

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA11-737
NORTH CAROLINA COURT OF APPEALS

Filed: 20 December 2011

JDAVIS ARCHITECTS, PLLC,
Plaintiff,

v.

Wake County
No. 09 CVS 11447

LAKE RALEIGH/DAVIS LLC, CRAIG
DAVIS PROPERTIES, INC., and BOARD
OF TRUSTEES OF THE ENDOWMENT FUND
OF NORTH CAROLINA STATE
UNIVERSITY,
Defendants.

Appeal by plaintiff from order entered 24 January 2011 by
Judge Lucy N. Inman in Wake County Superior Court. Heard in the
Court of Appeals 14 November 2011.

*W. Sidney Aldridge for Nicholls & Crampton, P.A., attorney
for plaintiff.*

*E.D. Gaskins for Everett Gaskins & Hancock, attorney for
appellees Lake Raleigh/Davis LLC, Craig Davis Properties,
Inc., Craig Davis.*

*Attorney General Roy Cooper by Special Deputy Attorney
General I. Faison Hicks for appellee Board of Trustees of
the Endowment Fund of North Carolina State University.*

Elmore, Judge.

JDavis Architects, Inc. (plaintiff), appeals an order granting a motion to dismiss and a motion for judgment on the pleadings in favor of the Board of Trustees of the Endowment Fund of North Carolina State University (defendant BOT). After careful consideration, we dismiss.

Plaintiff was hired by Lake Raleigh/Davis LLC (Lake Raleigh) and Craig Davis Properties, Inc. (CDP), to perform design services for a project to be built on a portion of land (the property) on Centennial Campus at North Carolina State University. At that time, Lake Raleigh held a long-term leasehold interest in the property. Defendant BOT held the reversionary interest in the property. On 29 January 2009 plaintiff filed a labor and materialman's lien pursuant to Chapter 44A of the North Carolina General Statutes on Lake Raleigh's leasehold interest in the property.

On 10 June 2009, plaintiff filed suit against Lake Raleigh and CDP. Defendant BOT was also included in the lawsuit. In its complaint, plaintiff alleged that it was owed \$471,183.30 for services performed on the property. Plaintiff requested 1) a judgment in that amount and 2) that Lake Raleigh's leasehold interest in the property be sold, and the proceeds of the sale be applied to the judgment. On 9 September 2010, defendant BOT

filed a motion to dismiss and a motion for judgment on the pleadings. In that motion defendant BOT argued that 1) the forced sale of any leasehold interest would interfere with its fee interest in the property and 2) that plaintiff has failed to state a claim against defendant BOT upon which relief can be granted. On 24 January 2011, the trial court entered an order granting the motion to dismiss and motion for judgment on the pleadings in favor of defendant BOT. In that order, the trial court concluded that 1) it was without constitutional authority to order a judgment of lien on a leasehold interest in the property, 2) that the forced sale of a leasehold interest in the property would interfere with and encumber defendant BOT's fee interest in the property and 3) that plaintiff failed to state a cause of action against defendant BOT. Plaintiff now appeals.

Plaintiff presents four arguments for our consideration. However, after careful review of the record, we dismiss plaintiff's appeal as interlocutory.

"An order or judgment is interlocutory if it is made during the pendency of an action and does not dispose of the case but requires further action by the trial court in order to finally determine the entire controversy." *Howerton v. Grace Hosp.*, 124

N.C. App. 199, 201, 476 S.E.2d 440, 442 (1996) (citation omitted).

Here, the trial court's order dismissed the suit only against defendant BOT. Plaintiff admits in its brief that it only included defendant BOT in the suit as a means to "give [defendant BOT] notice of the lien rights of [plaintiff] claimed in the leasehold interest[.]" Plaintiff's claims against Lake Raleigh and CDP are still pending with the trial court. The trial court has yet to decide 1) whether plaintiff is owed any compensation from Lake Raleigh or CDP and 2) whether to enforce a lien on the property. Accordingly, we conclude that plaintiff's appeal would be appropriate only following a final judgment of the trial court regarding the underlying dispute.

Dismissed.

Chief Judge MARTIN and Judge STEPHENS concur.

Report per Rule 30(e).