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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.

FINAL RESPONDENTS' BRIEF OF APPELLANTS-RESPONDENTS

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STATEMENT OF ISSUES

I. Where Appellants-Respondents' appeal concerns whether the circuit court erred in failing to undo its decision that had struck Appellants-Respondents' jury demand and referred the case to the master-in-equity, should this court entertain Respondent-Appellant's cross-appeal of the denial of its motion for judgment on the pleadings?

II. Is Respondent-Appellant's argument on its cross-appeal preserved for review?

III. Did the circuit judge err reversibly by denying Respondent-Appellant's motion for judgment on the pleadings as to Appellants-Respondents' unjust enrichment claim?

STATEMENT OF THE CASE

Respondent-Appellant New Residential Mortgage LLC (hereinafter "New Residential") brought this action for mortgage foreclosure against Appellants-Respondents (hereinafter "the Geddings"), Todd and Tricia Crawford, and Respondent USAA Savings Bank (hereinafter "USAA"), the latter alleged to hold a second-priority mortgage lien on the subject real property. (R. pp. 9-18.) The Crawfords had given the mortgages at issue, and they later deeded their interest in the property to the Geddings. (R. pp. 13, 23.) The Geddings answered, counterclaimed, and cross-claimed asserting counterclaims and crossclaims against New Residential and USAA for negligence, unjust enrichment, and violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, *et seq.*, bringing within their Unfair Trade Practices claim allegations that the original creditor for the mortgage loan violated is S.C. Code Ann. § 37-10-102, commonly referred to as the attorney preference statute. (R. pp. 21-27.) The Geddings' claims concerned the events of the closing of the mortgage (the attorney preference claim) and the taking of possession of the property by the mortgagee or mortgagees and alleged mishandling of that. (R. pp. 20-27.)

New Residential and USAA moved for judgment on the pleadings on the Geddings' claims. (R. pp. 57-75, 79-88.) New Residential also moved to strike the Geddings' jury demand and for the case to be referred to the master-in-equity. (R. pp. 76-78.) The Honorable Kristi F. Curtis heard the motions. (R. pp. 97-131.) Judge Curtis granted the motions for judgment on the pleadings as to all of the Geddings' counterclaims except for their unjust enrichment claim. (R. pp. 1-4.) As the only claims then left in the case sounded in equity, Judge Curtis struck the Geddings' jury

demand and referred the case to the master-in-equity, without deciding whether the at-law counterclaims were compulsory. (R. pp. 1-4.)

The Geddings moved to reconsider the judgment on the pleadings and the striking of their jury demand and reference to the master-in-equity. (R. pp. 89-96.) Judge Curtis granted the motion to reconsider as to the judgment on the pleadings, changing her ruling to allow the Geddings to amend and replead the claims she had previously dismissed. (R. pp. 5-8.) Her order on the motion to reconsider did not, however, state anything about changing her ruling that struck the Geddings' jury demand and referred the case to the master-in-equity. (R. pp. 5-8.) The Geddings filed an amended pleading that re-pled their at-law counterclaims and in which they repeated their demand for a jury trial. (R. pp. 45-56.)

New Residential did not make any motion in the circuit court after the denial of its motion for judgment on the pleadings as to the Geddings' unjust enrichment claim.

The Geddings brought this appeal of the striking of their jury demand and the reference to the master-in-equity. New Residential now cross-appeals the denial of its motion for judgment on the pleadings as to the Geddings' unjust enrichment claim.

STANDARD OF REVIEW

The standard of whether a motion for judgment on the pleadings should be granted is the same as for a motion under Rule 12(b)(6), SCRCP, and the appellate court is required to apply the same standard to the review of an order granting such a motion. See Sapp v. Ford Motor Co., 386 S.C. 143, 687 S.E.2d 47, 49 (2009); Russell v. City of Columbia, 305 S.C. 86, 406 S.E.2d 338 (1991); Rosenthal v. Unarco Indus., Inc., 278 S.C. 420, 422, 297 S.E.2d 639 (1982); Wooten v. Standard Life & Cas. Ins.

Co., 239 S.C. 243, 247-49, 122 S.E.2d 637 (1961); Falk v. Sadler, 341 S.C. 281, 533 S.E.2d 350 (Ct. App. 2000); Fireman's Ins. Co. v. Cincinnati Ins. Co., 302 S.C. 234, 394 S.E.2d 855 (Ct. App. 1990). In deciding a motion for judgment on the pleadings, the court may not consider matters outside the content of the non-moving party's pleadings. See Falk, 341 S.C. at 281; Firemen's Ins. Co., 302 S.C. at 234. A judgment on the pleadings is proper only where there is no issue of fact raised by the non-moving party's pleadings that would entitle the non-moving party to judgment if those issues were resolved in his favor. Sapp, 687 S.E.2d at 49; Wooten, 239 S.C. at 249 (quoting 41 Am.Jur. Pleading § 336). The court must deny a motion for judgment on the pleadings if, when viewed in the light most favorable to the non-moving party, and with every doubt resolved in his favor, "the facts alleged [in the non-moving party's pleadings] and inferences reasonably deducible therefrom would entitle the [non-moving party] to any relief on any theory of the case." Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601 (1995); accord Sapp, 687 S.E.2d at 49; Toussaint v. Ham, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987); Wooten, 239 S.C. at 249 (quoting 41 Am.Jur. Pleading § 336).

