

77021

RECEIVED

OCT 20 2015

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2015-CP-10-3660

Charlestowne Neighborhood Association, Harleston Village Association, Preservation Society of Charleston and Historic Charleston Foundation, Appellants,

Beach Jasper, LLC and Beach Equity Investments, LLC, Respondents,

v.

City of Charleston and City of Charleston Board of Architectural Review, .. Respondents.

MOTION TO DISMISS APPEAL AND REQUEST FOR SANCTIONS
AND SUPPORTING MEMORANDUM

Beach Jasper, LLC and Beach Equity Investments, LLC (“Beach Respondents”) move pursuant to Rule 269, SCACR, to dismiss the appeals of Appellants herein as being frivolous and taken solely for the purposes of delay and request that sanctions be imposed on Appellants. Appellants have no legal right to appear in this action as a party, and Beach Respondents request that the Court act quickly on these motions as any delay will lead to more losses suffered by them. See Affidavit of John Darby.

FACTS

As set forth in the Circuit Court Order on Motions to Intervene dated August 12, 2015, and attached to the Notice of Appeal, this matter originated with the City of

Charleston Board of Architectural Review (“BAR”), which denied the Beach Respondents’ application for a Certificate of Appropriateness to build a new building in the City of Charleston. The Beach Respondents appealed the BAR decision to the Circuit Court and requested pre-litigation mediation in accordance with S.C.Code Ann. 6-29-900(B)(2) and 6-29-915(A) (2004). Subsequently, the Appellants, neighborhood and historic preservation groups, who are opposed to the proposed building, moved to intervene in accordance with S.C.Code Ann. 6-29-915(A) (2004). The Beach Respondents opposed Appellants’ motion.

After a hearing, Circuit Court Judge J.C. Nicholson issued the Order on Motions to Intervene finding that “the interveners [Appellants] do not have any injury since the proposed project was rejected. However, the possibility of the imminent invasion of a legally protected interest gives them the right to participate in the mediation.” Order, p. 2. The Order allowed the Appellants “to participate in the mediation through their representatives, *but they shall not have final decision rights.*” [Emphasis in original.] *Id.* The Order specifically stated that it did “not give the [Appellants] the right to intervene on this litigation as a whole, and only grants them an opportunity to be heard at the mediation,” but that, if Appellants “feel that any proposed redevelopment plan approved by the [Beach Respondents] and [the City of Charleston and the City of Charleston Board of Architectural Review] does rise to the level of an injury-in-fact they may revisit their motion to intervene on the case as a whole at the appropriate time.” *Id.*

Appellants made motions to reconsider this Order, which Judge Nicholson denied.

The parties, with the Appellants in attendance, did hold a mediation which resulted in an impasse, after which the Beach Respondents filed their Petition requesting

appellate relief in accordance with S.C.Code Ann. 6-29-915(F). Appellants filed notices of appeal, and Beach Respondents request that these appeals be dismissed as quickly as possible in accordance with Rule 269, SCACR.

LEGAL ARGUMENTS

- I. **There is no legal basis for Appellants being a “party” to the appeal of the property owner, the Beach Respondents, from the decision of the City of Charleston BAR denying their application to be allowed to build a new building on their property.**

S.C.Code Ann. 6-29-900 (2004) provides for an appeal from a decision of a board of architectural review:

(A) A person who may have a substantial interest in any decision of the board of architectural review or any officer, or agent of the appropriate governing authority may appeal from any decision of the board to the circuit court ... by filing ... a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law....

(B) A property owner whose land is the subject of a decision of the board of architectural review may appeal either:

(1) as provided in subsection (A); or

(2) by filing a notice of appeal with the circuit court accompanied by a request for pre-litigation mediation in accordance with Section 6-29-915.

S.C.Code Ann. 6-29-915 (2004) provides in pertinent part:

(A) If a property owner files a notice of appeal with a request for pre-litigation mediation, the request for mediation must be granted... A person who is not the owner of the property may petition to intervene as a party, and this motion must be granted if the person *has a substantial interest* in the decision of the board of architectural review. [Emphasis added.]

...

(F) If mediation is not successful..., a property owner may appeal by filing a petition in writing setting forth plainly, fully and distinctly why the decision is contrary to law....

