

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

The Honorable Perry H. Gravely, Circuit Judge

Appellate Case No. 2019-000235

RECEIVED
MAR 08 2019
SC Court of Appeals

Scott E. Arbet.....Respondent,

v.

Riverstone Development Group, Inc.Appellant.

APPELLANT’S RETURN TO RESPONDENT’S MOTION TO DISMISS

Pursuant to Rule 240, SCACR, Appellant Riverstone Development Group (“Riverstone”) submits its Return to Respondent Scott E. Arbet’s (“Arbet” or “Respondent”) Motion to Dismiss.

BACKGROUND

Riverstone does not dispute the procedural history Respondent laid out in his Motion to Dismiss. Riverstone does dispute Respondent’s analysis of relevant caselaw, and will summarize its view below.

ANALYSIS

Rule 201(a) of the South Carolina Appellate Court Rules states, in relevant part:

(a) Judgments, Orders and Decisions Subject to Appeal. Appeal may be taken, as provided by law, from any final judgment, appealable order or decision. The procedure for petitioning for a writ of certiorari to review final judgments in post-conviction relief cases is provided by Rule 243.

Rule 201(a), SCACR (emphasis added).

An interlocutory order not governed by a specialized appealability statute is immediately appealable only if it fits into one of the categories listed in South Carolina Code section 14-3-330, which governs South Carolina appellate jurisdiction. *Thornton v. South Carolina Electric & Gas Corp.*, 391 S.C. 297, 705 S.E.2d 475 (Ct. App. 2011) (citing *Ex Parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 6, 630 S.E.2d 464, 467 (2006)).

Section 14-3-330 states, in relevant part:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

(1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from; [or]

(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action[.]

S.C. Code Ann. § 14-3-330 (2018) (emphasis added).

This Court has held that orders granting partial summary judgment may generally “be immediately appealable under either the ‘involving the merits’ or ‘substantial right’ categories of section 14-3-330(1) and (2)(c).” *Thornton*, 391 S.C. at 300, 705 S.E.2d at 477 (citing *Link v. Sch. Dist. of Pickens Cty.*, 302 S.C. 1, 6, 393 S.E.2d 176, 178-79 (1990)).

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. *Mid-State Distribs., Inc. v. Century Imps., Inc.*, 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993); see also *Nauful v. Milligan*, 258 S.C.

139, 187 S.E.2d 511 (1972) (holding that order granting partial summary judgment on the issue of liability was appealable); *Thornton*, 391 S.C. at 306-07, 705 S.E.2d at 480.

An order “affects a substantial right . . . if the order removes a material issue from the case, thereby preventing the issue from being litigated on the merits and preventing the party from seeking to correct any errors in the order during or after trial.” *Thornton*, 391 S.C. at 304, 705 S.E.2d at 479; *see also Breland v. Love Chevrolet Olds., Inc.*, 339 S.C. 89, 93, 529 S.E.2d 11, 13 (2000) (“Immediate appeals under [14-3-330(2)(c)] have been allowed in situations where the substantial right could not be vindicated on appeal after the case.”).

Respondent cites one case, *Lewis v. State*, 368 S.C. 630, 631, 630 S.E.2d 464, 464 (2006), in support for his assertion that the trial court did not make a final decision. *Lewis* is distinguishable from this case. *Lewis* concerned a post-conviction relief matter where the circuit court issued a conditional order of dismissal. *Lewis*, 386 S.C. at 630, 630 S.E.2d at 464. The order gave the petitioner twenty days to show cause why the conditional order should not become final, and instead of replying to the conditional order, the petitioner filed a petition for writ of certiorari to the South Carolina Supreme Court. *Id.* at 631, 630 S.E.2d at 464. The South Carolina Supreme Court noted that “under Rule 227, SCACR, and S.C. Code Ann. § 17-27-100 (2003), only a final decision or judgment in a post-conviction relief action is subject to review.” *Id.* The Supreme Court held that “a conditional order of dismissal is not the final judgment in a post-conviction relief case[,]” as there is another act that must be done before the parties’ rights are finally determined. *Id.* (citing S.C. Code Ann. § 17-27-70(b) (2003)).

