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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Perry M. Buckner, III, Circuit Court Judge

Appellate Case No. 2020-00607
AND
Appellate Case No. 2021-01540

Larry Rahn.....Respondent

vs.

Barbara SmithAppellant

APPELLANT'S MOTION TO CONSOLIDATE

Appellate Case No. 2020-00607

&

Appellate Case No. 2021-1540

COMES NOW the Appellant, Barbara Smith, and with the consent of Respondent, who pursuant to Rule 240, SCACR, herein moves to consolidated Appellate Case Nos. 2020-00607 and 2021-1540. This motion is based upon the following:

WHEREAS, Prior to filing this motion counsel for Appellant consulted with counsel for Respondent, and counsel for Respondent offered their consent to consolidation; and

WHEREAS, Appellant has taken two separate appeals from a single action (i.e., Common Pleas Case No. 2019-CP-15-00218). These two separate appeals are:

1. **Appellate Case No. 2020-00607** – Appeal from the Order of the Honorable P. Buckner dated December 3, 2019. This order granting specific performance of an option to purchase real-property contained within a settlement agreement, said performance to occur before July, 2020.
2. **Appellate Case No. 2021-01540** – Appeal from the denial of Appellant’s Rule 60, motion for relief from Judge Buckner’s Order, and the subsequent denial of Appellant’s Rule 59 Motion concerning this ruling. Both Orders being issued by the Honorable B. Price, and finally decided on December 14, 2021.

BACKGROUND

Appellate Case No. 2020-00607:

On December 3, 2019, the Circuit Court issued an order granting specific performance of an option contract to purchase real property for the payment of \$312,000.00 by respondent (to Appellant) to be paid on or before July 11, 2020. Appellant appealed this order (Appellate Case No. 2020-00607). During the pendency of the appeal, the July 11, 2020, deadline expired.

Therefore, on October 2, 2020, Appellant filed a motion with the Court of Appeals seeking leave to file a Rule 60 Motion the circuit court, seeking relief from the December 3, 2019 Order. By order dated November 20, 2020 the Court of Appeals granted Appellant leave to file the aforementioned Rule 60 motion with the Circuit Court. By this same order the Court of Appeals held briefing of Appellate Case No. 2020-00607 in abeyance pending resolution of the Rule 60 motion by the circuit court.

Appellate Case No. 2021-01540:

On April 5, 2021, the circuit court, by the Honorable B. Price, denied Appellants Rule 60 Motion. Appellant subsequently filed a Rule 59 Motion to Alter or Amend this order which the circuit court denied on December 14, 2021. In denying Appellant’s Rule 59 Motion, the circuit

court amended Judge Bucker's December 3, 2019 Order (i.e., that Order before this Court in Appellate Case No. 2020-00607) by extending the time for Respondent to perform by nearly 19 months from July 11, 2020 until February 1, 2022. Appellant filed Notice of Appeal of this Order on December 27, 2021, and the Court of Appeals assigned a separate Appellate Case No. (i.e., 2021-01540).

REASONING

The issues on appeal between the two matters now pending before this Court concern the same subject matter—i.e., what the rights the Respondents might have under a contract to compel the sale of a parcel of real property owned by Appellant. All issues pending between the parties in these matters originate from the same order—i.e., the Judge Buckner's December 3, 2019 Order. The first appeal (i.e., Appellate Case No. 2020-00607) concerns whether the trial court (via Judge Bucker) erred in finding that Respondents had until July 11, 2020 to perform, or whether their rights had expired. However, even assuming this Court is to affirm Judge Bucker's December 3, 2020 Order, the second appeal (i.e., Appellate Case No. 2021-01540) presents the question of whether that December 3, 2019, Order, which required performance by July 11, 2020, expired in light of Respondent's failure to perform by that date. The issue before this Court in in the second appeal (Appellate Case No. 2021-01540) concerns whether Judge Price has the authority to amend the December 3, 2019 Order.

Therefore, final resolution of the dispute between the parties cannot be had until both appeals are decided. Because the matters concern the same "judgment, decision or decree" this Court should order the consolidation of the aforementioned appeals. *See* Rule 214, SCACR.

CONCLUSION

Therefore, upon the consent of the parties and for the reasons stated above this Court should Order that Appeal No. 2020-00607 and Appeal No. 2021-01540 be consolidated, and that briefing be conducted collectively and pursuant to the briefing schedule applicable to Case No. 2021-01540.

THURMOND KIRCHNER & TIMBES, P.A.



s/
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Perry M. Buckner, III, Circuit Court Judge

Common Pleas Court Case No. 2019-GP-15-00218
Appellate Case No. 2020-00607

Larry Rahn.....Respondent

vs.


Barbara SmithAppellant

PROOF OF SERVICE

I, hereby certify that the enclosed was served on all other parties to this matter by depositing a copy of same in the U.S. Mail on this day and properly posted for delivery to the following addresses:

Ronnie L. Crosby
101 Mulberry Street East
P.O. Box 457
Hampton, SC 29924

THURMOND KIRCHNER & TIMBES, P.A.



~~Shannon Cerone~~
~~Paralegal to~~ Thomas J. Rode
Charleston, South Carolina

1/13/2022

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January 13, 2022

VIA US MAIL

Jenny Abbott Kitchings, Clerk of Court
SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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SC Court of Appeals

Re: Larry Rahn v. Barbara Smith

Dear Honorable Kitchings:

Enclosed please find the filing fee for the **Motion to Consolidate** that was filed on January 13, 2022. If you have any questions, please do not hesitate to contact us.

Very truly yours,

THURMOND KIRCHNER & TIMBES, P.A.

Samantha Peyton
Paralegal to Thomas J. Rode

Enc. As Stated

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