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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Carmen Mullen, Circuit Court Judge

C.A. No. 2013-CP-07-1567

James Piotrowski, deceased, by and through his Personal Representative Tracey L. Piotrowski and Tracey L. Piotrowski, individually, Plaintiff,

v.

Richard K. Santee, Carolyn Santee, and
Brays Island Plantation Colony, Inc., Defendants,

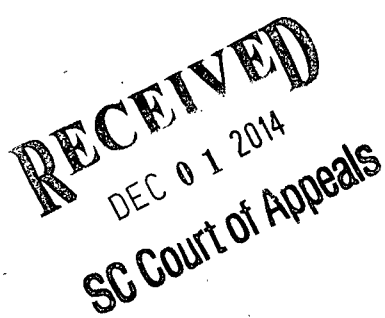
of whom

Brays Island Plantation Colony, Inc. is .....Appellant,

and

Richard K. Santee and Carolyn Santee are .....Respondents.

RESPONDENTS' MOTION TO DISMISS APPEAL



David C. Cleveland
Clawson and Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492
843.577.2026
Attorney for Respondents

BACKGROUND

This matter arises from a shooting incident that occurred on November 24, 2010, at the home of Richard K. Santee and Carolyn Santee (collectively the "Santee Defendants") in Beaufort County, South Carolina. Specifically, according to the allegations of the Complaint, the decedent Plaintiff was a guest at the Santee Defendants' home when, following an evening of excessive alcohol consumption, a "chaotic situation developed at the home" during which Defendant Richard Santee "recklessly discharged a handgun," fatally injuring the decedent Plaintiff. The Complaint also alleges that Defendant Brays Island Plantation Colony, Inc.'s (hereinafter "Appellant Brays Island") security officer, Gary Knox, "entered into Defendant Santee's home and negligently fired a weapon at James Piotrowski and struck him." The Complaint alleges that the decedent's death was directly and proximately caused by the shots from both Santee and Knox.

The Complaint, filed on or about June 14, 2013, set forth causes of action for negligence, gross negligence, and negligent infliction of emotional distress against the Santee Defendants, all of which are centered around allegations related to the shooting. As to Appellant Brays Island, the Plaintiff alleges specific acts of negligence wholly unrelated to the Santee Defendants' negligence, including failure to properly train, failing to follow policies and procedures, and other particularized allegations of negligence wholly related to Appellant Brays Island's employee's actions. On May 21, 2014, all of the parties and their respective attorneys, including Appellant Brays Island, participated in mediation. At the conclusion of the mediation, the Plaintiff reached an agreement to settle with the Santee Defendants. (**Exhibit A**, Proof of ADR). Appellant Brays Island

did not settle, but, significantly, Brays Island did not make any statement that it was opposed to settlement by the Santee Defendants if it did not also settle.

During the following month, Plaintiff and the Santee Defendants worked out the terms of the settlement and Plaintiff petitioned the Beaufort County Court of Common Pleas for approval of the settlement agreement reached on May 21, 2014. Judge Carmen Mullen approved said agreement on June 17, 2014. (**Exhibit B**, Order). As reflected by the terms of the Order, the Court reviewed the fairness and equity of said settlement and dismissed Plaintiff's claims against the Santee Defendants.

Appellant Brays Island subsequently filed a Motion to Alter or Amend the June 17, 2014 Order, wherein it complained that it was not provided proper notice of the settlement approval hearing and that dismissal of the Santee Defendants causes prejudice to it because its liability is related to the Santee Defendants' actions, the Defendants are jointly and severally liable, and the Santee Defendants are no longer subject to South Carolina's subpoena power. A hearing was held on the Motion to Alter or Amend on September 16, 2014. Thereafter, on October 8, 2014, the Court issued an Order Granting in Part and Denying in Part the Motion to Alter or Amend, requiring the settling parties to provide to Appellant Brays Island copies of settlement documentation under a confidentiality order and denying its motion to disapprove the settlement or require the Santee Defendants to remain in the litigation as defendants.

Appellant Brays Island subsequently filed the present Notice of Appeal of the Court's June 17, 2014 Order approving settlement and October 8, 2014 Order Granting in Part and Denying in Part the Motion to Alter or Amend.

DISCUSSION

The present appeal is not properly before this Court and must be dismissed. Significantly, Appellant Brays Island lacks legal standing to challenge the June 17, 2014, Order approving settlement between Plaintiff and the Santee Defendants. Additionally, even if Brays Island did have standing to appeal, the subject Order is an interlocutory order not immediately appealable pursuant to South Carolina law.

