

The South Carolina Court of Appeals

Porthemos Curry, Respondent,

v.


Carolina Insurance Group of SC, Inc. and Maurice
Derrick, Appellants.

Appellate Case No. 2016-000986

ORDER

Respondent filed a petition to lift the automatic stay initiated by Appellants' appeal of the trial court's granting of summary judgment as to their assertion of the affirmative defense of release. *See* Rule 241(a), SCACR (providing the service of a notice of appeal stays matters decided in the order on appeal and the lower court has jurisdiction only over matters not affected by the appeal). Respondent contends the matters remaining in the trial court are not affected by the appeal, and the trial should proceed while the appeal is pending. Respondent alternatively requests the appeal be dismissed as premature. We find the appeal of the granting of summary judgment on the Appellants' assertion of an affirmative defense is immediately appealable. *See* S.C. Code Ann. 14-3-330(1)-(2) (1976) (providing intermediate judgments "involving the merits" or "affecting a substantial right" may be immediately appealable); *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 306, 705 S.E.2d 475, 480 (Ct. App. 2011) ("An order 'involves the merits' when it finally determines a substantial matter forming the *whole or a part of some cause of action or defense.*" (emphasis added)).

Further, we find the matters remaining in the trial court may be affected by the resolution of this appeal. *See* Rule 205, SCACR ("Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal Nothing in [the South Carolina Appellate Court Rules] shall prohibit the lower court . . . from proceeding with matters *not affected* by the appeal." (emphasis added)). Accordingly, Respondent's petition to lift the automatic stay is denied.



FOR THE COURT

Columbia, South Carolina

cc:
Wesley Dickinson Peel, Esquire
Bryan Michael James Triplett, Esquire
Thomas Jefferson Goodwyn, Jr., Esquire
Rachel Gottlieb Peavy, Esquire

FILED

June 23, 2016