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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Deadra L. Jefferson
Circuit Court Judge

Appellate Case No. 2021-001170

Eddie B. Lewis,

Respondent

v.

Saul, LLC and Wells Fargo Bank,
National Association,

Of which Saul LLC is the Appellant;
and Wells Fargo Bank, National
Association is a Respondent

MEMORANDUM ON APPEALABILITY
OF RESPONDENT WELLS FARGO BANK, NATIONAL ASSOCIATION

s/Douglas E. Leadbitter

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Wells Fargo Bank, National Association

STATEMENT OF THE CASE

Saul, LLC ("Saul") filed the instant appeal challenging an interlocutory Order under Rule 60, SCRCP granting relief to Respondent Wells Fargo Bank, National Association ("Wells Fargo"). Eddie Lewis is also a Respondent to the appeal.

This Court contacted the parties on November 29, 2021 and requested Memoranda from the Parties addressing whether or not Judge Jefferson's Order granting Wells Fargo's Rule 60 Motion is immediately appealable.

FACTUAL BACKGROUND

This is a premises liability case that arose out of an alleged trip and fall by the Plaintiff, Eddie Lewis, at a banking location in Beaufort, South Carolina that was formerly leased by Wells Fargo. Wells Fargo leased the subject premises from Saul.

Saul filed a Motion for Summary Judgment asserting that various provisions in the Wells Fargo lease proved that Saul, LLC gave Wells Fargo "complete control" of the parking lot and the "tenant dedicated parking", therefore Saul was not responsible to Plaintiff for his alleged injuries as a matter of law.

Judge Jefferson granted Saul's Motion for Summary Judgment. Wells Fargo then filed a Rule 60, SCRCP Motion seeking an Order setting aside the summary judgment Order granting relief to Saul.

Argument

This Court should dismiss this appeal because the Order granting the Rule 60, SCRCP Motion in favor of Wells Fargo is not immediately appealable.

The Order granting Wells Fargo's Rule 60, SCRCP Motion is not immediately appealable. The determination of whether a party may immediately appeal an Order issued before or during trial is governed primarily by S.C. Code

Ann. § 14–3–330 (Supp. 2021). Pocisk v. Sea Coast Const. of Beaufort, 380 S.C. 584, 671 S.E.2d 98 (Ct. App. 2008).

S.C. Code Ann. § 14–3–330 (Supp. 2021)

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

(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;

(3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and

(4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

In Pocisk, the appellant Sea Coast (Payne) sought an appeal of the grant of a Rule 60, SCRCF Motion setting aside a default judgment. Sea Coast argued that the interlocutory Order was immediately appealable because the interlocutory Order affected a substantial right. The Court held that the Rule 60 (b) relief, that results in avoidance of a trial, does not affect a substantial right which would entitle a party to an immediate appeal. Id. The Court of Appeals further held that Sea Coast Construction (Payne) could seek appellate review of the Order granting Rule 60(b) relief following *final* judgment in the case (emphasis added). Id.

The facts of this case are on all fours with the holding of Posick. Judge Jefferson's Rule 60 Order was not a final disposition of the matter. Judge Jefferson specifically ruled that Saul's Motion for Summary Judgment would be re-scheduled for a new hearing. Even though the result of the prior grant of summary judgment to Saul could have resulted in an avoidance of the trial, that trial avoidance is not a substantial right under S.C. Code Ann. § 14-3-330. Id.

Since Judge Jefferson's ruling was not a final disposition and did not impact a substantial right, this Court should hold that this is an interlocutory Order which is not allowed to be immediately appealed. Id.

CONCLUSION

For the reasons argued above, this Court should dismiss this appeal.

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