ARGUMENT

I. This court should not entertain New Residential's improper interlocutory appeal of the denial of a motion for judgment on the pleadings.

New Residential cross-appeals the denial of its motion for judgment on the pleadings as to the Geddings' unjust enrichment claim. The Geddings appeal an entirely different ruling – a mode-of-trial ruling that struck their jury demand and referred the case to the master-in-equity. New Residential's cross-appeal is of an

interlocutory order that rendered no judgment against it and has nothing to do with the Geddings' appeal. This court should not consider New Residential's cross-appeal.

Rule 201(b), SCACR, expressly limits the right to appeal to "[o]nly a party aggrieved by an order, judgment, sentence or decision." "A party is aggrieved by a judgment or decree when it operates on his or her rights of property or bears directly on his or her interest." Beaufort Realty Co., Inc. v. Beaufort County, 346 S.C. 298, 301, 551 S.E.2d 588, 589 (Ct. App. 2001) (citing Cisson v. McWhorter, 255 S.C. 174, 178, 177 S.E.2d 603, 605 (1970); Bivens v. Knight, 254 S.C. 10, 13, 173 S.E.2d 150, 152 (1970)). Under this rule, "'aggrieved' refers to a substantial grievance, a denial of some personal or property right, or the imposition on a party of a burden or obligation." Id.

New Residential does not argue that it has suffered or will suffer any injury as a result of the circuit court's decision to deny its motion for judgment on the pleadings as to the Geddings' unjust enrichment claim. Judge Curtis' decision to deny the motion for judgment on the pleadings as to the unjust enrichment claim simply leaves that claim for later adjudication and does not operate on New Residential's property rights or impose a burden or obligation on New Residential. (R. p. 3.) The lower court simply not denying the Geddings' unjust enrichment claim did not finally determine whether New Residential was actually unjustly enriched. See S.C. Code Ann. § 14-3-330(1). New Residential is not an aggrieved party. Beaufort Realty Co., 346 S.C. at 301.

"[T]he denial of a motion for judgment on the pleadings is not directly appealable under S.C. Code Ann. § 14-3-330 (1976)[.]" Rose v. Thrash, 291 S.C. 459, 354 S.E.2d 378 (1987). New Residential's position seems to rest on the notion 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). Precedent, however, reveals this doctrine is more limited than what New Residential needs to have this court entertain its cross-appeal. 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 the Geddings appeal. The Geddings' unjust enrichment counterclaim 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). Accordingly, the viability of the unjust enrichment claim will be unaffected by this court's decision of the Geddings' appeal of the lower court's decision to deny their right to a jury trial and to refer the case to the master-in-equity, and vice-versa.

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 is not properly before this court. Rose, 291 S.C. at 459.

II. New Residential's argument is not preserved for review.

All that Judge Curtis' order states about the Geddings' unjust enrichment claim is the following:

> The Court finds that the Geddings have stated a valid claim for relief as to their counterclaim for Unjust Enrichment, and will deny New Residential and USAA FSB's motions for judgment on the pleadings as to this claim.

(R. p. 3.)

No order addressing the argument New Residential makes on its cross-appeal – the contention that the Geddings' unjust enrichment claim fails to plead facts to the effect that the benefit was not gratuitously conferred – was ever issued below. (R. pp. 1-8.) New Residential made no motion under Rule 59, SCRCP.

To be preserved for appellate review, an argument must have been both raised to and ruled upon by the trial court. E.g., Wilder Corp. v. Wilke, 330 S.C. 71, 497 S.E.2d 731 (1998). "Where a matter is not ruled on by the circuit court, the issue is not preserved for appellate review unless the complaining party moves to amend the judgment pursuant to Rule 59(e)." Vespazziani v. McAlister, 307 S.C. 411, 413, 415 S.E.2d 427, 428 (Ct. App. 1992). If the appealing party made the argument to the trial court in the first instance and did not receive a ruling on it, if he presents the argument again in a Rule 59 motion, it is then preserved for review, even if the trial court does not rule on it in response to that motion. Vespazziani, 307 S.C. at. 413.

New Residential's argument on appeal was never ruled on by the circuit court. Since New Residential did not make a Rule 59 motion presenting it again, it is not preserved for this court's review. Vespazziani, 307 S.C. at. 413.