There is no provision allowing a person who is not a party and not aggrieved to appeal a BAR decision. Indeed, Rule 201(b), SCACR states that “only a party aggrieved by an order, judgment, sentence or decision may appeal.” In this case, the Appellants are in support of the BAR decision and do not claim that they have been aggrieved by its decision. Although there is no provision of the law regarding appeals from a board of architectural review that allows for an *amicus curiae* brief, should this matter be appealed to the Court of Appeals after a decision by the Circuit Court, these Appellants may make a motion in accordance with Rule 213, SCACR.¹

The only provision allowing intervention is S.C.Code 6-29-915(A), which allows a person who “has a substantial interest in the decision of the board of architectural review” to intervene as a party to the pre-litigation mediation. The mediation is over in this case and was unsuccessful, so Appellants have not been aggrieved by the mediation. There is no legal basis for Appellants to be a party to this appeal of a landowner aggrieved by a decision of the BAR. Appellants are neither an appellant nor a respondent in the appeal. The Appellants have no decision making authority with regard to whether or not the BAR should have approved this matter so they cannot be a party with decision making authority.

Appellants’ only goal in this matter is to delay the Beach Respondents from obtaining a speedy determination of the merits of their appeal of the BAR decision. Appellants seek to thwart the statutes governing appeals from decisions of boards of architectural review that give them priority and ensure a speedy hearing: “At the next term of the circuit court [after the filing of the record of the proceedings of the

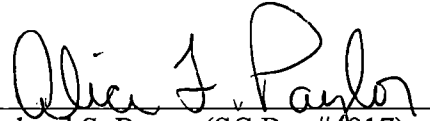
¹ Beach Respondents offered to consent to such a motion before the Circuit Court, but Appellants refused this offer.

architectural review board] or in chambers upon ten days' notice to the parties, the resident presiding judge of the circuit court of the county must proceed to hear and pass upon the appeal on the certified record of the board proceedings” S.C. Code Ann. § 6-29-930(A). Here, the entire project has been halted by the BAR’s action and the Beach Respondents have millions of dollars at risk. Time is of the essence as a matter of law and fact in this instance. Appellants know that any delay will harm the Beach Respondents which are incurring substantial monetary losses every day that they are prevented from obtaining a ruling on their appeal and moving forward with this development. See Affidavit of John Darby.

For all of these reasons, the Beach Respondents ask this Court to dismiss these frivolous appeals and to award sanctions to them in accordance with Rule 269, SCACR.

Respectfully submitted,

ROSEN, ROSEN & HAGOOD, LLC



Richard S. Rosen (SC Bar #4917)

Alice F. Paylor (SC Bar #4380)

P.O. Box 893 (29402)

151 Meeting Street, Suite 400

Charleston, SC 29401

Telephone: (843) 577-6726

Email: rsosen@rrhlawfirm.com

Email: apaylor@rrhlawfirm.com

ATTORNEYS FOR APPELLANTS

Charleston, SC
October 16, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

RECEIVED

OCT 20 2015

J.C. Nicholson, Jr., Circuit Court Judge

SC Court of Appeals

Case No. 2015-CP-10-3660

Charlestowne Neighborhood Association, Harleston Village Association, Preservation Society of Charleston and Historic Charleston Foundation, Appellants,

Beach Jasper, LLC and Beach Equity Investments, LLC, Respondents,

v.

City of Charleston and City of Charleston Board of Architectural Review, .. Respondents.

PROOF OF SERVICE

I certify that I have served all counsel of record in this action with a copy of Respondents Beach Jasper, LLC and Beach Equity Investments, LLC's Motion to Dismiss Appeal and Request for Sanctions and Supporting Memorandum on by mailing a copy of the same by United States mail, postage prepaid, to the following addresses:

John A. Massalon, Esquire
I. Ryan Neville, Esquire
Wills, Massalon, and Allen, LLC
97 Broad Street
Charleston, SC 29401

J. Rutledge Young, III, Esquire
Julie L. Moore, Esquire
Duffy & Young, LLC
96 Broad Street
Charleston, SC 29401

Attorneys for Preservation Society of Charleston and Historic Charleston Foundation

Attorneys for Charlestowne Neighborhood Association, Harleston Village Association

Frances I. Cantwell, Esq.
Assistant Corporation Counsel
City of Charleston
50 Broad Street
Charleston, SC 29401

*Attorney for City of Charleston and City
of Charleston Board of Architectural
Review*

