

The South Carolina Court of Appeals

IOS, LLC, Appellant,

v.

Lander University, Respondent.

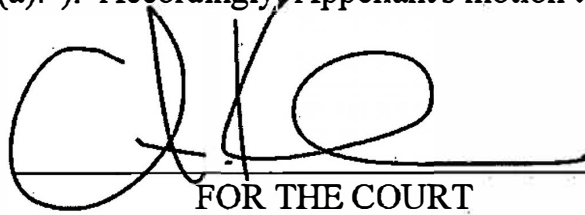
Appellate Case No. 2021-001400

ORDER

Appellant filed suit against Respondent for breach of contract, specific performance, promissory estoppel, negligent misrepresentation, negligence, and breach of lease agreement. The trial court granted summary judgment in favor of Respondent as to Appellant's causes of action for promissory estoppel, negligent misrepresentation, and negligence, and determined the sole cause of action remaining was breach of lease agreement. Trial was scheduled to proceed on this cause of action beginning Monday, December 6, 2021. Appellant has now filed an appeal of the trial court's order granting partial summary judgment and a petition for supersedeas, requesting this court stay the trial during pendency of this appeal. After careful consideration, the petition is granted.

First, the trial court's order granting partial summary judgment is immediately appealable. *See Link v. Sch. Dist. of Pickens Cty.*, 302 S.C. 1, 6, 393 S.E.2d 176, 179 (1990) (finding an order granting partial summary judgment is immediately appealable pursuant to § 14-3-330(2)(c), because it has the effect of striking out a pleading, or pursuant to § 14-3-330(1) as "involving merits."). Second, the trial court lacks jurisdiction to proceed with trial over the breach of lease agreement cause of action during pendency of this appeal because the cause of action is "a matter[] affected by this appeal." *See* Rule 205, SCACR ("Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters *not* affected by the appeal." (emphasis added)); *Tillman v. Oakes*, 398 S.C. 245, 255, 728 S.E.2d 45, 51 (Ct. App. 2012) ("[T]he lower court's power to proceed is determined by whether the issue sought

to be litigated in the lower court during the appeal is a 'matter[] affected by the appeal' under Rules 205 and 241(a)."). Accordingly, Appellant's motion to stay the trial is granted.



FOR THE COURT

Columbia, South Carolina

cc:
James Emerson Smith, Jr., Esquire
Lena Younts Meredith, Esquire

FILED
Dec 13 2021