1. Appellant Lacks Standing to Challenge the Order on Appeal.

Rule 201(b) of the South Carolina Appellate Court Rules provides that "only a party aggrieved by an order, judgment, or sentence may appeal." As a general rule among United States courts, a non-settling co-defendant is not an "aggrieved party" within the meaning of the rule. Accordingly, numerous jurisdictions throughout the country have uniformly held under facts similar to those at issue that non-settling defendants do not have standing to challenge on appeal a settlement between a plaintiff and co-defendants.

In a recent June 2014 case before the Second Circuit, the court cited numerous cases from various jurisdictions for the holding that non-settling defendants lack standing to object to a court order approving a partial settlement because a non-settling defendant is ordinarily not affected by such a settlement. Bhatia v. Ratnam, 756 F.3d 211 (2nd Cir. 2014) (citing string of case law). This rule "advances the policy of encouraging the voluntary settlement of lawsuits." Id. The court noted, however, that there is "a recognized exception to this general rule which permits a non-settling defendant to object where it can demonstrate that it will sustain some formal legal prejudice as a result of the settlement." Id. at 218 (citing string of case law). The level of "formal legal prejudice"

necessary for standing "exists only in those rare circumstances when, for example, the settlement agreement *formally* strips a non-settling party of a legal claim or cause of action, such as a cross-claim for contribution or indemnification, invalidates a non-settling party's contract rights, or the right to present relevant evidence at trial." Id. (emphasis in original) (citing string of case law). The Bhatia court held that the non-settling defendants, who argued they were "effectively stripped" of certain defenses as a result of the settlement, could not show the requisite level of formal legal prejudice:

> It is not . . . sufficient for the Non-Settling Defendants to show that they were somehow "undercut" through the loss of some practical or strategic advantage. As we have stated, to succeed they must show formal legal prejudice. They have not done so.

Id. at 219. This holding is in line with numerous other jurisdictions. See, *e.g.*, Goldberg v. Farno, 953 N.E.2d 1244 (Indiana Ct. App. 2011). The Goldberg court, relying upon the Fifth, Seventh, Eighth, Ninth and D.C. Circuits, held that a non-settling defendant's allegations of injury in fact or tactical disadvantage are insufficient to show "plain legal prejudice":

> Mere allegations of injury in fact [such as the prospect of a second lawsuit] or tactical disadvantage as a result of a settlement simply do not rise to the level of plain legal prejudice. Rather, a non-settling party must show that the settlement interfered with its contract rights or its ability to seek contribution or indemnification, or that the settlement stripped the party of a legal claim or cause of action, such as a cross-claim or the right to present relevant evidence at trial.

Id. (internal citations omitted). Accordingly, the non-settling defendant's argument in that case that he would be susceptible to "an increase in the amount of potential damages that may be claimed against him" was rejected by the court as insufficient to confer standing to challenge the settlement. Id.

South Carolina has considered the issue of whether a remaining defendant is an "aggrieved party" with standing to appeal a co-defendant's removal only in the context of a grant of summary judgment to the co-defendant, which, although factually dissimilar, is instructive to the present matter. Shaw v. City of Charleston, 351 S.C. 32, 567 S.E.2d 530 (S.C. Ct. App. 2002). The Shaw court held that a remaining defendant is an "aggrieved party" with standing to appeal a co-defendant's award of summary judgment in "narrow" circumstances, such as where one of the alleged joint tortfeasors is a governmental entity subject to the Tort Claims Act or where cross-claims were asserted against the dismissed defendant. Accordingly, where no cross-claims existed, where none of the alleged joint tortfeasors was a governmental entity, and where there has been no award of summary judgment with findings of fact, the remaining defendant lacks standing to appeal the trial court's order.

In the present case, Appellant Brays Island claims it is prejudiced by the settlement because liability of the Santee Defendants and Appellant Brays Island is alleged to be joint and several, such that it has an "undeniable interest" in having the Santee Defendants listed on the verdict form, and because the Santee Defendants reside out of state and are thus beyond the subpoena power of the court. Appellant Brays Island was not stripped of any cross-claims or contractual rights and the Order approving settlement does not make findings of fact or determinations of liability as to the underlying claims. Brays Island never raised a cross-claim against the Santee Defendants. The arguments Appellant offers constitute mere "injury in fact or tactical disadvantages" that do not rise to the level of "plain legal prejudice" sufficient to confer standing, even if South Carolina accepted that standard, which it has not yet done. For all

of these reasons and based upon this law, the appeal should be dismissed because Appellant Brays Island lacks standing to challenge the settlement.

