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Oct 07 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 Mikell R. Scarborough, Master-in-Equity

Court of Appeals Case No. 2021-001014

Bonnie Wall, individually and derivatively,
and Walter B. Wall, Jr.....Appellants,

v.

Jonathan Dye, Shaun Dye, Shellmore Homeowners’ Association, Inc., and
John H. Chakides, Jr., individually and
in his capacity as Director of Shellmore Homeowners’ Association, Inc.,
.....Respondents.

**MOTION TO STAY PENDING RESOLUTION
OF SOUTH CAROLINA SUPREME COURT CASE NO. 2024-001293**

This appeal is the second of two appeals, and its final disposition hinges on how the first appeal ends. Threshold legal questions – fundamental to both appeals – are at issue in the first appeal, which is currently pending before the South Carolina Supreme Court in its Case No. 2024-001293. Because the ultimate outcome of the first appeal drives the correct result in this second appeal, the Walls respectfully move to stay this appeal pending the Supreme Court’s final resolution of Case No. 2024-001293.

BACKGROUND

This is Court of Appeals Case No. 2021-01014, *Bonnie Wall v. Jonathan Dye (2)* (“Second Appeal”). The Second Appeal concerns an order for summary judgment as to

all of the Walls' claims, granted by the Charleston County Master-in-Equity on July 28, 2021. (R. p. 16). But several months before the summary judgment order at issue in this Second Appeal was rendered, two of the Walls' key causes of action were stripped away in the grant of summary judgment that is the subject of Appellate Case No. 2024-001293, *Bonnie Wall v. Jonathan Dye (1)* ("First Appeal").¹ The Master-in-Equity decided, on November 19, 2020:

Defendant's summary judgment motion as to Plaintiff's claims for Breach of Fiduciary Duty and Civil Conspiracy are GRANTED as there is no fiduciary duty owed by the Directors to the Plaintiff and no evidence of special damages has been shown by the Plaintiff to constitute a civil conspiracy.

(R. p. 10). The Walls took an immediate appeal from this order, raising the questions of whether the directors of a nonprofit corporation owe fiduciary duties to the corporation and its members, and whether the Walls were obligated to plead special damages. This Court heard the First Appeal and affirmed the Master-in-Equity in Opinion No. 2024-UP-159. The Walls have petitioned the South Carolina Supreme Court for a writ of certiorari, seeking further review of those issues of law and fact, and that Petition is pending before that Court.

Two months after this Court issued its Opinion in the First Appeal, it issued another Opinion, affirming summary judgment in the Second Appeal. Appellants have filed a Petition for Rehearing as to the Opinion in the Second Appeal contemporaneously with the filing of this Motion to Stay.

¹ 2024-001293 is the South Carolina Supreme Court case number. This Court captioned the First Appeal as Case No. 2020-001583, which is the subject of Opinion No. 2024-UP-159, rehearing denied on July 11, 2024.

ARGUMENT

The core questions of law before the South Carolina Supreme Court in the First Appeal will steer (and possibly control) this Court's consideration of this Second Appeal: first, the question of whether directors of a non-profit HOA owe fiduciary duties to the HOA and, second, whether special damages were required to be plead and proven in the conspiracy claim. If the South Carolina Supreme Court answers either, or both, of those questions in the affirmative, this Court's analysis will be significantly affected in this Second Appeal.

The First Appeal and the Second Appeal have in common the fundamental question of whether and how South Carolina's Nonprofit Corporation Act bears on the Respondent Shellmore Homeowners' Association and its directors. Within the First Appeal, this Court found that the HOA's status as a nonprofit corporation did not "matter." Op. No. 2024-UP-159 at p. 3. Likewise, in its Opinion in the Second Appeal, this Court entirely disregards the HOA's status as a nonprofit, notwithstanding controlling provisions of the Act that properly should be the lynchpin of its decision. Moreover, the First Appeal and the Second Appeal involve many of the same documents and exhibits, including corporate records like the articles of incorporation, the HOA's meeting minutes, correspondence with the Board of Directors, as well as the covenants. The South Carolina Supreme Court likely will construe those documents in a manner that pertains to this Second Appeal. Further, if the Supreme Court reverses this Court in the First Appeal, the Walls will be entitled to discovery and trial on the claims at issue. It thus would be prudent and efficient for this Court to avoid duplication of efforts.

Therefore, the Walls respectfully request this Court to stay this Second Appeal, pending the outcome of the Walls' Petition for Writ of Certiorari in the First Appeal. This Court should exercise its discretion to stay this appeal for the reasons set forth above, and in the interest of efficiency and judicial economy.

Respectfully submitted,

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Charleston, South Carolina
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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master-in-Equity

Circuit Court Case No. 2020-CP-10-04185
Appellate Case No. 2021-1014

Bonnie Wall, individually and derivatively,
and Walter B. Wall, Jr.....Appellants,

v.

Jonathan Dye, Shaun Dye, Shellmore Homeowners' Association, Inc., and
John H. Chakides, Jr., individually and
in his capacity as Director of Shellmore Homeowners' Association, Inc.,
.....Respondents.

PROOF OF SERVICE

I certify that on October 7, 2024, I have served Appellants' Motion to Stay by sending the same to their attorneys of record, Andrew M. Connor and L. Sidney Connor, at their email addresses of record with AIS.

s/ Ainsley F. Tillman
Attorney for Appellants