The *Lewis* holding is only relevant to whether a post-conviction relief case may be appealed and has no applicability in this case.

In this case, Appellant’s right to appeal is not limited by a specialized court rule or appealability statute such as Rule 227, SCACR¹ or South Carolina Code section 17-27-100.² Appellant’s right to appeal is thus governed by South Carolina Code section 14-3-330.

Under section 14-3-330 and South Carolina caselaw, Appellant’s appeal is proper if the trial court’s order either “involves the merits” or “affects a substantial right.” S.C. Code Ann. § 14-3-330 (2018); *Mid-State Distribs, Inc.*, 310 S.C. at 334, 426 S.E.2d at 780; *Breland*, 339 S.C. at 93, 529 S.E.2d at 13.

The trial court’s Order granted partial summary judgment for Respondent and “ordered, adjudged, and decreed that:

- A. [Riverstone] is barred in law and equity . . . from enforcing the provisions of its contract with Arbet;
- B. [Riverstone]’s counterclaims for Quantum Meruit and Breach of Contract are dismissed with prejudice; and
- C. [Riverstone’s] mechanics lien . . . is hereby dissolved and cancelled.

(Order at 5.)

Here, the trial court’s order granting partial summary judgment both “involves the merits” and “affects a substantial right,” and is thus appealable.

The trial court’s order “involves the merits” because it dismisses, with prejudice, two of Riverstone’s causes of action – its counterclaims for Quantum Meruit and Breach of Contract. *See Mid-State Distribs.*, 310 S.C. at 334, 426 S.E.2d at 780; *see also Nauful*, 258 S.C. at 139, 187 S.E.2d at 511.

¹ Rule 227, SCACR, no longer exists. Rule 243, SCACR, now governs certiorari to review post-conviction relief actions.

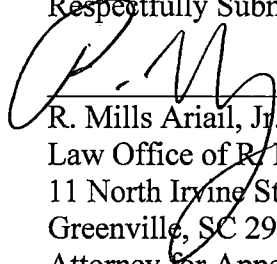
² South Carolina Code 17-27-100 concerns appeals under the Uniform Post-Conviction Procedures Act. It states that a “final judgment entered under this chapter may be reviewed by a writ of certiorari as provided by the South Carolina Appellate Court Rules.” S.C. Code Ann. § 17-27-100 (2018).

The trial court's order "affects a substantial right" because it bars Riverstone from enforcing its contract with Arbet, dismisses with prejudice two of Riverstone's counterclaims against Arbet, and dissolves Riverstone's mechanics' lien against Arbet's property. *See Thornton*, 391 S.C. at 304, 705 S.E.2d at 479.

CONCLUSION

Because the trial court's order both "involves the merits" and "affects a substantial right" under South Carolina Code section 14-3-330, this Court should deny Respondent's Motion to Dismiss.

Respectfully Submitted,



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March 6, 2019
Greenville, South Carolina

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PROOF OF SERVICE

I, Denise Tanner LaBeck, paralegal to R. Mills Ariail, Jr., do hereby certify that on this March 6, 2019, I served upon the below named Respondents copies of the **APPELLANT'S RETURN TO RESPONDENT'S MOTION TO DISMISS** by depositing copies of the same via U.S. Mail, postage prepaid, US Mail in an envelope addressed as set forth herein below:

Townes B. Johnson, III, Esquire
Post Office Box 9246
Greenville, SC 29604

Denise Tanner LaBeck
Denise Tanner LaBeck

March 6, 2019

R. MILLS ARIAIL, JR.
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March 6, 2019

Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

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

Dear Ms. Kitchings:

Please find enclosed for filing the original and six copies of the Appellant's Return to Respondent's Motion to Dismiss as well as a Proof of Service for the same.

I have included one additional copy that I ask that you return to me in the envelope provided for your convenience.

Thank you for your consideration of this letter.

Sincerely,
LAW OFFICE OF R. MILLS ARIAIL, JR.
Attorney at Law



R. Mills Ariail, Jr.

RMAjr/dl
Enclosures (as stated)

cc:
Townes B. Johnson, Attorney for Respondent



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