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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Honorable William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2023-001306
Case No. 2023-CP-22-00007

Elizabeth M. Powers and Edward A. Powers; Martha C. Green; Steven E. Basson; James R. Sherman; Alexander V. Picard and Jessica L. Picard; Parkersville Planning & Development Alliance; Keep It Green; and Preserve Murrells Inlet, Inc.,.....Appellants,

v.

Georgetown County; and Alliance for Economic Development for Georgetown County Respondents.

**RESPONDENT ALLIANCE FOR ECONOMIC DEVELOPMENT FOR
GEORGETOWN COUNTY'S REPLY TO APPELLANTS' RETURN IN
OPPOSITION TO THE ALLIANCE'S MOTION TO DISMISS**

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The Alliance for Economic Development for Georgetown County (“**Alliance**”) offers this Memorandum of Law in Reply to Appellants’ Return in Opposition to the Alliance’s Motion to Dismiss.

Quizzically, in the Background Section of Appellants’ Return, the Appellants attempt to portray the Alliance as derelict in filing its Motion to Dismiss. Appellants contend that the Alliance transferred the property in question to third-party Georgetown Realty, LLC on June 2, 2025, and the Alliance then filed an “eleventh-hour Motion to Dismiss” on June 6, 2025. (**Appellants’ Return, p. 2**). However, a review of the Deed reflecting the transfer in question, which was attached as **Exhibit A** to the Alliance’s Motion to Dismiss, reveals that the Deed was not recorded until June 5, 2025. Furthermore, the undersigned did not receive a copy of the Deed until June 6, 2025, and upon receiving the Deed, the Alliance promptly sought the consent of Georgetown County and the Appellants to the requested dismissal, and when the Appellants failed to respond by the end of the day to the Alliance’s request, the Alliance filed a Motion to Dismiss that same day, so that it could promptly bring this matter to the attention of the Court.

ARGUMENT

I. Rule 25(c), SCRCP does not govern the Court’s analysis in ruling on the Alliance’s Motion to Dismiss.

As an initial matter, the Alliance cited two Rules in support of its Motion to Dismiss: Rule 240, SCACR, and Rule 21, SCRCP. The Alliance never cited Rule 25(c), SCRCP in its Motion to Dismiss. Appellants, without any citation to case law, appear

to contend that Rule 25(c) prevents the Alliance from being dismissed as a party to this case. Because Appellants do not explain their position, it is not clear why they contend Rule 25(c) applies. Nonetheless, it is easy for the Alliance to explain to the Court why Rule 25(c) does not apply at all to this situation.

Appellants cite Rule 25(c) as though it applies when one party (the Alliance) transfers its interest in real party to a non-party (Georgetown Realty, LLC). That is not at all how Rule 25(c) works. Instead, “Rule 25(c) applies to the transfer of interest from one corporation to another with which the first merged.” *Bryant v. Waste Mgmt., Inc.*, 342 S.C. 159, 164, 536 S.E.2d 380, 383 (Ct. App. 2000). That is not what happened here. There has been no merger of any kind between the Alliance and Georgetown Realty, LLC. Instead, as reflected by the Deed that was attached as **Exhibit A** to the Motion to Dismiss, the Alliance entered into an arm’s length transaction with Georgetown Realty, LLC, whereby the Alliance sold the property in question to Georgetown Realty, LLC for One Million Two Hundred Thousand and 00/100 (\$1,200,000.00) Dollars. The Deed establishes that the Alliance transferred its entire interest in the subject property to Georgetown Realty, LLC, and the Alliance maintains no interest whatsoever in the subject property.

Appellants’ Return incorrectly assumes that Rule 25(c) frames the inquiry on how this Court will resolve the Alliance’s Motion to Dismiss. In making this assumption, Appellants offer ***no response*** to the Alliance’s argument that Rule 21 should guide the Court in ruling on this motion. Because Appellants offer no response

to this argument, the Court should deem it as Appellants’ “consent ... to the relief sought in the motion.” Rule 240(e), SCACR.

The plain language of Rule 240(a), SCACR, specifically states that it applies to motions to dismiss. *See* Rule 240(a), SCACR (“This Rule governs all motions or petitions filed in the appellate court, including but not limited to: ... **motions to remand or dismiss.**”) (emphasis added). Thus, by its own text, Rule 240(a), SCACR clearly applies and governs Motions to Dismiss, like the one before the Court. In ruling on this motion, the Court should look to Rule 21, SCRPC, as it provides guidance as to how courts should rule on such a motion. Rule 21 makes clear it gives courts *sua sponte* power to realign any party at any time on “such terms as are just.” Rule 21, SCRPC. Here, it is just that the Alliance should be dismissed from this case because it no longer has any interest whatsoever in the real property that is the subject of this dispute.

II. The Alliance should be dismissed from this appeal because it does not have an interest in the declaratory relief sought by Appellants.

This is a declaratory judgment action where the Appellants challenge the validity of Georgetown County’s ordinances, specifically Ordinances 22-36 and 22-37 (“**2022 Ordinances**”), which allowed for the construction of ninety residential units on the parcel of property owned by the Alliance and subsequently transferred to Georgetown Realty, LLC on June 5, 2025. The Appellants challenged the 2022 Ordinances under the South Carolina Uniform Declaratory Judgment Act (“**the Act**”). All parties to a declaratory judgment action must have a ***substantial, direct, and legally protected interest in the relief sought.*** *Carolina Alliance for Fair*

Empl. v. South Carolina Dep't of Labor, Licensing, & Regulation, 337 S.C. 476, 487, 523 S.E.2d 795, 801 (Ct. App. 1999) (emphasis added). The Alliance's substantial, direct, and legally protected interest in this declaratory judgment action terminated when it sold the property to Georgetown Realty, LLC.

