

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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DEC 18 2014

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

SC Court of Appeals

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. isAppellant,

and

Richard K. Santee and Carolyn Santee areRespondents.

RESPONDENTS' REPLY TO
APPELLANT'S RETURN TO
MOTION TO DISMISS APPEAL

David C. Cleveland
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Charleston, South Carolina 29492
843.577.2026
Attorney for Respondents

In its Return to Respondents' Motion to Dismiss Appeal,¹ Appellant argues that it is a party aggrieved by the circuit court's dismissal of the Santee Defendants following its approval of the settlement between Plaintiff and the Santee Defendants. As noted in Respondents' Motion to Dismiss, Appellant is not an "aggrieved" party with standing to appeal the orders approving Respondents' settlement with Plaintiff as "[i]t is not . . . sufficient for the Non-Settling Defendants to show that they were somehow "undercut" through the loss of some practical or strategic advantage." Bhatia v. Ratnam, 756 F.3d 211, 219 (2nd Cir. 2014). While Appellant may wish Respondents were still in the case, it cannot show a real legal prejudice by their dismissal. For example, Appellant had no cross-claim pending against the Santee Defendants for which adjudication would have been prohibited by their settlement and dismissal from the case. Shaw v. City of Charleston, 351 S.C. 32, 567 S.E.2d 530 (S.C. Ct. App. 2002).

Notwithstanding Appellant's lack of legal standing to appeal orders relating to Respondents' voluntary settlement with Plaintiff, no verdict has been returned against Appellant and, accordingly, there is no justiciable controversy to be determined on appeal. "Before any action or appeal can be maintained, there must exist a justiciable controversy." Toal, Vafaii and Muckenfuss, Appellate Practice in South Carolina, 2d ed., p. 111 (2002) (citing Byrd v. Irmo High School, 321 S.C. 426, 468 S.E.2d 861 (S.C. 1996)). "A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical,

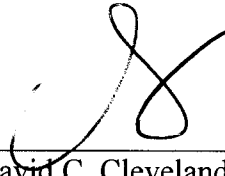
¹ Contrary to Appellant's assertion that neither Respondents nor the Piotrowski Plaintiff "file[d] any briefing" in response to this Court's November 18, 2014 letter questioning the appealability of this matter, Respondents explicitly noted in its correspondence to the Court and to Appellant's counsel that its motion for dismissal was to further serve as its memorandum evidencing the non-appealability of the dispute, and further noted that Plaintiff concurred with and joined in Respondents' filing. Plaintiff joins in Respondents' Reply as well.

or abstract dispute.” Id. (citing Waters v. S.C. Land Resources Conservation Comm’n, 321 S.C. 219, 467 S.E.2d 913 (S.C. 1996)). Thus, an issue not ripe for appellate review is one that remains contingent, hypothetical or abstract. Id. South Carolina appellate courts “generally decline to pronounce a declaration wherein the rights of a party are contingent upon the happening of some event which cannot be forecast and which may never take place.” Baber v. Greenville County, 327 S.C. 31, 488 S.E.2d 314 (S.C. 1997) (internal citations omitted).

In filing a Notice of Appeal at this stage in the litigation, Appellant is asking this Court to make a ruling to prevent a purported injury that has not yet occurred and, indeed, may never occur. There is no verdict against Appellant and it is possible under multiple scenarios that it will never be injured in the manner it predicts by the dismissal of the Santee Defendants. For example, Appellant may be successful in its defense at trial, and, if it is, there will be nothing for this Court to address. In short, until such time as there is a verdict against Appellant Bray’s Island, Appellant is presenting a hypothetical or contingent dispute in its Notice of Appeal, which is not ripe for judicial determination, and there is no justiciable controversy before the Court.

CONCLUSION

Based upon the authority and argument set forth herein and in Respondents’ Motion to Dismiss Appeal, the matter is not ripe for appellate review and must be dismissed.



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December 15, 2014

Attorneys for Respondents

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Brays Island Plantation Colony, Inc., Defendants,

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Brays Island Plantation Colony, Inc. isAppellant

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 Respondents' Reply to Appellant's Return to 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.
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**James Piotrowski, deceased, by and through his Personal
Representative Tracey L. Piotrowski and Tracey L. Piotrowski,
Individually, Plaintiffs**



David C. Cleveland
CLAWSON AND STAUBES, LLC

December 15, 2014
Charleston, South Carolina



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December 15, 2014

File No.: 2013-0834 dcc

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

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

SC Court of Appeals

Dear Madam or Sir:

Enclosed herewith for filing please find the original and seven (7) copies of Respondents' Reply to Appellant's Return to the Motion to Dismiss Appeal in the above-referenced matter. Please file this document and return a file-stamped copy to me in the envelope provided.

As with their prior filing, Respondents have consulted with counsel for Plaintiff regarding this Reply and Plaintiff concurs with and joins in Respondents' Reply.

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


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.

Master
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