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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas
Kristi F. Curtis, Circuit Judge

Appellate Case No. 2020-001490
Common Pleas Case No. 2020-CP-14-00023

New Residential Mortgage, LLC, ... Plaintiff,

v.

Todd S. Crawford, Tricia L. Crawford, William T. Geddings, Jr., Jane U. Geddings, and USAA Federal Savings Bank, ... Defendants,

Of Whom William T. Geddings, Jr. and Jane U. Geddings are the .... Appellants-Respondents,

and

New Residential Mortgage LLC is the .... Respondents-Appellant,

and USAA Federal Savings Bank is the ....Respondent.

APPELLANT-RESPONDENTS' REPLY TO RESPONDENT-APPELLANT'S RETURN

Respondent-Appellant (hereinafter "New Residential")'s return not only fails to articulate how this court's consideration of its cross-appeal of an unappealable issue would promote judicial economy, it also fails to mention an important aspect of the doctrine that "[an] order that is not directly appealable may be considered if there is an appealable issue before the court." Edge v. State Farm Mut. Auto. Ins. Co., 366 S.C. 511, 517, 623 S.E.2d 387, 390 (2005). An appellate court may choose to hear such an issue where the ordinarily unappealable issue is significantly connected with an appealable issue that is properly before the court. Brown v. County of Berkeley,

366 S.C. 354, 362 n. 5, 622 S.E.2d 533, 538 n. 5 (2005) (holding that interlocutory orders may be considered on appeal when they are companion to reviewable issues, but finding the motions to dismiss unreviewable because they lacked a sufficient "nexus or companionship" to justify the exercise of immediate appellate review); Morris v. Anderson County, 349 S.C. 607, 610-11, 564 S.E.2d 649, 651 (2002) (holding that the appellate court may, as a matter of discretion, consider an unappealable order along with an appealable issue where such a ruling will avoid unnecessary litigation, but declining to address the appeal based on concerns of creating an impermissible advisory ruling); Queen's Grant II Horizontal Property Regime v. Greenwood Dev. Corp., 368 S.C. 342, 628 S.E.2d 902, 918 & n. 20 (Ct. App. 2006) (dismissing cross-appeal of denial of summary judgment, stating "we may entertain appeals from interlocutory orders not ordinarily appealable when they are companion to reviewable issues," citing cases adhering to this rule); Pitts v. Jackson Nat'l Life Ins. Co., 352 S.C. 319, 338, 574 S.E.2d 502, 511-12 (Ct. App. 2002) (entertaining an appeal from a denial of summary judgment because it was so closely connected with other issues properly before the court). Indeed, in Edge, the Court entertained the appeal of a motion to dismiss in the interest of judicial economy only because a related issue was already properly before the court. 366 S.C. at 517.

The ruling subject of New Residential's cross-appeal is not significantly connected with the mode-of-trial ruling that Appellants-Respondents (hereinafter "the Geddings") appeal. New Residential has stated in its return that its cross-appeal is of the lower court's denial of its motion for judgment on the pleadings as to the Geddings' unjust enrichment counterclaim, which is an equitable claim on which none of the parties have the right to a jury trial. Dema v. Tenet Physician Servs.-Hilton Head, Inc., 383 S.C. 115, 123, 678 S.E.2d 430, 434 (2009) (unjust enrichment sounds in equity). Also, New Residential's cross-appeal is only of the lower court's September 3, 2020,

order, and it is *not* an appeal of the October 9, 2020, order that allowed the Geddings to keep their at-law negligence and unfair trade practices claims alive through amendment. (Notice of Cross-Appeal.)

The Geddings appeal the lower court's decision to deny their right to a jury trial and to refer the case to the master-in-equity. That is error that the lower court, after allowing the Geddings to keep their at-law claims alive, perpetuated by failing to grant the following portion of the Geddings' motion to reconsider:

> Because the court dismissed the Geddings' at-law claims, the court granted the motion to strike the Geddings' jury demand and refer this action to the master-in-equity without analysis of whether the Geddings pled compulsory at-law claims entitling them to a jury trial. The Geddings did so, and the court should reconsider and change its decision to strike the jury demand and refer this action.

(Motion to reconsider p. 7, ¶ 17.)

The Geddings' appeal has nothing to do with their unjust enrichment claim, the pendency of which will be unaffected no matter how the Geddings' appeal is decided. Whether New Residential's motion for judgment on the pleadings as to that unjust enrichment claim should have been granted – the subject of its cross-appeal – has nothing to do with the issues presented by the Geddings' appeal. What would make it appropriate for this court to hear New Residential's cross-appeal would be a significant nexus to what the court must decide in the Geddings' appeal. Edge, 366 S.C. at 517; Brown, 366 S.C. at 362 n. 5; Morris, 349 S.C. at 610-11; Queen's Grant 628 S.E.2d at 918 & n. 20; Pitts, 352 S.C. at 338. There is no such nexus. Under the settled law that "the denial of a motion for judgment on the pleadings is not directly appealable[,]" New Residential's appeal of the denial of a motion for judgment on the pleadings cannot be maintained. Rose v. Thrash, 291 S.C. 459, 459, 354 S.E.2d 378, 378 (1987).

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WHEREFORE Appellants-Respondents pray for an order dismissing Respondent-Appellant's cross-appeal.

Respectfully submitted,

/s/ Andrew S. Radeker

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