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Jul 12 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas
The Honorable Kristi F. Curtis

Appellate Case No. 2021-000685

The Station, Inc. d/b/a Company Two, Inc.,.....Appellant,

v.

Hampton County,Respondent.

APPELLANT’S RETURN TO RESPONDENT’S MOTION TO DISMISS, OR, IN THE
ALTERNATIVE, TO STAY APPEAL

Appellant The Station, Inc. d/b/a Company Two, Inc., submits this return to Respondent Hampton County’s motion to dismiss appeal, or, in the alternative, to stay appeal. Appellant does not oppose the motion to stay.

Appellant does oppose the motion to dismiss the appeal. Respondent does not cite to any authority to support its motion to dismiss. Under S.C. Code Ann. § 14-3-330, a ruling is immediately appealable under, *inter alia*, these circumstances:

- (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;
- (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(1)-(2). The lower court’s decision to grant Respondent’s motions for a directed verdict as to the breach of contract and specific performance causes of action involves the merits under § 14-3-330(1). *See Jefferson v. Gene’s Used Cars, Inc.*, 295 S.C. 317, 318, 368 S.E.2d 456, 456 (1988) (finding an interlocutory order is appealable under § 14-3-330(1) if it “involves the merits, that is, finally determines some substantial matter forming the whole or a part of some cause of action or defense” (internal quotation marks omitted)). The lower court’s decision to grant Respondent’s motions for a directed verdict as to the breach of contract and specific performance causes of action is also an order affecting a substantial right that strikes a pleading under § 14-3-330(2). *See Lebovitz v. Mudd*, 289 S.C. 476, 479, 347 S.E.2d 94, 96 (1986) (“An order granting a Rule 12(b) motion as to one of multiple claims is directly appealable under § 14-3-330(2) because it affects a substantial right and strikes out part of a pleading.”). Therefore, the rulings are appealable under § 14-3-330(1) and –330(2).

Appellant acknowledges this Court’s ruling in *Ashenfelder v. City of Georgetown*, 389 S.C. 568, 698 S.E.2d 856 (Ct. App. 2010), regarding the immediate appealability of a ruling that grants a directed verdict on some but not all causes of action. However, given that *Ashenfelder* involved a mistrial—which this case does not—it is not clear if *Ashenfelder* is sufficient to ensure an appeal of the rulings on breach of contract and specific performance filed after the lower court rules on all of the causes of action is timely as to the motions for directed verdict granted at trial.

Appellant requests the Court deny the motion to dismiss the appeal.

Dated: July 12, 2021

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PROOF OF SERVICE

The undersigned certifies that a copy of the Return has been served upon counsel of record for the Respondent using their primary email addresses listed in the Attorney Information System, as shown below, on July 12, 2021.

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