’Connells”) against the general contractor – Artis Construction, LLC (hereinafter “Artis”), the various subcontractors, and the former homeowners – House Therapy Holdings, LLC, Amanda F. Dempsey, William T. Phillips, and Matthew B. Swain (hereinafter collectively “HTH”). On May 5, 2023, Artis filed a Notice of Motion and Motion for Summary Judgment as to Artis’s Cross-Claims against HTH. The same day, Artis filed an *Amended* Notice of Motion and Motion for Summary Judgment as to Artis’s Cross-Claims Against HTH. The basis of Artis’s Motion was that there was no genuine issue of material fact that exists as to Artis’s Indemnity, Breach of Contract, and Fraud Claims against HTH. HTH filed a Memorandum in Opposition to Artis’s Motion for Summary Judgment on August 14, 2023.

Similarly, on June 23, 2023, Artis filed a Notice of Motion and Motion for Summary Judgment as to Plaintiffs’ Claims Against Artis Construction, LLC for violation of South Carolina Unfair Trade Practices Act. The basis of Artis’s Motion was that no genuine issue of material fact existed as to the O’Connells’ claims for violation of the South Carolina Unfair Trade Practices Act against Artis. The O’Connells filed a Memorandum in Opposition to Defendant Artis Construction, LLC’s Motion for Summary Judgment on August 11, 2023.

Both of Artis's Motions for Summary Judgment against HTH and the O'Connells were heard by the Honorable Bentley D. Price on August 15, 2023, at the Charleston County Courthouse. Judge Price denied both motions and requested counsel for the O'Connells and HTH to submit proposed orders. Both parties submitted their orders, at which time Artis's counsel stated that they did not agree with both parties' orders and electronically filed two unrequested orders both titled Order Denying Artis Construction, LLC's Motion for Summary Judgment as to Plaintiffs. Due to a clerical error, Judge Price signed the following four orders:

- Order Denying Motion for Summary Judgment, filed September 1, 2023, at 10:54 AM;
- Order Denying Artis Construction, LLC's Motion for Summary Judgment as to Plaintiffs, filed September 1, 2023, at 10:58 AM;
- Order Denying Artis Construction, LLC's Motion for Summary Judgment as to Plaintiffs, filed September 1, 2023, at 11:00 AM; and
- Order Denying Artis Construction, LLC's Motion for Summary Judgment as to Plaintiffs, filed on September 1, 2023, at 11:02 AM.

The order signed at 11:00 AM titled "Order Denying Artis Construction, LLC's Motion for Summary Judgment as to Plaintiffs" pertained to Artis's Motion for Summary Judgment against HTH and not the O'Connells. It was brought to Judge Price's attention that four orders were signed, at which time Judge Price requested all parties send the orders that were submitted via electronic filing to him via electronic mail. At this time counsel for Artis corrected the names of the orders to include an order titled "Order Denying Artis Construction, LLC's Motion for Summary Judgment as to Defendants House Therapy Holdings, LLC; Amanda F. Dempsey; William T. Phillips; and Matthew B. Swain."

On September 19, 2023, a Form 4 Order was signed by Judge Price stating “Both Orders titled “ORDER DENYING ARTIS CONSTRUCTION, LLC’S MOTION FOR SUMMARY JUDGMENT AS TO DEFENDANTS HOUSE THERAPY HOLDINGS, LLC; AMANDA F. DEMPSEY; WILLIAM T. PHILLIPS; AND MATTHEW B. SWAIN” were signed in error due to a clerical error and are therefore vacated.” It was brought to Judge Price’s attention that none of the four orders electronically filed contained this title but that the one of the orders submitted by Artis via electronic mail was corrected to contain this title. On September 27, 2023, a second Form 4 Order was signed by Judge Price stating:

The following three orders were signed and filed due to clerical errors and are therefore vacated:

