

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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OCT 28 2015

SC 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.

RETURN TO MOTION TO DISMISS APPEAL
AND SUPPORTING MEMORANDUM
(Respondents City of Charleston and City of Charleston
Board of Architectural Review)

Respondents City of Charleston and City of Charleston Board of Architectural Review (herein "City Respondents") file this Return to the Motion to Dismiss Appeal filed by Respondents Beach Jasper, LLC and Beach Equity Investments, LLC (herein "Beach Respondents") The City Respondents oppose the Motion.

FACTS

This case arises from a denial by the City of Charleston Board of Architectural Review (herein "Board") of Beach Respondents' application to construct a new development in the City's Old and Historic District. In accordance with S. C. Code Ann. § 6-29-900 (B) (2) (Supp. 2014),

Beach Respondents filed a Notice of Appeal from the Board's decision, along with a request for pre-litigation mediation.

Appellants, two neighborhood associations and two preservation groups, filed motions to intervene under the auspices of S. C. Code Ann. § 6-29-915(A) (Supp. 2014). Appellants contended they had a substantial interest in the decision of the Board that entitled them to be parties to the action.

Beach Respondents opposed the motion. The City Respondents took no position on the motion other than to underscore that the decision of the Board would be vigorously defended.

On August 12 and 13, 2015, the Honorable J. C. Nicholson, Jr. entered an Order, Supplemental Order and Amended Order (to correct a clerical error) denying the motion to intervene, but allowing the Appellants to participate in the mediation. Judge Nicholson reasoned that the Appellants had not suffered injury as a result of the Board's decision, as they, in fact, agreed with the decision. He further reasoned that, because the mediation could result in a proposed settlement that could affect their interests, Appellants would be allowed to appear and participate in the mediation. The mediation was held and resulted in an impasse.

After motions to alter or amend or reconsider were denied, Appellants filed Notices of Appeal in this Court. Beach Respondents have moved to dismiss the Appeal, contending that because the Appellants have not been aggrieved by either the mediation or decision of the Board, they have no right to appeal. See S.C. Code Ann. § 6-29-940 (Rev. 2004); Rule 201 (b), SCACR.

DISCUSSION

The posture of this case is most unusual. Appellants are appealing Orders denying their motions to intervene in a circuit court appeal, where they concur with the decision being challenged in that appeal. But for the request for pre-trial mediation, there would be little doubt but that these Appellants would not be entitled to appeal the decision of the Board under S.C. Code Ann. § 6-29-900 (Supp. 2014), as they agree with the decision of the Board, and thus would have no issue to appeal. Their intervention in any such appeal would have to be as respondents, and would be governed by Rule 24, SCRCP. The fear articulated that their interests would be not be adequately represented at the mediation has been dispelled with the mediation resulting in an impasse.

The request for pre-litigation mediation, however, casts the issue posed by this appeal in a different light. S. C. Code Ann. § 6-29-915 (A) allows those with a substantial interest in the decision of the Board to petition "to intervene as a party", which petition must be granted if a showing of the requisite interest is made. So, the underlying issue here is whether a landowner,

by invoking the right to pre-litigation mediation, opens the door to having parties who would not otherwise have the right to participate as a party in the appeal being imbued with that right because they support, or even have a substantial interest in, the decision subject to mediation. The issue posed by this appeal, at least at this juncture, is the legislative intent of S. C. Code Ann. § 6-29-915 (A) in allowing one with a substantial interest to intervene “as a party”. Does this mean a party only to the mediation or to the appeal, or both? Clarity from the Court on this issue is needed, in this case, and for future guidance. The Motion to Dismiss this Appeal should be denied.

Charleston, South Carolina
October 26, 2015



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CERTIFICATE OF SERVICE

The undersigned certifies that on the 21 day of October, 2015, a true and correct copy of the City of Charleston and City of Charleston Board of Architectural Review Return to Motion to Dismiss Appeal was placed in an envelope with prepaid first class postage affixed thereto and deposited in the U. S. Mail addressed to the following:

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