

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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AUG 11 2016
SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

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Appeals

Case No. 2015-000593

Ronald J. Ferguson,

Appellant,

V.

~~John D. Hatcher, Rachel Shalaby, James P. Gilbert,
Molly A. Miller and Michael Stehney, individually
and as members of the Architectural Committee of
Mill Creek Estates~~

Respondents,

~~and~~

Mill Creek, LP,

~~Defendant~~

FINAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

- I. The Court Order is interlocutory and the appeal is not proper.
- II. If the appeal were proper, the intervention was appropriate.
- III. This action should not be allowed to continue after Remand.

STATEMENT OF THE CASE

This case was filed in September 2013 by the Appellant against a corporation known as Mill Creek, LP. This Appellant seeks relief from the Restrictive Covenants filed for a subdivision known as Mill Creek Estates. The Appellant seeks Court abandonment of the Restrictive Covenants and that the "Deed restrictions be vacated".

It is important to understand the history of why this action was filed. The Respondents in April 2013 filed an action (2013-CP-23-01810) against the Appellant's father (subsequently his mother also) alleging a violation of the Restrictive Covenants in a house that the Defendants built in Mill Creek Estates subdivision. All the Respondents and Defendants are homeowners in the subdivision in question. Subsequently, Mr. and Mrs. Ferguson, the Defendants in that case transferred an interest in the home to the Appellant herein so that he could be involved in the litigation.

The Respondents, herein, learned that the present action was pending regarding the same issue which is the Restrictive Covenants. The Respondents filed a Motion to Intervene to prevent inconsistent decisions regarding the Restrictive Covenants in separate actions. The Respondents filed the motion because they believe a decision in this case could impair and impede their ability to protect their interest in the other lawsuit regarding the Restrictive Covenants. The motion to intervene was granted by Judge Maddox.

The Appellant subsequently filed a Notice of Appeal within 30 days of Judge Maddox's Order.

ARGUMENTS

I. The Court Order is interlocutory and the appeal is not proper.

A. The sole issue before the Appellate Court is interlocutory and not appropriate for appeal.

The Order appealed from is Judge Maddox's dated February 19, 2015 Order wherein he ordered that "John D. Hatcher's Motion to Intervene is granted". (R. p 8 line 11)

An Order granting a Motion to Intervene is not immediately appealable. Duncan vs. Government Employee Ins. Co., 331 SC 484, 485, 449 SE2d 580 (1994). Accordingly, the Respondents respectfully request that this matter be remanded to the Trial Court for a final adjudication of the issues raised therein.

The Respondents also note that the vast majority of the Appellant's argument has nothing to do with this issue of intervention. For example, the Appellant argues about setting aside a default judgment, default issues, Restrictive Covenants and errors that are complete irrelevant to issues before the Court.

II. If the appeal were proper, the intervention was appropriate.

The Appellant filed this action seeking an abandonment of the Restrictive Covenants and/or vacating the Restrictive Covenants for a subdivision known as Mill Creek Estates. (R. pp 10-13) The Appellant brought this action against Mill Creek, LP which is a corporation still in existence but virtually out of business. It appears that it was a corporation used to develop Mill Creek back in 1974 but has ceased to conduct business in

thirty years. Furthermore, Mill Creek, LP has no standing with regard to the Restrictive Covenants at the present time.

The Respondents herein brought an action prior to this one requesting that the Appellant's parents' actions in building a house in Mill Creek Estates subdivision violated the Restrictive Covenants. (R. pp 15-17) Both Defendants subsequently transferred an interest in the home to the Appellant herein so that he could be involved in the litigation.

Therefore it clear to see that the issues in both cases involve the Restrictive Covenants for a subdivision known as Mill Creek Estates. The issues raised in this action regarding Restrictive Covenants were required to have been brought as a compulsory Counterclaim in the previous action. However before that issue can be raised, the Respondents had to move to intervene to address these issues.

Judge Maddox heard the Motion to Intervene and granted the motion. (R. p 8 lines 11-12) The Respondents requested the Court to intervene in this action to prevent inconsistent verdicts and decisions by the Trial Courts regarding the Restrictive Covenants and to allow someone with standing to address the Court with regard to the Restrictive Covenants when the only Defendant named by the Appellant is an entity corporation with no standing or reason to litigate the issue.

The issue in Respondents' original lawsuit was that the Fergusons built a house which violated the Restrictive Covenants. (R. pp 15-17, p 19 lines 12-16, p 23 lines 4-7) They

requested permission to build a house which was granted and subsequently built a completely different house. (R. pp 15-17, p 19 lines 12-16, p 23 lines 4-7)

The granting of intervention is wholly discretionary with the Trial Court and would be reversed only upon an abuse of discretion. Sauner vs. Public Service Authority of S.C., 354 SC 297, 411, 581 SE2d 161, 169 (2003). Rule 24 of the South Carolina Rules of Civil Procedure provides for intervention of right and permissive intervention. See Sauner, supra.

