

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Oct 29 2021

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master-in-Equity

Circuit Court Case No. 2020-CP-10-04185

Appellate Case No. 2020-001583

Bonnie Wall, individually and derivatively,
and Walter B. Wall, Jr.....Appellants,

vs.

Jonathan Dye, Shaun Dye, Shellmore Homeowners' Association, Inc., and
John H. Chakides, Jr., individually and
in his capacity as Director of Shellmore Homeowners' Association, Inc.,
.....Respondents.

RETURN TO RESPONDENTS DYE'S MOTION TO CONSOLIDATE

Appellants Bonnie and Walter Wall (the "Walls") respectfully request that this Court deny Respondents Shaun and Jonathan Dyes' (the "Dyes") Motion to Consolidate Appeals, which motion was filed on October 21, 2021.

The Dyes' request for consolidation does not meet the test set forth in Rule 214 of the Appellate Court Rules:

RULE 214 CONSOLIDATION

Where there is more than one appeal from the same order, judgment, decision or decree, or where the same question is involved in two or more appeals in different cases, the appellate court may, in its discretion, order the appeal to be consolidated.

Rule 214, SCACR.

ARGUMENT

The Dyes move this Court to consolidate two appeals: (1) the above-captioned appeal, which has been fully briefed to this Court by both sides (Appellate Case No. 2020-01583) (“Appeal I”); and (2) a newly-filed appeal, in which the transcript has not even been received yet (Appellate Case No. 2021-1014) (“Appeal II”). These two appeals pertain to different orders, rendered by the lower court on different grounds, and they involve distinctly different issues on appeal.

The Appellate Court Rules allow for consolidation of appeals in **two limited circumstances, neither of which is applicable here**. The first is “[w]here there is more than one appeal from the same order, judgment, decision, or decree.” Rule 214, SCACR (“Consolidation”). But there is no question that Appeal I and Appeal II are from entirely different orders:

- Appeal I concerns an order dated November 19, 2020, in which the lower court granted summary judgment on two causes of action filed by the Walls;
- Appeal II concerns orders dated July 28, 2021 and August 13, 2021, granting summary judgment on distinctly different causes of action.

Importantly, not only are the orders on appeal different, and issued almost a year apart, but each order was made by the lower court based on different evidence, different records, different arguments, and different law. Therefore, the first prong of Rule 214 does not operate to permit consolidation.

The second limited circumstance in which the rules permit consolidation is “where the same question is involved in two or more appeals in different cases.” Rule 214, SCACR. Here, the appeal involves the same case – not “different cases” – and different questions.¹ Therefore, the second prong of Rule 214 does not operate to permit consolidation.

The Dyes argue that the two appeals involve overlapping questions of law, namely (1) the interpretation of restrictive covenants, and (2) the admissibility of evidence. This is **patently wrong**, as a simple reading of the first order on appeal makes clear. Since it is only three paragraphs long, here is the extent of the ruling on appeal in Appeal I:

This matter came before the court on Nov. 2, 2020 on Defendants Johnathan and Shaun Dye’s Motion to Dissolve the Preliminary Injunction. Based upon this court’s review of the record, arguments of counsel and the factors required to grant an injunction, the Motion is GRANTED and the Preliminary Injunction is dissolved.

¹ Appeal I, which has been fully briefed, involves the independent question of law as to whether the board of directors of a nonprofit corporation have fiduciary duties to the corporation and its members, as well as the question of whether there was evidence of special damages (if it was actually needed) in the Walls’ civil conspiracy cause of action against the Respondents. *See Appellants’ Initial Brief*, filed July 16, 2021.

Appeal II has not yet been briefed (nor has the transcript been received). However, as the future author of those briefs, the undersigned counsel represents to this court that the issues on appeal will not be fiduciary duty or civil conspiracy, since the lower court did not base its decision in the second orders on appeal on either question (having already decided them in the order on appeal in Appeal I).

Defendant's summary judgment motion as to Plaintiff's claims for Breach of Fiduciary Duty and Civil Conspiracy are GRANTED as there is no fiduciary duty owed by the Directors to the Plaintiff and no evidence of special damages has been shown by the Plaintiff to constitute a civil conspiracy.

The cross motions for Summary Judgment are respectfully DENIED as to the Declaratory Judgment relief sought, Breach of Covenants claims and the claim of Nuisance. As to these issues, the matter will proceed to trial on Feb. 24-25, 2021.

(Order, dated November 19, 2020, on appeal in Appellate Case No. 2020-1583). Clearly, the first order on appeal did not interpret the neighborhood's covenants in any way (indeed, it expressly reserved this issue for a later trial). Nor did the first order on appeal make any ruling on the admissibility of evidence. Moreover, the evidence before the court in the two orders was different, and so would require distinct admissibility determinations (which the court did not make). The Dyes are wrong that those questions were decided in the first order. Regardless, the rules do not permit the consolidation of appeals from the same case, when the appeal is from different orders, and involves different rulings by the lower court.

In sum, the Dyes have failed to demonstrate that the two appeals that they want to be consolidated fall within the operation of Rule 214, SCACR, governing "Consolidation." This Court should therefore deny their Motion to Consolidate.

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Respectfully submitted,

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