2. The Challenged Order is an Interlocutory Order Not Immediately Appealable.

South Carolina law disfavors interlocutory appeals. "It is well settled that an interlocutory order is not immediately appealable unless it involves the merits of the case or affects a substantial right." Brown v. County of Berkeley, 366 S.C. 354, 361, 622 S.E.2d 533, 538 (S.C. 2005); see also Cobb v. Maccaro, 310 S.C. 303, 304-05, 423 S.E.2d 156, 157 (S.C. Ct. App. 1992) ("Only final judgments, including those arising from a special or collateral proceeding after judgment, and certain interlocutory orders are appealable. Only interlocutory orders which (1) involve the merits; (2) affect a substantial right; or (3) involve certain orders regarding injunctions and appointments of receivers, can be appealed."). "To involve the merits of a case, the order must finally determine some substantial matter forming the whole or a part of some cause of action or defense. To affect a substantial right, the order must determine the action and prevent a judgment from which an appeal might be taken or discontinue the action." Brown, 366 S.C. at 361 (citations and quotations omitted). "The phrase 'involving the merits' is narrowly construed in modern precedent. "An order usually will be deemed interlocutory and not immediately appealable when there is some further act that must be done by the trial court prior to a determination of the parties' rights." Ex Parte Capital U-Drive-It, Inc., 369 S.C. 1, 6-7, 630 S.E.2d 464, 467 (S.C. 2006).

The instant Order approving settlement does not "involve the merits" of the case or "affect a substantial right." The Order, unlike an order granting summary judgment, makes no determination of any fact or law and is not binding upon any remaining party.

The purpose of this Order is to determine whether the offer to settle is fair, just, and equitable. This includes an evaluation as to whether the attorney's fees are fair and whether the overall settlement amount is fair in light of the alleged injuries. There is no determination by the court as to any liability. In fact, the petition submitted to the trial court stated that the claims were doubtful and disputed and liability has been expressly denied. For these reasons, the Order approving settlement does not involve the merits of the case. Likewise, the Order does not affect a substantial right because no rulings have been made as to liability and the remaining claims will proceed. The Order approving settlement simply makes no determination with respect to the underlying claim. Pursuant to this controlling authority, the Order is interlocutory and not presently appealable.

CONCLUSION

Appellant lacks legal standing to appeal to this Court for relief from the subject settlement Order. Further, even if Appellant had standing to challenge the Order, which is denied by Respondents, the Order at issue is interlocutory and does not involve the merits of the case or affect a substantial right. For these reasons and based upon the authority set forth herein, the appeal must be dismissed.

David C. Cleveland
Laura Simons Greaver
Clawson and Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492
843.577.2026

Attorneys for Respondents

Charleston, South Carolina
November 26, 2014

EXHIBIT A

614-104

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	
James Piotrowski, et. al., Plaintiff,	)	PROOF OF ADR OR EXEMPTION
vs.	)	FILE NO.: 2013-CP-07-1567
Richard K. Santee, et. al., Defendant.	)	

2014 MAY 27 PM 3:29
BEAUFORT COUNTY, S.C.
CLERK OF COURT

(An original and copy of this form is to be completed and filed with the Office of the Clerk of Court and a copy forwarded to the attorneys for the parties within 10 days of the conclusion of ADR, or within 300 days of the filing date of the action, whichever is earlier.)

PURSUANT to the South Carolina Alternative Dispute Resolution Rules (SCADR):

A. _____ I certify that this case is exempt from ADR for the following reason and the parties wish to exercise that exemption:

Plaintiff/Attorney for Plaintiff	Defendant/Attorney for Defendant
Print Name	Print Name
Phone/Fax	Phone/Fax

Date: _____

B. X 1. Alternative Dispute Resolution (ADR) was conducted in the form of:

Mediation

(Note: If binding arbitration has been chosen by the parties but not yet completed, an appropriate order of dismissal must be attached hereto.)

2. The neutral(s) was/were: (Name of arbitrator/mediator):

Thomas J. Wills, Esquire

3. The ADR was conducted on May 21 , 20 14

4. As a result of ADR, this case should be considered (please check one);

( ) Fully Settled.

( ) by Consent Judgment, to be filed by _____

or ( ) Voluntary Dismissal to be filed by _____

(X) Partially Settled. *** as to Defs. Richard Santee & Carolyn Santee only**

( ) At an Impasse.

( ) In need of further ADR I ☐ am ☐ am not willing to continue as a neutral. I recommend that ADR resume as of _____.

