

89189

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

The Honorable Perry H. Gravely, Circuit Court Judge

RECEIVED

MAR 04 2019

SC Court of Appeals

Appellate Case No. 2019-000235

Scott Arbet,.....Respondent,

v.

Riverstone Development Group, Inc.,.....Appellant.

MOTION TO DISMISS

To the Honorable Jenny Abbott Kitchings, South Carolina Court of Appeals:

Pursuant to Rule 240, SCACR, the Respondent, Scott E. Arbet (“Arbet”), respectfully requests the issuance of a motion to dismiss the Appellant, Riverstone Development Group, Inc. (“Riverstone”)’s appeal of the Court’s Order Granting Arbet’s Amended Motion for Partial Summary Judgment based on the Order being interlocutory.

Background

On February 1, 2016, Arbet filed a Summons and Complaint against Riverstone in the Court of Common Pleas for Pickens County, South Carolina under Case No.: 2016-CP-39-00103 for construction defects, fraudulent billing and for contracting outside of its license limits. On March 4, 2016, Riverstone filed a Motion to Dismiss. On or May 27, 2016, Arbet filed a Motion to Amend its Complaint following both Riverstone and subcontractor Yoder’s Building Supply, Inc. (“Yoder”) filing of Mechanics’ Liens on

Arbet's real property. On July 1, 2016, Arbet filed a Memo in Opposition to Riverstone's Motion to Dismiss and in support of its Motion to Amend. On August 12, 2016, the Honorable Perry H. Gravely denied Riverstone's Motion to Dismiss and granted Arbet's Motion to Amend its Complaint. On August 16, 2016, Arbet filed its Amended Summons and Complaint to bring in Yoder as an additional Defendant and to add an additional cause of action against Yoder. On September 15, 2016, Riverstone filed an Answer and Counterclaim to Arbet's Amended Complaint alleging Arbet failed to sufficiently constitute a cause of action against it. On September 19, 2016, Arbet then filed a Reply to Riverstone's Counterclaim alleging Riverstone's inability to bring any claims against Arbet due to its lack of holding a proper license for the construction performed on Arbet's property. On November 28, 2017, Arbet filed a Motion for Partial Summary Judgment based on Declaratory Judgment that the construction contract entered upon between Arbet and Riverstone was void for violation of South Carolina Code Ann. § 40-11-5, *et seq.* On December 2, 2018, Arbet filed an Amended Motion for Partial Summary Judgment to add Riverstone's counterclaims of Quantum Meruit and Breach of Contract to its grounds for Partial Summary Judgment, and, on January 7, 2019, the Order was granted in favor of Arbet. On January 11, 2019, Riverstone filed a Motion to Alter or Amend the Ordered Judgment arguing that the contract was ambiguous, and the court improperly applied *C-Sculptures, LLC v. Brown*, 403 S.C. 53, 742 S.E.2d 359 (2013) to the case. On January 22, 2019, Arbet filed a Memo in Opposition to Defendant's Motion to Alter or Amend Judgment. After reviewing the arguments, Judge Gravely denied Riverstone's Motion on February 6, 2019. On February 7, 2019, Arbet filed a Motion for Summary Judgment for the recovery of attorneys' fees in this action.

On February 13, 2019, Riverstone filed a Notice of Appeal in the Pickens County Court of Appeals, appealing the Court's Order granting Arbet's Motion for Partial Summary Judgment.

Discussion

The appellate courts of South Carolina have addressed whether a final decision made by a court can be appealed. In the case at hand, an Order of Partial Summary Judgment was granted by the court and is interlocutory. Interlocutory orders are generally unappealable until a cause of action is finalized. Lewis v. State, 368 S.C. 630, 631, 630 S.E.2d 464, 464 (2006). ("Any judgment or decree, leaving some further act to be done by the court before the rights of the parties are determined, is interlocutory; but if it so completely fixes the rights of the parties that the court has nothing further to do in the action, then it is final.") (quoting Adickes v. Allison & Bratton, 21 S.C. 245, 259 (1884));

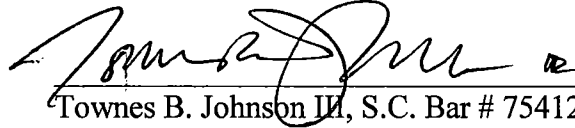
Second, finding an interlocutory order is appealable under S.C. Code Ann. § 14-3-330(1) only if it involves the merits, i.e. it "finally determines some substantial matter forming the whole or a part of some cause of action or defense" (quoting Henderson v. Wyatt, 8 S.C. 112, 112 (1877)); In this case, Riverstone does not have the merits to appeal the Order granted.

Finally, the Court's place is not to pick winners and losers; but rather, the Court is required to sit impartially and discharge its duties in accordance with the law. It is well known that equity follows the law. Smith v. Barr, 375 S.C. 157, 164, 650 S.E.2d 486, 490 (Ct. App. 2007). Accordingly, it is an abuse of the Court's discretion to set a precedent wherein the Court decides where an Order that is interlocutory can be appealed. Such a precedent renders Orders worthless and is against the public interest.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests the issuance of a Motion to Dismiss the appeal filed by Appellant.

TOWNES B. JOHNSON III, LLC



Townes B. Johnson III, S.C. Bar # 75412

P.O. Box 9246

Greenville, S.C. 29604

(864)-757-4899

tjohnson@sc.legal

Attorneys for the Respondent

February 20, 2019
Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

The Honorable Perry H. Gravely, Circuit Court Judge

Case No. 2019-000235

Scott Arbet,.....Respondent,

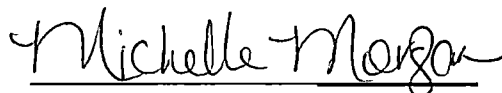
v.

Riverstone Development Group, Inc.,.....Appellant.

CERTIFICATE OF MAILING

This is to certify that I have served a true copy of the foregoing **Motion to Dismiss Appellant's Appeal** on this 28st day of February, 2019 by depositing a copy of same in the United States mail, proper postage affixed, addressed as follows:

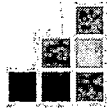
R. Mills Ariail, Jr., Esq.
11 North Irvine Street, Suite 11
Greenville, SC 29601



Michelle Morgan, Assistant
TOWNES B. JOHNSON III, LLC

Greenville, South Carolina

RECEIVED
MAR 04 2019
SC Court of Appeals



February 28, 2019

Townes B. Johnson III
(864) 757-4899
tjohnson@sc.legal

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

RECEIVED
MAR 04 2019
SC Court of Appeals

**Re: Scott Arbet vs. Riverstone Development Group, Inc.
Appellate Case No. 2019-000235**

Dear Ms. Kitchings:

Enclosed please find for filing the original and six (6) copies of Respondent Scott Arbet's Motion to Dismiss Appellant's Appeal in the above-referenced matter:

- (1) Motion to Dismiss;
- (2) Certificate of Mailing of the Motion to Dismiss;
- (3) Filing Fee

Please send me a filed copy in the enclosed prepaid envelope.

Sincerely,

Michelle Morgan,
Assistant to Townes B. Johnson, III

Cc: R. Mills Ariail, Jr.

TBS
PO Box 9246
Greenville, SC 29604



RECEIVED

MAR 04 2019

SC Court of Appeals

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