

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Trial Court Case No. 2010-CP-10-9305

Appellate Case No.: 2013-001632

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SEP 30 2013
SC Court of Appeals

Johnson Koola,
.....Appellant,
v.
Cambridge Lakes HOA,
.....Respondent.

RETURN TO THE MOTION TO DISMISS THE APPEAL

Appellant pro se submits the Return to the Motion to Dismiss filed by the respondent to dismiss appellant's appeal. The respondent states in its motion that the appeal is interlocutory and not ripe for appeal as the underlying case is still awaiting trial in the lower court. The respondent further states that the appellant will have an opportunity to present his case again when the trial court hears the claims of the respondent against the appellant. The appellant states that the respondent's claims are contrary to the facts leading to the appeal and should be dismissed.

The Form 4 Order signed by the trial court judge on March 4, 2013 granted respondent's Motion for Summary Judgment and dismissed the appellant's counterclaims in the underlying case. The trial court judge further noted that "This Order ends the case" [with respect to the appellant's counterclaims]. [Exhibit 1]. The trial court judge signed the Order on March 15, 2013. [ROA # 17, Order granting Plaintiff's Motion for Summary Judgment]. In the Order, the trial court judge articulated the grounds for the grant of Summary Judgment to the respondent and the grounds for the dismissal of the appellant's counterclaims. Furthermore, on June 18, 2013, the trial court judge denied appellant's Motion to Reconsider. [Exhibit 2]. Through these actions, the trial court judge demonstrated that *the trial court disposed of whole subject of the appellant's counterclaims and granted all the relief that responded contemplated in its Motion for Summary Judgment.* (Emphasis added). Therefore, the decision of the trial court on the appellants' counterclaims by granting Summary Judgment to respondent is final and not interlocutory as claimed by the respondent.

The trial court case *Cambridge Lakes HOA v. Koola*¹ has two parts: (i) respondent's claims against the appellant and (ii) the appellant's counterclaims against the respondent. After trial court Judge's orders, especially after stating that the actions of the court ended the case [with respect to appellant], the appellant cannot raise these counterclaims during the continuation of the case when trial court decides on the respondent's claims against the appellant. The appellant submits to the Appellate Court that the decisions of the trial court judge

¹ *Cambridge Lakes HOA v. Koola*, Case No.: 2010-CP-10-9305

with respect to appellant's counterclaims and grant of Summary Judgment to the respondent are final and not interlocutory.

The Appellate Courts have in several instances decided on appeals from grant of summary judgment to one party. In *Clea v. Odom*, 394 S.C. 175, 714 S.E.2d 542 (2011), Supreme Court of South Carolina *heard an appeal from the grant of summary judgment* to the respondent and affirmed in part and reversed in part. In *Wilson v. Style Crest Products, Inc.*, 367 S.C. 653, 627 S.E.2d 733 (2006), Supreme Court of South Carolina *heard an appeal form the grant of summary judgment* to the respondents and affirmed the lower court's decision. In *Olson v. Faculty House of Carolina, Inc.*, 354 S.C. 161, 580 S.E.2d 440 (2003), Supreme Court of South Carolina heard an appeal from the grant of Summary Judgment and affirmed in results. In *Olson, supra*, the Supreme Court held that denial of Summary Judgment is not appealable since the denial of Summary Judgment does not finally determine the events of the case. In *Bowen, Jr. v. Lee Process Systems Co.*, 342 S.C.232, 536 S.E.2d 86 (Ct.App. 2000), Court of Appeals of South Carolina heard an appeal from the grant of Summary Judgment and vacated and remanded. In *George v. Empire Fire and Marine Ins. Co.*, 336 S.C. 206, 519 S.E.2d 107 (Ct.App. 1999), Court of appeals of South Carolina heard an appeal from the grant of summary judgment, reversed and remanded, and further noted that "summary judgment as to some but not all of the parties to a lawsuit is appealable". (Internal citations omitted). In *Pruitt v. Bowers*, 330 S.C. 483, 499 S.E.2d 250 (Ct.App. 1998), Court of Appeals of South Carolina heard an appeal from grant of Summary Judgment, affirmed, and noted that "[An]

appeal of amendment order is interlocutory and generally not appealable, but may be considered by this court because it accompanies the appeal of grant of motion for summary judgment". These court decisions would show to the Court of Appeals that grant of summary judgment, per se, is not interlocutory and is appealable. Citing S.C. Code Ann. § 14-3-330 (1976), Court of Appeals of South Carolina notes that "Statutes and rules of the court should be construed liberally in favor of the right of appeal. *Wieters v. Bon-Secours-St. Francis Xavier Hosp., Inc.*, 378 S.C. 160, 662 S.E.2d 430 (Ct.App. 2009) (Internal citations omitted).

Other jurisdictions have, as well, heard and decided on appeals from grant of summary judgment. In *Motor Club of America Ins. Co. v. Hanifi*, 145 F.3d 170 (4th Cir. 1998), United States Court of Appeals, Fourth Circuit, heard an appeal from grant of Summary Judgment and vacated and remanded. In *Willis v. City of Atlanta*, 265 Ga.App. 640, 595 S.E.2d 339 (Ga.App. 2004), Court of Appeals of Georgia, citing Ga.Code Ann. § 9-11-56(h), notes that "[OCGA § 9-11-56(h)] is an exception to the finality rule which is for the benefit of the losing party. The party against whom summary judgment was granted may appeal either after the grant of summary judgment or after the rendition of the final judgment". In *Lidster v. Jones*, 176 Ga.App. 392, 336 S.E.2d 287 (Ga.App. 1985), the Georgia Court of Appeals heard an appeal from grant of Summary Judgment and reversed.

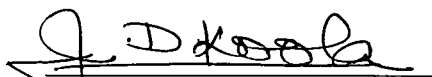
The respondent's Motion to Dismiss appellant's appeal, in spite of the trial court judge's clear Order after the grant of Summary Judgment that 'this Order ends the case' and after denial of the appellant's Motion to Reconsider, is without any merits.

CONCLUSION

For the reasons stated above, the appellant respectfully requests this Court to dismiss respondent's Motion to Dismiss appellant's appeal.

Dated: Mt. Pleasant, SC
Sep. 28, 2013

Respectfully submitted,



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