5. Plaintiff ☒ was present ☐ was not present
Defendant ☒ was present ☐ was not present

6. Other partcipants were:

X Lawyer for Defendant _____
X Lawyer for Plaintiff _____
X Representative for Insurance Carrier _____
_____ Guardian *ad Litem* _____
_____ Experts
_____ Others _____

7. Choice of the neutral was by:

X Stipulation
_____ Court Order

8. The total number of hours spent in ADR was: 10.5 hours.

9. Further comments of the neutral: **Case settled as to Richard & Carolyn Santee. Brays Isand Plantation Colony, Inc. remains as Defendant.**

_____
Neutral's Signature

Date: May 21, 2014

EXHIBIT B

2014 JUN 17 PM 1:53

JEANNETTE GAMBRELL
BEAUFORT COUNTY, S.C.
CLERK OF COURT

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	CASE NO.: 2013-CP-07-1567
James Piotrowski deceased by and through his Personal Representative Tracey L. Piotrowski and Tracey L. Piotrowski Individually,	ORDER
Petitioner,	
vs.	
Richard K. Santee, Carolyn Santee, and Brays Island Plantation Colony, Inc.,	
Respondent.	

Upon considering the attached Petition of Tracey L. Piotrowski, Individually and as the Personal Representative of the Estate of James Piotrowski, deceased, it appears that under the conditions set forth in the Petition, the offer is fair, just, and equitable and should be approved by this Court. Therefore, it is

ORDERED, ADJUDGED AND DECREED that Tracey L. Piotrowski, Individually as the appointed Personal Representative of the Estate of James Piotrowski, is hereby authorized and directed to accept the compromise settlement offer and to execute and deliver the full, final and complete release. This release shall include Richard K. Santee, Carolyn Santee and State Farm Fire and Casualty Insurance Company. This does not release the Petitioner's claims against Brays Island Plantation Colony, Inc. Richard K. Santee and Carolyn Santee are hereby dismissed with prejudice.

PRESIDING JUDGE

Beaufort, South Carolina

17 day of June, 2014.

2 (cw)

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen Mullen, Circuit Court Judge

Case No.: 2013-CP-07-1567

James Piotrowski, deceased, by and through his Personal Representative Tracey L. Piotrowski and Tracey L. Piotrowski, individually, Plaintiffs,

v.

Richard K. Santee, Carolyn Santee, and
Brays Island Plantation Colony, Inc., Defendants,

of whom

Brays Island Plantation Colony, Inc. is ..... Appellant

v.

Richard K. Santee, Carolyn Santee are..... Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that on the date indicated below she served all counsel of record with a copy of the Respondents' Motion to Dismiss Appeal by mailing a copy of the same by United States Mail with first class postage prepaid to the following:

J. Bennett Crites, III, Esq.
Christian Stegmaier, Esq
Collins & Lacy, PC
PO Box 12487
Columbia, SC 29211-2487
Attorneys for Brays Island Plantation Colony, Inc.

William E. Applegate, IV, Esq.
Douglas E. Jennings, Esq.
Yarborough Applegate, LLC
291 E Bay Street, Floor 2
Charleston, SC 29401-1601
James Piotrowski, deceased, by and through his Personal Representative Tracey L. Piotrowski and Tracey L. Piotrowski, Individually, Plaintiffs

LSGreaver
Laura S. Greaver
CLAWSON AND STAUBES, LLC

November 26, 2014
Charleston, South Carolina

CLAWSON AND STAUBES LLC

David C. Cleveland
Licensed in SC
dcleveland@clawsonandstaubes.com

November 26, 2014

File No.: 2013-0834 dcc

Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia, South Carolina 29211-1629

Re: James Piotrowski v. Richard Santee (Brays Island)
Appellate Case No.: 2014-002396

Dear Madam or Sir:

We represent the Respondents in the above matter. We are in receipt of your letter of November 18, 2014, wherein the Court requested that the parties submit memoranda on the issue of appealability of this matter. It is Respondents' position that this matter is not appealable under the law, such that we had already anticipated filing a Motion to Dismiss Appeal. In this regard, please allow the enclosed Motion to Dismiss Appeal to further serve as Respondents' submission in response to the Court's November 18, 2014 correspondence.

Respondents have consulted with counsel for Plaintiff regarding this Motion, and Plaintiff concurs in Respondents' Motion to Dismiss Appeal.

Please file the enclosed original of Respondents' Motion to Dismiss Appeal and return one file-stamped copy to me in the envelope provided. Also enclosed is our firm check in the amount of $25.00 for the filing fee. By copy of this letter to all counsel of record, I am providing them with a copy of this filing.

As always, thank you for your assistance. If you have any questions, please do not hesitate to contact me.

Very truly yours,

CLAWSON and STAUBES, LLC

LSWreaver 0/5/0
DCC

David C. Cleveland

LSG/tal
Enclosures
cc (w/enc.): William E. Applegate, IV, Esq.
Douglas E. Jennings, Esq.
J. Bennett Crites, III, Esq.
Christian Stegmaier, Esq.

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11/26/2014
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CLAWSON AND STAUBES LLC
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492
DCC/tal

Clerk of Court
South Carolina Court of Appeals
PO Box 11629
Columbia, SC 29211-1629