

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Maite D. Murphy, Circuit Court Judge

RECEIVED

MAY 24 2017

SC Court of Appeals

Case No. 2013-CP-10-4874
Appellate Case No. 2017-000529

Byrdnest, LLC, Craig Sedmak, Stephanie Sedmak, and
Wesley Nau, Respondents,

v.

Johnathan Ramaci, Haverly Ramaci, Richard Scott, and
Billy Ulm, Defendants,

Of whom

Johnathan Ramaci is, Appellant.

REPLY IN SUPPORT OF PETITION FOR REHEARING

This court must grant Ramaci’s petition for rehearing and reinstate his appeal. Ulm’s return to Ramaci’s petition for rehearing does not suggest any ground to deny rehearing. Ramaci had a defined statutory right to appeal the circuit court’s denial of his motion for injunctive relief, *see* S.C. Code Ann. § 14-3-330(4), and he properly exercised that right. Ramaci’s petition for rehearing carefully outlined the errors this court committed in dismissing the appeal—specifically, the court misapprehended the procedural history of this case and the nature of the issues and arguments. *See* (Pet. for Rehearing p. 4). Ramaci filed his motion for a permanent injunction only *after* Ulm announced his intent to assign the cross-claims and *before* filing his motion for summary judgment on the ground that the cross-claims were time-barred. (Pet. for Rehearing pp. 4-6). Thus, Ramaci’s motion for a permanent injunction was unrelated to his motions for summary judgment. Based on these grounds, this court should grant rehearing and reinstate the appeal.

Contrary to Ulm's argument, his cross-claims were an impediment to Ramaci's settlement with the plaintiffs. The existence of Ulm's cross-claims forced Ramaci to settle the plaintiffs' claims for a higher amount than he would have if the circuit court properly enjoined the assignment of the cross-claims. Regardless, at this stage of the appellate process, this court need not decide whether Ramaci was, in fact, entitled to an injunction. Ulm is again attempting to argue the merits of the issue on appeal as part of his effort to have the appeal dismissed.

The settlement of the plaintiffs' claims eliminates Ulm's argument that the case is not stayed in the circuit court. The circuit court is now *required* to stay proceedings pending a resolution of this appeal. Ramaci appealed the denial of his motion to enjoin Ulm from asserting the cross-claims; therefore, Ulm's right to prosecute the cross-claims is a matter decided in the order on appeal and is automatically stayed pursuant to Rule 241(a) of the South Carolina Appellate Court Rules for the duration of this appeal. Although the circuit court has set a trial date for the cross-claims, it will be error for the circuit court to proceed with the trial while this appeal is pending. If necessary, Ramaci intends to seek certiorari to preserve that error and to preserve his right to an injunction.

Finally, Ramaci did not file this appeal to delay and is not seeking rehearing for that purpose. Rather, he continues to pursue his appellate rights to avoid waiving them. *See Lester v. Dawson*, 327 S.C. 263, 266, 491 S.E.2d 240, 241 (1997) (finding a party waived an immediately appealable issue by failing to file an interlocutory appeal).

Ramaci respectfully requests that this court grant rehearing, deny Ulm's motion to dismiss, and reinstate the appeal.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: A. Mattison Bogan

A. Mattison Bogan

SC Bar No. 72629

E-Mail: matt.bogan@nelsonmullins.com

Cory E. Manning

SC Bar No. 14702

E-Mail: cory.manning@nelsonmullins.com

Adam J. Hegler

SC Bar No. 100115

E-Mail: adam.hegler@nelsonmullins.com

1320 Main Street / 17th Floor

Post Office Box 11070 (29211-1070)

Columbia, SC 29201

(803) 799-2000

Attorneys for Appellant Jonathan Ramaci

Columbia, South Carolina

May 24, 2017

RECEIVED

MAY 24 2017

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Maite D. Murphy, Circuit Court Judge

Case No. 2013-CP-10-4874
Appellate Case No. 2017-000529

Byrdnest, LLC, Craig Sedmak, Stephanie Sedmak, and
Wesley Nau, Respondents,

v.

Johnathan Ramaci, Haverly Ramaci, Richard Scott, and
Billy Ulm, Defendants,

Of whom

Johnathan Ramaci is, Appellant.

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Appellant, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

Appellant's Reply in Support of Petition for Rehearing

Counsel Served:

Benjamin A. Traywick
BEN TRAYWICK LAW FIRM, LLC
171 Church Street, #340
Charleston, SC 29401

Rutledge Young, III
Julie Lauren Moore
DUFFY & YOUNG, LLC
96 Broad Street
Charleston, SC 29401



Lisa P. Whitehurst
Administrative Assistant

May 24, 2017

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
1320 Main Street / 17th Floor / Columbia, SC 29201
Tel: 803.799.2000 Fax: 803.255.5916
www.nelsonmullins.com

A. Mattison Bogan
Tel: 803.255.9589
Fax: 803.255.5916
matt.bogan@nelsonmullins.com

May 24, 2017

RECEIVED

MAY 24 2017

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
P.O. Box 11629
Columbia SC 29211

RE: Byrdnest, LLC, Craig Sedmak, Stephanie Sedmak, and Wesley Nau v. Johnathan Ramaci,
Haverly Ramaci, Richard Scott, and Billy Ulm
Civil Action No. 2013-CP-10-04874
Appellate Case No. 2017-000529
Our File No. 47061/01500

Dear Ms. Kitchings:

Enclosed please find the original and seven copies of Appellant's Reply in Support of Petition for Rehearing in regard to the above-referenced matter. We would ask that you file the original and return a clocked-in copy to us via our courier.

Very truly yours,



A. Mattison Bogan

AMB:lpw
Enclosures

cc: The Honorable Julie J. Armstrong
Benjamin A. Traywick, Esquire
Rutledge Young III, Esquire
Julie Lauren Moore, Esquire