

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas
S. Jackson Kimball, III, Special Circuit Court Judge

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APR 03 2017
SC Court of Appeals

Case No. 2016-CP-46-1001
Appellate Case No.: 2017-000600

Alfred and Mary JenkinsRespondent,

v.

Ferrara-Buist Company, LLC, d/b/a Custom Crafted
Homes.....Appellant.

RESPONDENT’S MOTION TO DISMISS APPEAL

Respondents, Alfred and Mary Jenkins (“Jenkins”) move to dismiss this Appeal on the grounds that the Order from which this appeal is taken is interlocutory and does not finally determine any substantial matter forming the whole or part of a cause of action.

FACTS

On August 22, 2014, Jenkins signed a contract with Ferrara Buist (“FB”) whereby FB agreed to build a house and, upon completion, sell the house and lot to Jenkins. FB started construction of the house. As construction of the house approached completion, a dispute arose between the parties. When the Parties could not reach a resolution of the dispute, the contract was terminated. Both Parties contend that the other Party breached the Contract.

During construction, FB submitted partial pay requests to Jenkins. All FB pay requests were timely paid with the exception of the last pay request.

After the contract between the parties was terminated, FB placed the home on the market, eventually selling the house for \$850,000.00. Before FB's sale of the house was closed, Jenkins filed this action.

Jenkins' Complaint contains several causes of action, one of which is a claim for an equitable lien on the real property by reason of payments made by Jenkins in the amount of \$643,760.00. The title to the property was in FB and there was no mortgage. Upon closing of the sale of the property to a third party, FB would have had the \$643,760.00 paid by Jenkins and \$850,000.00 paid by the third party purchaser. In order to allow the sale of the house to close, Jenkins and FB agreed to place \$643,760.00, the amount paid to FB by Jenkins, in trust to be held by the Clerk of Court pending further order of the Court.

Jenkins filed a motion for an order releasing the funds held by the Clerk of Court. Jenkins argued that upon sale of the house and receipt of the full purchase price, FB was not entitled to hold the funds paid by Jenkins as security for a possible damage claim by Jenkins. The Special Circuit Court Judge found that the funds held in trust should be released to Jenkins. This appeal followed.

ARGUMENT

An appeal ordinarily may be pursued only after a party has obtained a final judgment. Watson v. Underwood 407 S.C. 443, 756 S.E.2d 155 (2014). An order is immediately appealable when it finally determines some substantial matter forming the whole or part of a cause of action. Id. at 163. "An order usually will be deemed

interlocutory and not immediately appealable when there is some other act that must be done by the trial court prior to a determination of the parties' rights".

This case is basically a breach of contract case. Each party claims the other breached the contract. Upon determination by the trier of fact as to which party breached the contract, the non-breaching party will be entitled to direct and consequential damages. The amount of damages to which the non-breaching party is entitled will be determined by the trier of fact.

The Trial Court's order does not affect any claim the appellant may have. Appellant may pursue a judgment against the Jenkins' in the same manner and the same amount as if the Trial Court's order had not been issued. The Trial Court's Order does not determine any substantial matter forming the whole or part of any cause of action.

The Trial Court made it clear that this order is interlocutory and does not finally decide any issue raised by the parties. For that reason, Jenkins submits that this appeal should be dismissed.

March 31, 2017

Respectfully Submitted,



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Alfred and Mary JenkinsRespondent,

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Homes.....Appellant.

CERTIFICATE OF SERVICE

The undersigned, an employee of Hamilton Martens, LLC certifies that Respondents' Motion to Dismiss Appeal was served upon the Appellant by depositing same in the United States Mail, with sufficient postage affixed and addressed as follows:

Paul B. Ferrara, III
Ferrara Law Firm, PLLC
2300 Otranto Road
North Charleston, SC 29406

This the 31st day of March, 2017.


L. Melia Sweatt



HAMILTON
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March 31, 2017

The Honorable Jenny Abbott Kitchings
Clerk of Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: *Alfred and Mary Jenkins vs. Ferrara-Buist Company, LLC,*
d/b/a Custom Crafted Homes
Appellate Case No.: 2016-02317


Dear Ms. Kitchings:

I have enclosed the original and seven (7) copies of Motion to Dismiss Appeal in the above-named matter. Please file the original and return a clocked copy of the same to me in the envelope that I have provided. I have also enclosed my firm's check in the amount of \$25.00 for the filing fee.

By copy of this letter, I am serving the Motion to Dismiss Appeal upon other counsel of record as evidenced by the enclosed Proof of Service.

Thank you for your assistance in this matter.

Sincerely,


L. Melia Sweatt
Paralegal for the Firm

/lms

Enclosure

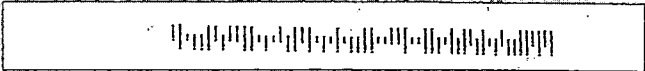
cc: Paul B. Ferrara, III
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