

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

69854

APPEAL FROM CHARLESTON COUNTY
Court of Commons Pleas

R. Markley Dennis Jr., Circuit Court Judge

Case No. 2010-CP-10-9305

RECEIVED

SEP 23 2013

SC Court of Appeals

Cambridge Lakes HOA,..... Respondent,

v.

Johnson Koola,..... Appellant.

RESPONDENT'S MOTION TO DISMISS

Respondent, by and through her undersigned counsel, hereby moves this Court to enter an Order dismissing Appellant's appeal. This Motion is based on the fact that the appeal is interlocutory and not ripe for appeal as the underlying case is still awaiting trial in the lower court.

Analysis

South Carolina adheres to the final judgment rule. Accordingly, with certain exceptions, an appeal lies only from a final judgment. *Hagood v. Sommerville*, 362 S.C. 191, 194-195, 607 S.E.2d 707, 708 (2005). Appellant Koola ("Appellant") states in his initial brief that the Order dismissing his counterclaims against Respondent Cambridge Lakes HOA ("Respondent") ended the case. (App. Initial

Brief, p.1) Appellant is incorrect, and the lawsuit brought by Respondente against Appellant is still pending in Charleston County Circuit Court. (see Exhibit A)

Rule 201(a) SCACR, states that an appeal may be taken from any final judgment, appealable order or decision. Appellant is not appealing a final judgment, but rather an interlocutory order. An intermediate/interlocutory order is immediately appealable only if it involves the merits of the case or affects a substantial right. S.C. Code, §14-3-330; *Shields v. Martin Marietta Corp.*, 303 S.C. 469, 470, 402 S.E.2d 482, 483 (1991).

Dismissal of Appellant's counterclaims does not involve the merits as contemplated under S.C. Code §§14-3-330(1). To involve the merits, the order must finally determine some substantial matter forming the whole or part of some cause of action or defense. *Peterkin v. Brigman*, 319 S.C. 367, 368, 461 S.E.2d 809, 810 (1995) (emphasis added). Moreover, substantial rights have not been affected because the dismissal does not determine the action, prevent a judgment from which an appeal might be taken or discontinue the action. S.C. Code §§14-3-330(2). The underlying case is currently pending in the lower court and will be tried before a jury, thereby affording Appellant the opportunity to present his case.

Conclusion

For the reasons stated above, Respondent respectfully requests this Court grant Respondent's Motion and enter an Order dismissing this Appeal.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,



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