- ORDER DENYING ARTIS CONSTRUCTION, LLC’S MOTION FOR SUMMARY JUDGMENT AS TO PLAINTIFFS Filed 9/1/23 at 11:00am
- ORDER DENYING ARTIS CONSTRUCTION, LLC’S MOTION FOR SUMMARY JUDGMENT AS TO PLAINTIFFS Filed 9/1/23 at 11:02am
- Form 4 Order vacating ORDER DENYING ARTIS CONSTRUCTION, LLC’S MOTION FOR SUMMARY JUDGMENT AS TO DEFENDANTS HOUSE THERAPY HOLDINGS, LLC; AMANDA F. DEMPSEY; WILLIAM T. PHILLIPS; AND MATTHEW B. SWAIN" Filed 9/19/23 at 4:00pm.

Therefore, the orders signed by Judge Price that remain in effect are: Order Denying Motion for Summary Judgment, filed September 1, 2023, at 10:54 AM, and the Order Denying Artis Construction, LLC’s Motion for Summary Judgment as to Plaintiffs, filed September 1, 2023, at 10:58 AM (hereinafter the “Orders”).

Subsequently, Artis filed a Motion for Reconsideration on October 9, 2023. The trial court provided notice that Artis’s Motion for Reconsideration was denied on November 8, 2023. Artis filed its Notice of Appeal on November 30, 2023. On December 12, 2023, the Court of Appeals advised all counsel that upon a preliminary review of the orders challenged on appeal, the orders indicate that they may not be appealable and requested memoranda addressing the issue of appealability be served and filed within ten (10) days. On December 22, 2023, the O’Connells

filed a Motion and Memorandum to Dismiss Appeal, but Artis did not file a memorandum as requested by the Court of Appeals. On January 2, 2024, Artis filed a Return to Motion and Memorandum to Dismiss Appeal. On March 21, 2024, the Court of Appeals issued an Order dismissing Artis’s Appeal based upon the South Carolina Supreme Court’s well-established precedent that “the denial of a motion for summary judgment is not immediately appealable because it does not finally determine anything about the merits or strike defenses, regardless of what may be said in the order denying summary judgment.” O’Connell v. House Therapy Holdings, L.L.C., S.C. Ct. App. Order dated March 21, 2024. On April 5, 2024, Artis filed a petition for rehearing on the basis that the Court of Appeals did not consider the substance of the orders on appeal and only the name of the orders, absent evidence to suggest such. The Court of Appeals filed an Order on June 14, 2024, stating that “[a]fter careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principal of law has been either overlooked or disregarded . . .” O’Connell v. House Therapy Holdings, L.L.C., S.C. Ct. App. Order dated June 14, 2024. Artis then filed this Petition for Writ of Certiorari on July 15, 2024.

ARGUMENT

I. ARTIS’S PEITION FOR CERTIORARI DOES NOT MEET THE REQUISITE STANDARDS UNDER RULE 242, SCARC.

This Court should deny Artis’s Petition for Certiorari because it fails to satisfy the certiorari requirements. Rule 242, SCACR, provides that a writ of certiorari “will be granted only where there are special and important reasons.” The following are generally accepted reasons for permitting certiorari: (1) where there are novel questions of law; (2) where there is a dissent in the decision of the Court of Appeals; (3) where the Court of Appeals’ decision conflicts with a prior decision of the Supreme Court; (4) where substantial constitutional issues are directly involved;

and (5) where a federal question is included and the decision below conflicts with a decision of the United States Supreme Court. SCACR, Rule 242 (b).

Artis's Petition for Certiorari lacks any of the reasons granting certiorari, nor do they argue any of these reasons are applicable to this Petition. On the contrary, the Court of Appeals' decision directly aligns with the South Carolina Supreme Court decision in Ballenger v. Bowen, 313 S.C. 476, 443 S.E.2d 379 (1994) (affirmed Olson v. Faculty House of Carolina, Inc., 354 S.C. 161, 580 S.E.2d 440, 444 (2003)). This Court should deny Artis's Petition as it lacks a novel question of law; the Court of Appeals decision did not contain a dissent; the Court of Appeals' decision directly aligns with prior decisions of the Supreme Court; there is no substantial constitutional issues directly involved; and there is no federal question included.