To have standing, a party must have personal stake in the subject matter of the lawsuit. Bailey vs. Bailey, 312 SC 454, 441 SE2d 325, 327 (1994). Herein the Respondents have standing that the original Defendant, Mill Creek, LP does not. Mill Creek, LP is not a real party in interest because they do not have a real, actual, material or substantial interest in the subject matter of the action. See Bailey, supra. Only the Respondents and other homeowners do.

Intervention of right requires a direct, substantial and legally protectable interest in the proceedings. Ex Parte Reichlyn: In Re: SCDHEC vs. Columbia Organic Chemical Co., Inc., 310 SC 495, 499, 427 SE2d 661, 664 (1993). It is clear that the Respondents as homeowners and as Plaintiffs in another lawsuit involving the same Restrictive Covenants have a substantial and legally protectable interest in these proceedings. It could hardly be argued that intervention was inappropriate or an abuse of discretion.

Furthermore, the rules permit liberal intervention particularly where judicial economy would be promoted by the declaration of the rights of all parties who may be affected. Berkley Electric vs. Town of Mt. Pleasant, 302 SC 186, 189, 394 SE2d 712, 714 (1990). Herein, of course,

the Respondents have a separate action dealing with this matter and judicial economy would be served by the combining of the two actions.

Permissive joinder is premised upon the same theory that when claims or defenses have a question of law or fact in common to each other, sound administrative procedures encourage the disposition of all the claims or defenses in one action rather than a multiplicity of actions.

S.C. Tax Commission vs. Union City Treasurer, 297 SC 257, 263, 268 SE2d 72, 75 (Ct. App. 1988)

It is clear that there are common questions of issues, facts and defenses that would allow the intervention of the Respondents herein.

It was the correct and only decision the Court could have reached in allowing the intervention. To serve judicial economy, to prevent inconsistent verdicts or decisions and to allow someone with standing to argue the matter, it was appropriate to allow intervention.

III. This action should not be allowed to continue after Remand.

After this case is remanded to the Common Pleas Court, the Court will need to determine that it is proper to keep it as a separate action or consolidate it or to dismiss it. There is a serious question whether this is a compulsory Counterclaim. See South Carolina Rules of Civil Procedure, Rule 13. Secondly the Court will need to address whether it should be dismissed pursuant to Rule 12(b)(8) of the South Carolina Rules of Civil Procedure because another action is pending seeking the same relief.

There is also an issue raised by Judge Maddox that all homeowners would need to be made parties to obtain the relief sought by the Appellant herein. (R. p 29 lines 15-17)

Accordingly, the Court will need to address all these issues upon remand but herein the Court of Appeals is requested to determine that intervention was the only appropriate decision for Judge Maddox.

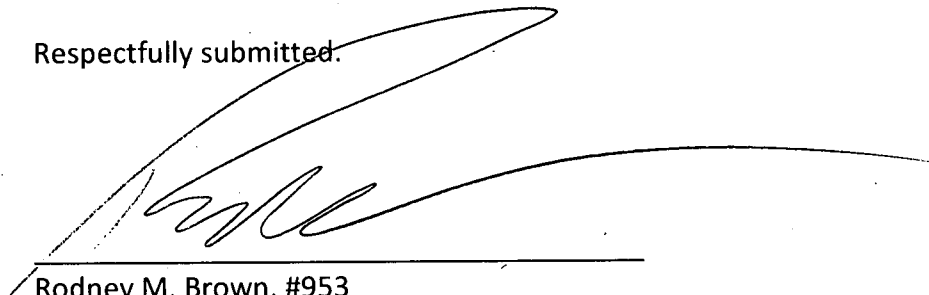
CONCLUSION

The Respondents respectfully request the Court of Appeals to carefully considered the matters herein and remand this matter to the Common Pleas Court for further action. First and foremost the appeal of a Motion to Intervene is interlocutory and not appealable. It should be remanded on this issue alone.

Secondly, granting intervention was proper. It could be hard to imagine a case that would be any more appropriate to allow intervention than this one. We have two separate, distinct lawsuits involving the same issue. The Appellant herein tried to obtain the relief he wanted against an empty entity which would have caused a tremendous amount of confusion in the Courts and in the real estate records.

The Respondents request the Court to remand this matter and further request that the Order be rendered without the benefit and necessity of oral argument.

Respectfully submitted.



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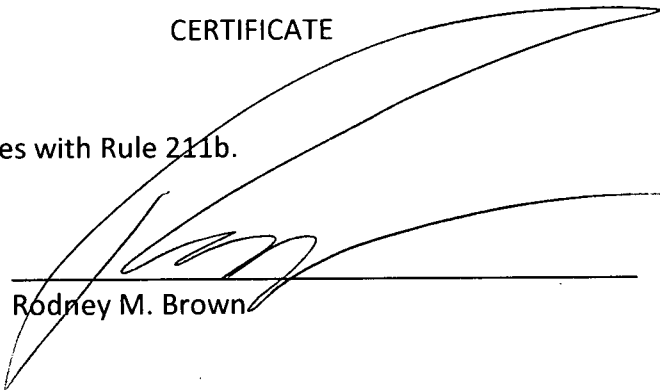
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August 8, 2016

CERTIFICATE

The final brief complies with Rule 211b.



Rodney M. Brown