III. Judge Curtis was not wrong to deny the motion for judgment on the pleadings as to the unjust enrichment claim.

Unjust enrichment is an equitable doctrine which permits the recovery from the enriched party of the amount by which he has been unjustly enriched at the expense of the claimant. Ellis v. Smith Grading and Paving, Inc., 294 S.C. 470, 473, 366 S.E.2d 12, 14 (Ct. App. 1988). The test for unjust enrichment, per our Supreme Court, is as follows:

> (1) benefit conferred by plaintiff upon the defendant;
>
> (2) realization of that benefit by the defendant; and
>
> (3) retention of the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying its value.

Myrtle Beach Hosp., Inc. v. City of Myrtle Beach, 341 S.C. 1, 8-9, 532 S.E.2d 868, 872-73 (2000).

Here, the Geddings alleged in their pleading subject of New Residential's motion that they have enriched New Residential – dramatically increasing the value of its collateral – under circumstances that make it unjust for New Residential to retain that benefit without paying its value. (R. pp. 19-27.) Those circumstances include the fact that the mortgagee's behavior was such that it acted like it had abandoned its mortgage or any right to enforce it, thus inducing the Geddings to put money into their property, with the Geddings acting on the perception the mortgagee created. (R. pp. 20-26.) The Geddings acted on that perception by significantly increasing the value of the mortgagee's collateral. (R. pp. 23-24.) This could be seen by a factfinder as circumstances that would make it inequitable for New Residential to retain the increased value of its mortgage without paying the Geddings for that added value.

These facts alleged in the then-operative pleading could have been seen as fitting the elements of unjust enrichment; thus, Judge Curtis was correct to determine that it was up to a finder of fact to determine whether they do. See id.

New Residential argues that there is another element – that the benefit be conferred non-gratuitously – but that is not another element of an unjust enrichment claim beyond those listed in Myrtle Beach Hospital. Id. It is, rather, an older way – perhaps a less complete way – of stating that the benefit has to be conferred "under circumstances that make it inequitable for [the opposing party] to retain it without paying its value." Id. at 9. Sauner v. Public Service Authority of South Carolina, 354 S.C. 397, 581 S.E.2d 161 (2003), does not hold that the non-gratuitous manner in which the benefit was conferred is an additional element of unjust enrichment. Id. at 409. To the extent that this court's opinion in Church v. McGee, 391 S.C. 334, 345, 705 S.E.2d 481, 487 (Ct. App. 2011), holds otherwise, as New Residential contends, it is wrong, against controlling Supreme Court precedent, and ought to be overruled. Sauner, 354 S.C. at 409; Myrtle Beach Hosp., 341 S.C. at 8-9. (Church does not so hold. 391 S.C. at 345. To the extent Church stated non-gratuitousness as an extra element of an unjust enrichment claim, that was dicta, and the result of Church would have been the same without that statement. Id.)

Further, existing precedent about amendment and dismissal provides that New Residential is not entitled to what it seeks – apparently, a merits ruling dismissing the Geddings' unjust enrichment claim with prejudice. As Judge Curtis noted in her order on the Geddings' motion to reconsider (R. p. 7), per our Supreme Court, "[u]nder Rules 12(b)(6) and 15(a), the circuit court may not dismiss a claim with prejudice unless the

plaintiff is given a meaningful chance to amend the complaint, and after considering the amended pleading, the court is certain there is no set of facts upon which relief can be granted." Skydive Myrtle Beach, Inc. v. Horry Cnty., 426 S.C. 175, 189, 826 S.E.2d 585, 592 (2019). This applies to counterclaims. See Charleston County School Dist. v. Laidlaw Transit Inc., 348 S.C. 420, 424, 559 S.E.2d 362 (Ct. App. 2001) (motion to dismiss standard applies equally to counterclaims and complaints). Given that the standards for a motion for judgment on the pleadings and a motion to dismiss under Rule 12(b)(6), SCRCP, are the same, this principle applies to motions for judgment on the pleadings, as well.

If this court agreed with New Residential that the Geddings did not plead facts sufficient to constitute a cause of action for unjust enrichment, the court would then need to "conduct an analysis to determine whether any amendment would be futile." Skydive Myrtle Beach, 426 S.C. at 183. Only if this court determined it could and should reach the merits of New Residential's cross-appeal, and then only if it were "certain there is no set of facts upon which relief can be granted[,]" could the court then reverse and grant New Residential's motion for judgment on the pleadings as to the unjust enrichment claim. Id. at 189.

New Residential, however, does not argue that "there is no set of facts upon which relief can be granted[,]" nor does it provide this court with information that could make this court certain of that. Id. That is because, as in most cases, in this case this court cannot be "certain there is no set of facts upon which relief can be granted." Id.

CONCLUSION

This court should dismiss New Residential's cross-appeal, determine it cannot reach New Residential's unpreserved argument, or otherwise affirm Judge Curtis' denial of New Residential's motion for judgment on the pleadings.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

I certify that the foregoing final brief complies with Rule 211(b), SCACR.

Respectfully submitted,

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I certify that I have served the foregoing final brief on the date given below by emailing it to opposing counsel at the addresses noted below.

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