

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Robin B. Stilwell, Circuit Court Judge

Case No.: 2012-CP-23-3738

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OCT 21 2013

SC Court of Appeals

Marathon Community Church,

Appellant,

v.

CIT Technology Financing Services,

Respondent.

**MEMORANDUM REGARDING THE APPEALABILITY OF THE ORDER OF THE
HONORABLE ROBIN B. STILWELL**

Appellant hereby submits the following memorandum regarding the appealability of the Order of the Honorable Robin B. Stilwell, dated August 28, 2013 and filed August 30, 2013:

FACTS

Appellant Marathon Community Church ("Marathon") entered into a contract on or around November 4, 2009 ("Contract") whereby it agreed to lease copiers from Third-Party Defendant Ricoh Americas Corporation ("Ricoh"). The Contract was allegedly assigned to Respondent CIT Technology Financing, Inc. ("CIT") by Ricoh, however, Marathon had no notice of this alleged assignment. Based on and in reliance on certain representations made by Ricoh, Marathon canceled the subject Contract. Subsequently, CIT filed this action alleging a single cause of action against Marathon for breach of contract. Marathon answered CIT's

Complaint and counterclaimed against CIT. Marathon subsequently amended its answer to assert third-party claims against Ricoh. On or around June 5, 2013, CIT moved for summary judgment, and a hearing was held on July 23, 2013 in front of the Honorable Robin B. Stilwell. Judge Stilwell issued an order dated August 28, 2013 and filed August 30, 2013 (“Order”), granting CIT summary Judgment as to liability only while leaving open the issue of damages. Marathon now appeals this Order.

ARGUMENTS

I. THE ORDER OF THE HONORABLE ROBIN B. STILWELL IS AN INTERLOCUTORY ORDER

“South Carolina adheres to the final judgment rule. Accordingly, with certain exceptions, an appeal lies only from a final judgment...By statute, an appeal from an interlocutory order is permitted in certain circumstances, including when the order is one ‘involving the merits...[or] affecting a substantial right.’ S.C.Code Ann. § 14-3-330(1) and (2).” Brunson v. Am. Koyo Bearings, 367 S.C. 161, 165, 623 S.E.2d 870, 872 (Ct. App. 2005). “If there is some further act which must be done by the court prior to a determination of the rights of the parties, then the order is interlocutory.” Mid-State Distributors, Inc. v. Century Importers, Inc., 310 S.C. 330, 335, 426 S.E.2d 777, 780 (1993). In the present case, the Order “enters Summary Judgment as to liability while leaving the issue of damages outstanding.” (See **Order of the Honorable Robin B. Stilwell, p. 1.**) Because the Order leaves open the issue of damages for determination at a future hearing, it is an interlocutory order and is only appealable if it falls within the ambit of a specific statutory provision.

II. THE ORDER OF THE HONORABLE ROBIN B. STILWELL FALLS WITHIN THE AMBIT OF §§ 14-3-330(1) AND (2) OF THE SOUTH CAROLINA CODE AND IS THEREFORE IMMEDIATELY APPEALABLE

“An interlocutory order not governed by a specialized appealability statute is not immediately appealable unless it fits into one of the categories listed in section 14-3-330 of the South Carolina Code.” Thornton v. S. Carolina Elec. & Gas Corp., 391 S.C. 297, 300, 705 S.E.2d 475, 477 (Ct. App. 2011). S.C. Code § 14-3-330 provides that:

“The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

(1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; *provided*, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;

(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;”

In evaluating whether or not a particular order falls within the ambit of S.C. Code § 14-3-330, our Supreme Court stated that “[g]enerally, orders granting partial summary judgment may be immediately appealable under either the ‘involving the merits’ or ‘substantial right’ categories of section 14-3-330(1) and (2)(c). See Link v. Sch. Dist. of Pickens County, 302 S.C. 1, 6, 393 S.E.2d 176, 178-79 (1990) (holding an order granting partial summary judgment may be appealable under either category). To decide whether a particular summary judgment order fits into either subsection, however, the court must examine the order to determine if it meets the subsection's criteria for appealability.” Thornton at 306.

Our Supreme Court has defined an order which “involves the merits” and is therefore

appealable under S.C. Code § 14-3-330(1), as an order which “must finally determine some substantial matter forming the whole or a part of some cause of action or defense....”. Mid-State Distributors at 334. Our Supreme Court has stated that an order “affects a substantial right” and is therefore immediately appealable under S.C. Code § 14-3-330(2) “when such order would discontinue an action, prevent an appeal, grant or refuse a new trial, or strike out an action or defense.” Id at 335. Further, in interpreting whether an order denying class certification was immediately appealable, the Court of Appeals stated that “[a]n order affects a substantial right by striking a pleading if the order removes a material issue from the case, thereby preventing the issue from being litigated on the merits, and preventing the party from seeking to correct any errors in the order during or after trial.” Thornton at 304.

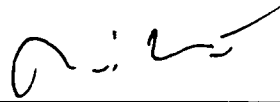
In the present case, the Order grants CIT summary judgment as to liability. The Order is somewhat unclear as to whether it is limited to CIT’s claims only, or also grants CIT judgment as to Marathon’s counterclaims. Even if the Order is given its most narrow interpretation and applies to CIT’s claims only, it finally determines that Marathon breached a contract with CIT and is liable to CIT for said breach. Whether or not Marathon breached a contract with CIT is a substantial matter as it is the basis for the sole cause of action in CIT’s complaint and is at the heart of Marathon’s defenses and counterclaims. The Order involves the merits, and is immediately appealable pursuant to S.C. Code § 14-3-330(1), because, at a minimum, the Order finally determines a substantial matter forming the whole of CIT’s cause of action, and if read more broadly, also finally determines Marathon’s counterclaims against CIT. The Order also affects a substantial right and is immediately appealable under S.C. Code § 14-3-330(2)(c) as it discontinues CIT’s action against Marathon and strikes out Marathon’s defenses. Further, if read broadly, the Order potentially discontinues Marathon’s counterclaims against CIT and strikes out

Marathon's causes of action against CIT and any defenses CIT has asserted thereto. At a minimum, the Order removes the issue of whether or not Marathon breached a contract with CIT from the case. Thus, the Order prevents the issue of whether Marathon breached the subject contract from being litigated on the merits, and would prevent Marathon from seeking to correct any errors in the order during or after trial.

CONCLUSION

The Order grants summary judgment to CIT as to liability, while leaving open the issue of damages and is therefore an interlocutory order and only appealable if it falls within the ambit of a specific statutory provision. The Order involves the merits, and is immediately appealable pursuant to S.C. Code § 14-3-330(1), because, at a minimum, it finally determines a substantial matter forming the whole of CIT's cause of action, and if read more broadly, also finally determines Marathon's counterclaims against CIT. The Order also affects a substantial right and is immediately appealable under S.C. Code § 14-3-330(2) as it discontinues CIT's action against Marathon, strikes out Marathon's defenses, potentially discontinues Marathon's counterclaims against CIT, and strikes out Marathon's causes of action against CIT and any defenses CIT has asserted thereto. Further, the Order affects a substantial right as it removes the issue of whether or not Marathon breached its contract with CIT from the case.

RESPECTFULLY SUBMITTED,



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PROOF OF SERVICE

I certify that I have served a Memorandum Regarding Appealability of the Order of the Honorable Robin B. Stilwell on all Counsel of Record to the address below by depositing a copy of it in the United States Mail with postage prepaid on October 17, 2013, as well as by via email and facsimile to all Counsel of Record.

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