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**Aug 26 2024**

**S.C. SUPREME COURT**

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

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

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APPELLATE CASE NO. 2024-001161  
CIVIL ACTION NO. 2021-CP-10-03090

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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/Petitioner,**

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, 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,**

versus

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

**Third-Party Defendants.**

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**REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI**

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**ARTIS CONSTRUCTION, LLC**

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The Court of Appeals erred in dismissing the appeal of Artis Construction by only considering the title of the appealed orders which purported to deny summary judgment and not the substance of such orders which granted relief on the merits against Artis Construction in favor of the opposing parties, thus making the orders immediately appealable under S.C. CODE ANN. § 14-3-330 because the orders involved the merits and affected a substantial right.

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## ARGUMENT IN REPLY

**The Court of Appeals erred in dismissing the appeal of Artis Construction by only considering the title of the appealed orders which purported to deny summary judgment and not the substance of such orders which granted relief on the merits against Artis Construction in favor of the opposing parties, thus making the orders immediately appealable under S.C. CODE ANN. § 14-3-330 because the orders involved the merits and affected a substantial right.**

As an initial matter, Respondents HTH and the HTH Individual Defendants did not file a Return to Artis Construction's Petition for Writ of Certiorari and have not objected that the order on summary judgment with respect to the cross-claims is immediately appealable.

Only the Plaintiffs have filed a Return to the Petition. In their Return, the Plaintiffs blatantly misrepresent to this Court that Artis Construction never filed a memorandum in response to the Court of Appeals' December 12, 2023 letter requesting the parties to address the issue of appealability. See Plaintiffs' Return, pp. 4, 9 ("Artis did not file a memorandum as requested by the Court of Appeals," and "Artis failed to submit a memorandum detailing why this matter was appealable as requested by the Court of Appeals.").

Contrary to the Plaintiffs' false claim that Artis Construction purportedly ignored the request of the Court of Appeals, Artis Construction in fact filed a twelve-page memorandum with exhibits on the issue of appealability per the Court of Appeals' request on December 21, 2023. This memorandum and supporting exhibits are found on C-Track under Appellate Case No. 2023-001853 under the entry dated December 21, 2023.

The Plaintiffs further contend the Trial Court issued an order denying summary judgment on their Unfair Trade Practices Act claim and decided nothing about the merits of the case. As such, the Plaintiffs argue that the order is not immediately appealable and the appeal should be dismissed.

Artis Construction recognizes that orders which deny a motion for summary judgment are not immediately appealable. But the Trial Court's order in this case as to the Plaintiffs did not merely deny a motion for summary judgment. That may have been the label affixed to the order, but the substance of the order went far beyond the bounds of an order denying a motion for summary judgment. Morrow v. Fundamental Long-Term Care Holdings, LLC, 412 S.C. 534, 539, 773 S.E.2d 144, 147 (2015) (noting appellate court should not look to how the order is styled in deciding appealability, but instead look to the effect of the interlocutory order to determine its appealability).

The order, attached as Exhibit "H" to the Memorandum Re: Appealability filed with the Court of Appeals on December 21, 2023, makes a number of decisive findings and conclusions of law that hinder Artis Construction's ability to defend the case, including:

1. multiple findings of fact predetermining the existence of construction deficiencies which resulted in damage to the Plaintiffs, including experiencing illness which forced the Plaintiffs to move out of the home due to air quality, even though the existence of construction deficiencies, causation, and damages was and continues to be a disputed issue in the case [Id. at pp. 2-3];
2. findings of fact concluding that Artis Construction suggested underground PVC ductwork, which is dispute, and further stated that because Artis improperly installed the PVC ductwork, Coliform and E.Coli are now present at the Plaintiffs' property, which factual findings are conclusive of liability and causation against Artis Construction [Id. at p. 3 (finding "improper installation of underground ductwork" causing ductwork to fill with water resulting in Plaintiffs' illnesses); p. 5 (same factual finding)];
3. that the Plaintiffs proved an adverse effect on the public interest for purposes of an Unfair Trade Practices Act claim and "need not allege or prove anything further" [Id. at p. 4]; and
4. that Artis Construction committed a "fraudulent and deceptive act" by installing a PVC ductwork system that could not work in the environment for the Plaintiffs' property resulting in damage to the Plaintiffs [Id. at p. 5].

To recover in an action under the Unfair Trade Practices Act, a “plaintiff must show: (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s).” Wright v. Craft, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006). In its order, the Trial Court already determined that Artis Construction committed a deceptive act which affected the public interest for which the Plaintiffs suffered damages as a result. There is nothing left to be decided.

The Plaintiffs, citing the Court of Appeals’ erroneous order of dismissal, also contend 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.” But this ignores the very requirement that an appellate court must examine the substance of the order to determine what the order in fact does in the case. The Trial Court’s order here as to the Plaintiffs did not simply deny a motion for summary judgment, but, as described above, instead made numerous conclusive, factual determinations as a matter of law that construction deficiencies exist, that Artis Construction improperly completed the construction work, that Artis Construction acted fraudulently and deceptively, that Artis Construction’s actions adversely affected the public interest, and that the acts of Artis Construction caused the construction deficiencies and the Plaintiffs’ damages.

The Trial Court did not render these conclusions of law as simply dicta, but decided necessary elements of the Plaintiffs’ Unfair Trade Practices Act claim in their favor. Cf. Weil v. Weil, 299 S.C. 84, 89, 382 S.E.2d 471, 473 (Ct. App. 1989) (observing statements made by a trial court on “a matter not necessarily involved in the case nor necessary to a decision thereof” are

mere dicta and the law of the case does not apply). The effect of the Trial Court’s order is to grant summary judgment to the Plaintiffs on these disputed issues, and under the parameters of S.C. CODE ANN. § 14-3-330(1) and 2(c), Artis Construction is entitled to an immediate appeal.

At a minimum, it is improper for a trial court to make such conclusive factual findings and determinations of law in denying a motion for summary judgment. Artis Construction asked the Trial Court to remove such findings and determinations from its order denying summary judgment, but the Trial Court refused to do so. See Motion for Reconsideration, attached as Exhibit “M” and Order Denying Motion for Reconsideration, attached as Exhibit “N” to the Memorandum Re: Appealability filed December 21, 2023 with the Court of Appeals. An immediate appeal is the only way to address the Trial Court’s error.

The order issued by the Trial Court which decides in favor of the Plaintiffs on every element of their Unfair Trade Practices Act claim thus “involves the merits” and “affects a substantial right” and is immediately appealable under S.C. CODE ANN. § 14-3-330. The Court of Appeals’ dismissal of Artis Construction’s appeal deprives it of an immediate appeal to which is entitled to by statute. Only this Court can correct this error.

**CONCLUSION**

For the reasons set forth herein and in the previously filed Petition, Petitioner Artis Construction respectfully requests that the Court grant its Petition for Writ of Certiorari, reverse the Court of Appeals’ dismissal of the appeal, determine that the appealed orders are immediately appealable under S.C. CODE ANN. § 14-3-330, remand the case to the Court of Appeals, and order that the appeal proceed on the merits.

*[signature on following page]*

Respectfully submitted,

/s Carmen V. Ganjehsani

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**ATTORNEYS FOR PETITIONER**

**ARTIS CONSTRUCTION, LLC**

August 26, 2024.