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NO. COA07-704

NORTH CAROLINA COURT OF APPEALS

Filed: 18 December 2007

SHAREHEART DEVELOPMENT  
CORPORATION, LLC,  
Plaintiff,

v.

Pamlico County  
No. 06 CVS 203

PAMLICO COUNTY,  
Defendant.

# Court of Appeals

Appeal by Defendant from judgment entered 14 March 2007 by Judge John E. Nobles in Pamlico County Superior Court. Heard in the Court of Appeals 29 November 2007.

## Slip Opinion

*Ward and Smith, P.A., by Eric J. Remington, for Plaintiff-Appellee.*

*Womble Carlyle Sandridge & Rice, PLLC, by Douglas W. Hanna and Sarah L. Buthe, for Defendant-appellant.*

ARROWOOD, Judge.

Defendant (Pamlico County) appeals from an order granting partial summary judgment on the pleadings for Plaintiff Shareheart Development Corporation. We dismiss as interlocutory.

Briefly summarized, the record establishes the following: Plaintiff is a corporation that develops real estate projects in Pamlico County. In 2006 Plaintiff was planning to develop a condominium project called Cribbs Cove Cottages (the Project). The Project is a "waterfront, cottage community of eight single family

residential homes located on twelve and a half acres of land" in Pamlico County. On 19 June 2006 Pamlico County adopted the Pamlico County Group Housing Projects Ordinance ("the Ordinance"). In September 2006 the Pamlico County Building Inspection Department issued permits to Plaintiff authorizing it to build the eight residences planned for the Project. Plaintiff began construction of the Project.

In October 2006 a controversy developed between the parties regarding whether the Ordinance applied to the Project. Pamlico County contended that the Project fell within the ambit of the Ordinance, while Plaintiff disagreed. In early November 2006, Pamlico County revoked Plaintiff's building permits and placed "Stop Work Orders" on the residences that were under construction.

On 13 November 2006 Plaintiff filed suit against Pamlico County. Plaintiff filed claims for injunctive and declaratory relief, seeking a declaration that the Ordinance did not apply to the Project, and asking that Pamlico County be "temporarily, preliminarily, and permanently enjoined and restrained" from enforcing the Ordinance against the Project. Plaintiff also asserted a claim for vested common law rights, based on Plaintiff's expenditures in reliance on Defendant's initial issuance of permits. Additionally, Plaintiff sought damages for violation of its right to due process and asserted that the Ordinance was a violation of its right to equal protection. Finally, Plaintiff alleged that Pamlico County had engaged in arbitrary and capricious application of the Ordinance.

Pamlico County answered, denying the material allegations of the complaint and asserting various defenses. On 23 February 2007 Plaintiff filed a motion for partial judgment on the pleadings under N.C. Gen. Stat. § 1A-1, Rule 12(c). Plaintiff asserted that the undisputed facts established its entitlement to judgment in its favor on its claims for injunctive and declaratory relief. On 14 March 2007 the trial court granted Plaintiff's motion, from which Pamlico County has appealed. The trial court did not certify its order as immediately appealable under Rule 54(b).

#### Standard of Review

We first address the interlocutory nature of this appeal. "It is uncontroverted that [Defendant's] appeal from the trial court's [order for partial judgment on the pleadings] is interlocutory. 'An interlocutory order is one made during the pendency of an action, which does not dispose of the case, but leaves it for further action by the trial court in order to settle and determine the entire controversy.' 'Generally, there is no right of immediate appeal from interlocutory orders and judgments.'" *Hamby v. Profile Prods., L.L.C.*, \_\_ N.C. \_\_, \_\_, \_\_S.E.2d \_\_, \_\_ (November 9, 2007) (No. 507A06) (Timmons-Goodson, J., dissenting) (quoting *Veazey v. City of Durham*, 231 N.C. 357, 362, 57 S.E.2d 377, 381 (1950) and *Goldston v. Am. Motors Corp.*, 326 N.C. 723, 725, 392 S.E.2d 735, 736 (1990)). "However, interlocutory orders are immediately appealable if they: '(1) affect a substantial right and (2) [will] work injury if not corrected before final judgment.' . . . Therefore, the only way [Defendant] can maintain this appeal

is if it can show that it will lose a 'substantial right' if the case proceeds any further at the trial level." *Hamby*, \_\_ N.C. at \_\_, \_\_ S.E.2d at \_\_ (quoting *Goldston*, 326 N.C. at 728, 392 S.E.2d at 737).

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Defendant argues first that when a "partial judgment as a matter of law is combined with a permanent injunction, the order may be immediately appealable." Defendant argues that the trial court's order "affects a substantial right because it permanently enjoins Pamlico County from enforcing its Ordinance." We first note that the order does not enjoin the general enforcement of the Ordinance, but only the application of the County's Group Housing Ordinance as against Plaintiff's development project. More importantly, Defendant fails to articulate what substantial right will be lost absent immediate review of the order. "'Essentially a two-part test has developed - the right itself must be substantial and the deprivation of that substantial right must potentially work injury . . . if not corrected before appeal from final judgment.'" *Sharpe v. Worland*, 351 N.C. 159, 162, 522 S.E.2d 577, 579 (1999) (quoting *Goldston*, 326 N.C. at 726, 392 S.E.2d at 736). Defendant has failed to demonstrate that it will lose a substantial right without immediate review. This argument is overruled.

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Defendant next argues that without immediate review of the trial court's order, it faces the possibility of separate trials on the same issues resulting in inconsistent verdicts. We disagree.

The order for partial judgment on the pleadings ordered that the Ordinance did not apply to the Project, and enjoined Defendant from enforcing the Ordinance against the Project. This effectively resolved Plaintiff's claim for a declaration that it has a vested common law right to proceed with the project; having obtained a declaration that the Ordinance is inapplicable to the Project, it no longer needs to rely on "common law vested interests."

Plaintiff's unresolved claims seek damages for violation of its constitutional rights to equal protection and due process, and for Defendant's arbitrary and capricious application of the Ordinance. At a trial on these claims, the order for partial judgment on the pleadings would require the trial court to instruct the jury that, as a matter of law, the Ordinance does not apply to the Project. Defendant argues that if, following Plaintiff's recovery of damages in a trial, this Court were to subsequently determine that the trial court erred in entering partial judgment on the pleadings, Defendant would then face the possibility of inconsistent verdicts. Defendant's contention is in error.

If Plaintiff obtains a jury verdict in its favor, Defendant could then appeal both that verdict and the earlier order for partial judgment on the pleadings. If this Court reversed the trial court's order for partial judgment on the pleadings, one of two results might obtain. If only issues of law were presented and

the Court determined that Defendant was entitled to judgment, we could remand for entry of judgment in favor of Defendant. Alternatively, if issues of fact were presented regarding the application of the Ordinance to the Project, the Court might reverse and remand for a new trial wherein the jury would resolve the pertinent factual issues. In either event, the jury verdict in favor of Plaintiff would be vacated because of its reliance on the presumption that the Ordinance was inapplicable to the Project. This eliminates the possibility of two trials with inconsistent verdicts. Defendant faces only the possibility, inherent in most appeals, of a retrial occasioned by error at the trial level.

Finally, Defendant argues that immediate review will "expedite the administration of justice." We have reviewed Defendant's arguments in this regard and find them without merit.

For the reasons discussed above, we conclude that Defendant's appeal is interlocutory and must be

Dismissed.

Judges TYSON and JACKSON concur.

Report per Rule 30(e).