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THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM JASPER COUNTY
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Appellate Case No.: 2015-001200

Jasper County.....Respondent

v.

The Settings of Mackey Point, LLC and
Bond Safeguard Insurance Company,.....Defendants,

Of which Bond Safeguard Insurance Company is .....Petitioner.

Return to Petition for a Writ of Certiorari

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QUESTION PRESENTED

Did the Court of Appeals correctly conclude Bond Safeguard's appeal of the denial of a motion to stay trial is interlocutory when the appeal came before any trial and when no "final judgment, appealable order or decision" giving rise to a right to appeal exists?

STATEMENT OF THE CASE

This case was set for trial on December 10, 2014 when Petitioned (Bond Safeguard Insurance Company) filed this appeal after the trial judge denied its motion to stay the trial. This lawsuit involves an unpaid bond concerning infrastructure at a project in Jasper County, South Carolina. Respondent is a political body organized pursuant to the South Carolina Constitution and the South Carolina Code of Laws and is charged with, among other things, the duty to ensure compliance with all applicable zoning ordinances for Jasper County, South Carolina. Defendant The Settings of Mackay Point, LLC was the developer of a property development of homes and certain amenities commonly known as "The Settings of Mackay Point" located in Jasper County. On June 19, 2006, Jasper County and The Settings of Mackay Point, LLC entered into a Development Agreement (pursuant to Jasper County Ordinance 06-18) concerning the project. The then-existing Jasper County Development Standards Ordinance and S.C. Code Ann. § 6-29-1180 addressed the development of the project, and the developer was required to complete the infrastructure construction or bond the infrastructure construction as a prerequisite to the recording of subdivision plats. The developer needed recorded subdivision plats to sell lots. Accordingly, The Settings of Mackay Point, LLC posted five Bonds issued by Defendant Bond Safeguard Insurance Company concerning the infrastructure and, subsequently, recorded three subdivision plats. Ultimately, the developer sold and conveyed more than 120 residential lots at project, but did not complete construction of the infrastructure and has not shown any indication or interest in completing the infrastructure.

On March 15, 2010, Jasper County Council called the Bonds by adopting Resolution 10-06, which declared that the developer had not completed the work covered by the five Bonds. Plaintiff notified Defendant Bond Safeguard Insurance Company about the Resolution and that the developer had not completed the infrastructure improvements by a March 25, 2010 letter that included a copy of Resolution 10-06.

On April 19, 2010, Respondent filed this lawsuit. Defendant Bond Safeguard Insurance Company paid four of the five bonds in February 2014, and the remaining litigation involves the bond for Phase II-West of the project. The non-jury trial was set for December 10, 2014 before Appellant filed the Notice of Appeal after Judge Murphy denied its motion to stay the trial.

ARGUMENT

As a defense to the bond claim for Phase II-West (which is now the only unpaid bond), Bond Safeguard has attempted to create a defense by purchasing two lots in the Phase II-West. Bond Safeguard purchased both lots for a significant price above what the original purchasers paid. Bond Safeguard made these purchases so that it could argue that no lot owner of Phase II-West has demanded development of Phase II-West. In doing so, Bond Safeguard ignores the requests by owners of lots in Phase I and Phase II-East who want Phase II-West developed (along with Phase I and Phase II-East) and ignores that the original developer platted, marketed, and sold lots in the project that included Phase II-West.

Similarly, Bond Safeguard argues the ownership issue of Lot 228 in Phase II-West, which is not owned by Bond Safeguard, affects the written contract it had with Jasper County concerning the infrastructure bonds. Bond Safeguard's conclusions about the viability of the project or alleged windfall to Jasper County are issues that must be litigated at the trial court level before addressed by any appeal.

Absent some specialized statute, the immediate appealability of an interlocutory order depends on whether the order falls within one of the categories listed in S.C. Code Ann. § 14-3-330. See Woodard v. Westvaco Corp., 319 S.C. 240, 460 S.E.2d 392 (1995). In relevant part, section 14-3-330 states that appellate courts have jurisdiction to review:

> (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas . . . .;

> (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 . . . .

S.C. Code Ann. § 14-3-330.[1] For the challenged order to be immediately appealable, it must fall squarely into one of the categories set forth in section 14-3-330. Otherwise, the Court must dismiss the appeal for lack of subject matter jurisdiction. See State v. Castleman, 219 S.C. 136, 139, 64 S.E.2d 250, 252 (1951).

A review of the case law interpreting section 14-3-330 demonstrates the limited nature of its scope. To "involve the merits" for purposes of Section 14-3-330(1), an order "must finally determine some substantial matter forming the whole or part of some cause of action or defense." Mid-State Distributors, Inc. v. Century Importers, Inc., 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993). Similarly, the provisions of section 14-3-330(2) only apply "when [the] order would discontinue an action, prevent an appeal, grant or refuse a new trial, or strike out an action or defense." Id. at 334-35, 426 S.E.2d at 780. When an order can be reviewed following a trial on the merits, the order does not affect a "substantial right," and, thus, does not fall within the scope of section 14-3-330. Breland v. Love Chevrolet Olds., Inc., 339 S.C. 89, 93, 529 S.E.2d 11, 13 (2000). Clearly, these standards are intended to be restrictive because judicial policy favors waiting until the end of a case to pursue an appeal. As Chief Justice Toal and her co-authors have explained, "It is only in exceptional cases that the appellate court views with approval an appeal from an interlocutory order; it is usually far better for the party

[1] Subsections (3) and (4) deal with, respectively, final orders and orders dealing with injunctions or the appointment of a receiver. The present appeal does not concern either of those categories.

to await the final decree or judgment." Toal, et al., Appellate Practice in South Carolina 88 (2d ed. 2002).

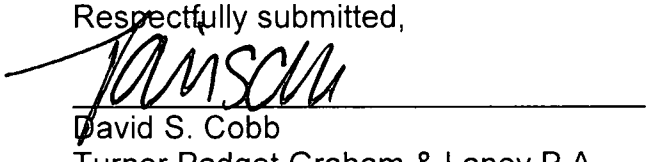
Applying these principles, the South Carolina Supreme Court has held that an order granting a stay is not immediately appealable. Edwards v. SunCom, 369 S.C. 91, 631 S.E.2d 529 (2006). In Edwards, the Court defined an order "affecting a substantial right" as an order that "discontinued an action [or] prevent[ed] an appeal." Id.

Similar logic applies to Bond Safeguard's current argument because Judge Murphy's order did not involve the merits, affect a substantial right, or prevent a judgment from which an appeal may later be taken. Judge Murphy's order denying the stay did not discontinue any pending lawsuit and did not prevent any appeal over any issues raised by Bond Safeguard at the eve of trial. Accordingly, this Court should deny the petition.

CONCLUSION

For these reasons, Jasper County asks this Court to deny the Petition for Writ of Certiorari.

Respectfully submitted,



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July 15, 2015

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PROOF OF SERVICE

I certify that I have served a copy of the Return to Petition for a Writ of Certiorari by depositing copies of the same in the United States mail, postage prepaid, on July 16, 2015, to all counsel of record at the following address:

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