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IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM THE BEAUFORT COUNTY
COURT OF COMMON PLEAS

HONORABLE MARVIN H. DUKES, III
BEAUFORT COUNTY MASTER-IN-EQUITY AND
SPECIAL CIRCUIT COURT JUDGE

CASE NO.: 2014-CP-07-0052
APPELLATE CASE NO.: 2019-001270

Lady Beaufort, LLC &
Tideland Realty, Inc.

Appellants,

vs.

Hird Island Investments, Inc., Sherwood N. Fender, Addison D. Fender,
Martha B. Fender, William B. Bowen, Lady Kemmerlin, LLC,
Brickyard Holdings, Inc. and A&K Holding Co., LLC,

Defendants,

AND

William M. Bowen,

Third-Party Plaintiff,

v.

James S. Kerr and Matt Trumps,

Third-Party
Defendants,

Of Which Sherwood N. Fender is

Respondent.

MOTION TO DISMISS APPEAL

The Respondents, Hird Island Investments and Sherwood N. Fender, hereby move before the South Carolina Court of Appeals for an Order dismissing this appeal on the ground that the Order from which this appeal is taken is not an appealable Order. More specifically, the Order

from which this appeal is taken does not necessarily affect the judgment, does not involve the merits of the case, and does not affect a substantial right.

A. FACTUAL SUMMARY

For the purposes of this motion, only two (2) facts are relevant.

First, on October 26, 2018 the Beaufort County Court of Common Pleas entered a judgment on this breach of contract action against Fender and Hird Island in favor of the Appellants Lady Beaufort, LLC and Tideland Realty, Inc. in the amounts of \$51,511.15 and \$17,857.00, respectively. ROA, pg. 21. This Order is currently on appeal in the South Carolina Court of Appeals in Appellate Case Number 2018-001969.

Second, on July 30, 2019, the Beaufort County Court of Common Pleas granted Fender's request that he be allowed to post a bond, in an amount equal to 1.5 times the amount of these judgments, transferring the judgment lien from all of Fender's assets generally to the judgment bond. ROA, pp. 1, 2 and 5. This is the Order that is the subject of this appeal.

B. ARGUMENT

This is an action for breach of contract. ROA, pp. 91-98. An action for breach of contract is an action at law. *Lee v. University of South Carolina*, 407 S.C. 512, 517, 757 S.E.2d 394, 397 (2014). The appealability of an action at law is governed by S.C. Code Ann. §14-3-330. An Order issued in such a case is appealable only if it necessarily (1) affects the final judgment, (2) involves the merits, or (3) affects a substantial right. *Id.*

Allowing the Respondents to post a bond does affect the final judgment in the slightest. In granting permission to the Respondents to post a bond, the trial court did not alter, or amend the judgment entered against the Respondents.

Likewise, allowing the Respondents to post a bond will not have any effect on the appeal

of the judgment in Appellate Case Number 2018-001969. A decision by the Court of Appeals as to whether the underlying contract was breached or not breached, and whether the judgment will stand or not stand, will not be influenced to any degree by the fact that there is or is not a judgment bond posted in the lower court. The fact that a bond is posted will not involve or affect the merits of this case one way or the other.

Finally, allowing the Respondent to post a bond does not affect the substantial rights of the Appellants. Allowing the Respondents to post a bond simply transfers the judgment lien from a non-liquid asset to a liquid asset. In fact, allowing the Respondents to post a bond has the practical effect of making it easier for the Appellants to collect the judgment in the event it should stand.

CONCLUSION

Allowing the Respondents to post a judgment bond has no affect on the underlying judgment or the appeal of the underlying judgment. Posting a bond does not involve the merits of the case, and it does not affect the substantial rights of any party.

It is accordingly respectfully requested that this appeal from the Order of the Beaufort County Court of Common Pleas filed July 30, 2019 allowing the Respondents to post a bond be dismissed on the ground that said Order is not an appealable Order.

Respectfully submitted,

MOSS, KUHN & FLEMING, P.A.

By: 

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Beaufort, South Carolina
November 5, 2020

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM THE BEAUFORT COUNTY
COURT OF COMMON PLEAS

HONORABLE MARVIN H. DUKES, III
BEAUFORT COUNTY MASTER-IN-EQUITY AND
SPECIAL CIRCUIT COURT JUDGE

CASE NO.: 2014-CP-07-0052
APPELLATE CASE NO.: 2018-001270

Lady Beaufort, LLC &
Tideland Realty, Inc.

Appellants,

vs.

Hird Island Investments, Inc., Sherwood N. Fender,
Addison D. Fender, Martha B. Fender, William B. Bowen,
Lady Kemmerlin, LLC, Brickyard Holdings, Inc. and
A&K Holding Co., LLC,

Defendants,

AND

William M. Bowen,

Third-Party Plaintiff,

v.

James S. Kerr and Matt Trumps,

Third-Party Defendants,

Of Which Sherwood N. Fender is

Respondent.

CERTIFICATE OF SERVICE

Undersigned certifies that the **Motion to Dimiss** to which this certificate is affixed, was served upon the party (s) to this action by hand delivery or by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record:

Andrew K. Epting, Jr., Esquire
Jaan G. Rannik, Esquire
46A State Street
Charleston, South Carolina 29401
Attorneys for the Respondent
Lady of Beaufort, LLC

in a post office or official depository under the exclusive care and custody of the United States Postal Service, on November 6, 2020.

By: 

Sue Radford

LAW OFFICES

MOSS, KUHN & FLEMING P.A.

JAMES H. MOSS
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November 6, 2020

The Honorable Jenny Abbot Kitchings
Clerk of Court, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Lady Beaufort, LLC & Tidelands Realty, Inc. v. Hird Island Investments, Inc. and
Sherwood Fender
Case No.: 2014-CP-07-0052
Appellate Case No.: 2019-001270

Dear Ms. Kitchings:


Enclosed please find the original and seven (7) copies of the Motion to Dismiss Appeal and Certificate of Service. Also enclosed is \$50.00 filing fee.

I would appreciate your filing the enclosures and returning a filed copy to me in the enclosed self-addressed stamped envelope.

With kind regards, I am

Very truly yours,

MOSS, KUHN & FLEMING, P.A.


H. Fred Kuhn, Jr.

HFKjr:sr
Enclosure

cc: Andrew K. Epting, Esquire (w/enclosures)
Jaan G. Rannik, Esquire (w/enclosures)

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MOSS, KUHN & FLEMING, P.A.
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HAC

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To:

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The Honorable Jenny Abbot Kitchings
Clerk of Court, South Carolina Court of Appeals
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