II. THE COURT OF APPEALS PROPERLY DISMISSED ARTIS'S APPEAL IN RULING IN AGREEMENT WITH THE SUPREME COURT'S WELL SETTLED PRECEDENT THAT THE DENIAL OF A MOTION FOR SUMMARY JUDGMENT IS NOT IMMEDIATELY APPEALABLE AS IT DOES NOT FINALLY DETERMINE ANYTHING ABOUT THE CASE REGARDLESS OF THE BODY OF THE ORDER DENYING SUMMARY JUDGMENT.

Artis's Petition should be denied as the trial court's Orders Denying Artis's various motions for summary judgment are not immediately appealable and the Court of Appeals properly dismissed Artis's appeal. The South Carolina Supreme Court has repeatedly held that "the denial of summary judgment is not directly appealable." Ballenger, 313 S.C. at 476, 443 S.E.2d at 380. The denial of summary judgment is not reviewable even in an appeal from final judgment. Raino v. Goodyear Tire & Rubber Co., 309 S.C. 255, 259, 422 S.E.2d 98, 100 (1992). The denial of summary judgment decides nothing about the merits of the case, but simply decides the case should proceed to trial. Ballenger, 313 S.C. at 411. (citing Parker Oil Co. v. Smith, 34 N.C.App 324, 237 S.E.2d 882 (1997)). A ruling which does not determine the rights of the parties in a matter is interlocutory and not immediately appealable. Ashenfelder v. City of Georgetown, 389 S.C. 568,

573-73, 698 S.E.2d 856, 859-60 (Ct. App. 2010). The South Carolina Supreme Court in Olson, 354 S.C. at 167, held that the denial of a motion for summary judgment is not appealable, even after final judgment, and that any cases inconsistent with this holding are expressly overruled.

The determination of whether a party may immediately appeal an order issued before or during trial is governed primarily by S.C. Code Ann. § 14-3-330, which states four different instances in which an order is immediately appealable. Artis contends two such instances are present in this case. First, Artis contends that the Orders involve the merits of the case and fall under S.C. Code Ann. § 14-3-330(1), which states that that an order shall review upon appeal if:

Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from.

Second, Artis contends that the Orders at issue in this case also fall under S.C. Code Ann. § 14-3-330(2), which states that an order shall review upon appeal if:

An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action.

Artis contends that the Orders denying summary judgment involve the merits of the case. However, the South Carolina Supreme Court clearly stated in Ballenger, and affirmed in Olson, a

denial of a motion for summary judgment decides nothing about the merits of the case; therefore, Artis's argument that the Orders at issue involve the merits of the case fails for lack of law to support their contentions. The Orders decide nothing about the merits of the case at hand and Artis's Appeal should be dismissed.

Artis also asserts that the Orders denying summary judgment affect a substantial right. An order can only affect a substantial right when the order (1) determines the action and prevents a judgment (2) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in the action. S.C. Code Ann. § 14-3-330(2). The Orders in this case do not prevent a judgment because issues raised in a motion for summary judgment that has been denied can be raised again in the proceedings by a motion for a directed verdict. Ballenger, 313 SC. at 477. Furthermore, the Orders do not have any bearing on granting or refusing a new trial as the trial in this matter has not occurred. Moreover, the Orders do not strike out any answer, party, or pleading in the pending action. Similar to how the denial of summary judgment in Ballenger did not have the effect of striking the defenses of *res judicata*/ collateral estoppel, the Orders in the present action do not strike any defenses Artis may have in the present case nor does the Order make any findings as to the O'Connells' claims pursuant to the South Carolina Unfair Trade Practices Act.