The Alliance was added as a party to this action so it would be bound if the Court invalidated the 2022 Ordinances that were challenged by Appellants in the underlying lawsuit. The practical legal effect of invalidating the 2022 Ordinances at this stage would be: (i) voiding the development application as it relates to the property now owned by Georgetown Realty, LLC; and (ii) preventing development on the property now owned by Georgetown Realty, LLC. As the Court can plainly see, the Alliance has no interest in either of these outcomes because it no longer owns the property in question. Stated otherwise, the Alliance has no interest in the declaratory relief sought by Appellants in this case.

Nonetheless, the Appellants try desperately to keep the Alliance in this case. While it is not clear why the Appellants want the Alliance to remain in this case, the Appellants argue, again without any citation to case law, that the Alliance remains an interested party because it was “the applicant named on the land development application at issue.” (**Appellants’ Return, p. 3**). The Alliance’s status as the applicant is inextricably related to its ownership of the property. Also, Appellants’ arguments about the development application are, as they describe it, confined to “improprieties in the *application approval process*.” (**Appellant’ Return, p. 3**) (emphasis added). The Alliance played no role in approving the development

application. Georgetown County, by virtue of adopting the 2022 Ordinances, approved the development application, and if the Appellants wish to challenge the “approval” of the development application, such arguments can only be aimed at the approving-authority, which is Georgetown County, not the Alliance.

Again, the Alliance’s *only* interest in this matter (including the application) stemmed from its ownership of the property. This interest indisputably terminated when the Alliance sold its property to Georgetown Realty, LLC. Because the Alliance no longer has any interest in this action (much less a substantial, direct, and legally protected interest), the Alliance respectfully requests that it be dismissed from this appeal.

As a final Hail Mary, Appellants argue (again without any citation to law) that the Alliance should not be dismissed from this appeal because:

[T]here are no facts of record about the following matters: (1) the relationship between the Alliance and the transferee, and whether there are common members or financial or other interests between these two entities; and (2) inasmuch as the transfer took place while litigation was pending, the nature and details of any agreements between the Alliance and the transferee relative to the outcome of the litigation.

(Appellants’ Return, p. 4).

In response, the Alliance would point to the Deed itself and argue that the Deed reflects an arm’s length transaction. After all, the Deed shows that Georgetown Realty, LLC paid One Million Two Hundred Thousand and 00/100 (\$1,200,000.00) Dollars to the Alliance for the property. Moreover, the Alliance would contend that Appellants’ arguments are misdirection and appear to assert legal theories that are

not before the Court and are not present in the pleadings in this action. If the Appellants wish to challenge the propriety of the transaction between the Alliance and Georgetown Realty, LLC, such allegations are not before the Court, and the Appellants would need to commence a separate legal action to try to do so. But, the Appellants cannot mount that challenge in this appeal. The veracity of the transaction between the Alliance and Georgetown Realty, LLC is not before this Court, and the Court should not bite on Appellants' arguments to wade into these waters in the first instance. This Court is an appellate court, and generally, it lacks jurisdiction to resolve matters that were not first decided by a lower court. *See* S.C. Code § 14-8-200(a) (“(a) Except as limited by subsection (b) and Section 14-8-260, the court has jurisdiction over any case *in which an appeal is taken* from an order, judgment, or decree of the circuit court, family court, a final decision of an agency, a final decision of an administrative law judge, or the final decision of the Workers’ Compensation Commission. *This jurisdiction is appellate only*”) (emphasis added).

III. The case is moot as it relates to the Alliance.

According to this Court and the South Carolina Supreme Court, “[a] case becomes moot when judgment, if rendered, will have no practical legal effect upon an existing controversy. This is true when some event occurs making it impossible for a reviewing court to grant effectual relief.” *Shah v. Richland Mem’l Hosp.*, 350 S.C. 139, 150, 564 S.E.2d 681, 687 (Ct. App. 2002) (quoting *Mathis v. South Carolina State Highway Dep’t*, 260 S.C. 344, 346, 195 S.E.2d 713, 714 (1973) (internal quotations

omitted)). That is exactly what happened in this case as it relates to the Alliance—there will be no practical legal effect on the Alliance even if the Court awards the relief requested by the Appellants because it sold the subject property.

While the case may not be entirely moot (Georgetown County will remain as a party), the Appellants should not be allowed to hold the Alliance captive as a party to this appeal when, even if their declaratory relief is granted, there will be no practical legal effect to the Alliance. For this reason as well, the Alliance respectfully requests that it be dismissed from this appeal.

CONCLUSION

For the foregoing reasons, the Alliance respectfully requests that the Court of Appeals dismiss it from this appeal and grant such other and further relief as this Court deems just and necessary under the circumstances.

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PROOF OF SERVICE

I, the undersigned legal practice assistant of the law offices of Burr & Forman, LLP, do hereby certify that on June 9, 2025, I have served all counsel in this action with a copy of the below by emailing a copy to each attorney listed below using their primary email address listed in the Attorney Information System pursuant to Rule 262 of the South Carolina Appellate Court Rules and the May 6, 2022 Order of the South Carolina Supreme Court (Appellate Case No. 2023-001306).

Documents Served: (1) Respondent Alliance for Economic Development for Georgetown County’s Reply to Appellants’ Return in Opposition to the Alliance’s Motion to Dismiss

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