IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-544

No. COA21-59

Filed 5 October 2021

Wake County, No. 19 CVS 3269

BANNOR MICHAEL MacGREGOR, Plaintiff,

v.

RANDALL S. SPRUNG, Defendant.

Appeal by defendant from order entered 28 October 2020 by Judge Paul C. Ridgeway in Wake County Superior Court. Heard in the Court of Appeals 21 September 2021.

Harris Sarratt & Hodges, LLP, by Donald J. Harris, for plaintiff-appellee.

Roberti, Wicker, Lauffer & Cinski, P.A., by R. David Wicker, Jr., for defendant-appellant.

TYSON, Judge.

¶ 1 Defendant, Randall S. Sprung ("Sprung"), appeals from an order finding a previously issued stay is no longer in effect. We dismiss the appeal as interlocutory.

I. Background

¶ 2 Sprung filed a complaint in the Supreme Court of New York in Kings County on 4 March 2019, alleging breach of contract and unjust enrichment arising out of a

stock purchase agreement and addendums against Bannor Michael MacGregor ("MacGregor"). MacGregor filed a complaint alleging the same cause of actions arising out of the same stock purchase agreement and addendums against Sprung in North Carolina on 18 March 2019.

¶ 3 On 31 May 2019, Sprung filed a motion to dismiss, or in the alternative, a motion to stay proceedings. Following a hearing, the trial court entered an order staying proceedings on 2 August 2019 pursuant to N.C. Gen. Stat. § 1-75.12 (2019) to allow disposition of MacGregor's motions to dismiss the pending New York action.

¶ 4 On 3 October 2019, the Supreme Court of New York denied in part and granted in part MacGregor's motion to dismiss. On 14 October 2019 the Wake County trial court administrator contacted the parties' counsels. Sprung's counsel responded by email asserting the 2 August 2019 stay was still in effect and no further proceedings in North Carolina were proper. MacGregor's counsel responded by asserting the 2 August 2019 stay had dissolved automatically upon the 3 October 2019 order of the Supreme Court of New York.

¶ 5 On 13 November 2019, the trial court entered an order appointing a mediator with a mediation settlement conference deadline of 16 January 2020. Based upon the parties' conversations with the mediator, the case was referred to the Senior Resident Superior Court Judge of Wake County to determine whether the 2 August 2019 stay order was still in effect. Both parties briefed the issue. On 28 October 2020, the trial

court entered an order concluding "the plain language of . . . [the] August 2, 2019 order required the Wake County matter to be stayed only pending the disposition of the Defendant's Motions to Dismiss in the New York case." The trial court "conclude[d] that stay imposed . . . , as a matter of law, is no longer in effect." Sprung appeals.

II. Jurisdiction

¶ 6 Sprung concedes this appeal is interlocutory but asserts without immediate review his substantial rights will be impacted. *See* N.C. Gen. Stat. § 7A-27(b)(3)(a) (2019). "Generally, there is no right of immediate appeal from interlocutory orders and judgments." *Goldston v. American Motors Corp.*, 326 N.C. 723, 725, 392 S.E.2d 735, 736 (1990).

¶ 7 Our Supreme Court has held:

> A final judgment is one which disposes of the cause as to all the parties, leaving nothing to be judicially determined between them in the trial court. An interlocutory order is one made during the pendency of the 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.

Veazey v. City of Durham, 231 N.C. 357, 361-62, 57 S.E.2d 377, 381 (1950) (citations omitted).

¶ 8 "This general prohibition against immediate appeal exists because there is no more effective way to procrastinate the administration of justice than that of bringing

cases to an appellate court piecemeal through the medium of successive appeals from intermediate orders." *Harris v. Matthews*, 361 N.C. 265, 269, 643 S.E.2d 566, 568 (2007) (citations omitted).

¶ 9 North Carolina courts do not recognize a right to immediate appeal from an interlocutory order denying a stay of litigation. *See Howerton v. Grace Hospital, Inc.*, 124 N.C. App. 199, 201, 476 S.E.2d 440, 442 (1996). In *Howerton*, the appellants appealed an order denying their motion for a stay. *Id.* at 200, 476 S.E.2d at 442. Appellants were defendants in lawsuits in both the United States District Court for the Western District of North Carolina and in state court. The United States district court granted summary judgment and the plaintiffs gave notice of appeal to the United States Court of Appeals for the Fourth Circuit. *Id.* This Court dismissed the appeal as interlocutory and held no substantial right was invoked. *Id.* at 202, 476 S.E.2d at 443.

¶ 10 In *Howerton*, the trial court denied a motion for a stay, whereas here the trial court found a stay had dissolved by the express language of the order based upon a ruling of the New York court. While *Howerton* and the facts before us are in different procedural postures, their result is analogous. The state trial court was to proceed with the litigation.

¶ 11 "Ordinarily the possibility of undergoing a second trial affects a substantial right only when the same issues are present in both trials, creating the possibility

that a party will be prejudiced by different juries in separate trials rendering inconsistent verdicts on the same factual issue." *Green v. Duke Power Co.*, 305 N.C. 603, 608, 290 S.E.2d 593, 596 (1982).

> The pendency of a prior suit in federal court is not an absolute bar to a suit in state court by the same plaintiff against the same defendant for the same cause of action. However, as a matter of comity and discretion, a state court may stay its proceedings pending the outcome of related federal litigation, and will generally do so where the action before it involves the same parties and the same issues as a previously filed action in federal court. *In the absence of complete identity as to parties, causes of action, and remedies sought, however, a stay of the state proceedings may properly be denied.*

Howerton, 124 N.C. App. at 202, 476 S.E.2d at 443 (citation omitted).

¶ 12 The New York action and the action at bar do not have complete identity of parties. The North Carolina action only involves MacGregor and Sprung, while the New York litigation involves MacGregor and Sprung in addition to other parties.

¶ 13 Sprung does not cite any case, nor can we find any, where this Court or our Supreme Court held a substantial right was invoked by the automatic dissolving of a stay. Sprung has not shown he possesses a substantial right which would be jeopardized or lost absent immediate appellate review. We express no opinion on the merits, if any, of MacGregor's claims or of Sprung's arguments and defenses.

III. Conclusion

¶ 14 Sprung has failed to show he possesses "a substantial right which would be

jeopardized absent a review prior to a final determination on the merits." *Topping v. Meyers*, 270 N.C. App. 613, 627, 842 S.E.2d 95, 105 (2020) (citation omitted). Sprung has failed to show either a substantial right as a basis for the interlocutory appeal or to grant a petition for a writ of certiorari.

¶ 15 This Court is without appellate jurisdiction. Sprung's appeal is dismissed as interlocutory, and this cause is remanded. We express no opinion on the validity, if any, of MacGregor's claims nor Sprung's defenses thereto. *It is so ordered.*

DISMISSED.

Judges GORE and JACKSON concur.

Report per Rule 30(e).