Artis makes the groundless assumption that the Court of Appeals only considered the labels of the Orders and not the substance of those Orders, when nothing in either the Court of Appeals Order Denying the Appeal or the Order Denying the Rehearing supports this contention. On the contrary, the Court of Appeals' Order clearly considered how the substance of the orders affected their ruling when they cited Ballenger by stating that "the denial of a motion for summary judgment is not immediately appealable because it does not finally determine anything about the merits or strike a defense, *regardless* of what may be said in the order denying summary judgment."

O’Connell v. House Therapy Holdings, L.L.C., S.C. Ct. App. Order dated March 21, 2024. (emphasis added). It is evident that the Court of Appeals considered the body of the Orders as they cited to the South Carolina Supreme Court’s well-settled holding that the substance of an order denying summary judgment does not determine anything about the case regardless of the substance of such orders.

Artis describes the Court of Appeals’ ruling as a “fundamental misapprehension” but fails to recognize that the Court of Appeals’ ruling is directly aligned with the South Carolina Supreme Court’s ruling in Ballenger, which was affirmed in Olson and subsequently cited again in the South Carolina Supreme Court’s decision in Lucas v. Rawl Family Ltd. P’ship., Op. No. 2007-MO-058 (S.C. Sup. Ct. filed Sep. 24, 2007). Artis failed to recognize this precedent while repeatedly citing to the groundless theory that the Orders make binding findings of fact and conclusions of law which preclude Artis from pursuing crossclaims and presenting defenses, all while ignoring the clear precedent that an order denying summary judgment does no such thing despite the wording of the complaint.

Artis consistently intertwines S.C. Code Ann. §14-3-330 and case law to reach the misguided conclusion that the statute sets forth a requirement that the Court must look at the substance of an order in making their determination. S.C. Code Ann. §14-3-330 sets forth various judgments and orders in which appellate courts have jurisdiction, not how the Court must review those judgments and orders. The manner of review is prescribed by case law, which Artis consistently ignores. While this Court has recognized that an appellate court should look to the effect of an interlocutory order and that review of that order is not restricted to the manner in which it is styled (see e.g. Morrow v. Fundamental Long-Term Care Holdings, L.L.C., 412 S.C. 534, 773 S.E.2d 144 (2015), Thornton v. S.C. Elec. & Gas Corp., 391 S.C. 297, 705 S.E.2d 475 (Ct. App.

2011)), this Court has also acknowledged many times that an order denying a motion for summary judgment does not determine anything about the merits or defenses of the case no matter the wording of the order. Ballenger, 313 S.C. at 476.

Artis failed to submit a memorandum detailing why this matter was appealable as requested by the Court of Appeals. They then re-iterated the same law in their Return to Motion and Memorandum of Respondents Jared S. O’Connell and Harmony A. O’Connell to Dismiss Appeal, filed January 2, 2024, while failing to address how the South Carolina Supreme Court precedent stating that a motion for summary judgment is not immediately appealable, regardless of the substance of the order, is not applicable to this matter. Artis, again, failed to address this in their Petition and instead opted to cite Georgia¹ law regarding the effect of an order granting summary judgment, rather than addressing Ballenger, which is a binding case directly aligned with the facts of the matter in this case. Artis has failed to support their contention that the Court of Appeals erred by following the well-settled precedent of the South Carolina Supreme Court’s decision in Ballenger.

The Court of Appeals properly denied Artis’s Appeal of the trial court’s Order Denying Summary Judgment by ruling directly in alignment with the South Carolina Supreme Court’s ruling in Ballenger, and Artis’s Petition should be denied.

CONCLUSION

For the reasons set forth herein, the O’Connells respectfully request this Court deny Artis Construction LLC’s Petition for Writ of Certiorari and affirm the Court of Appeals’ Order dismissing Artis Construction LLC’s appeal as this matter is not immediately appealable.

[signature page to follow]

¹ 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).

Respectfully submitted,

s/ Amanda M. Blundy
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