

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-1039

Filed 05 September 2023

Iredell County, No. 22 CVS 201

CASA ADVISORS, LLC, Plaintiff,

v.

BRANDON SHEETS; TRASCERA INVESTMENTS, LLC; JAMES CHANDLESS;
TRISTONE INVESTMENTS, LLC; 604 E. IREDELL AVE., LLC; KATHERINE
CASA, AND ANTHONY CASA, Defendants.

Appeal by plaintiff from order entered 19 May 2022 by Judge Joseph N.
Crosswhite in Iredell County Superior Court. Heard in the Court of Appeals
8 August 2023.

Casa Law P.A., by Angela Casa, for plaintiff-appellant.

*Jones, Childers, Donaldson & Webb, PLLC, by Kevin C. Donaldson, for
defendant-appellees.*

ARROWOOD, Judge.

Casa Advisors, LLC (“plaintiff”) appeals from the trial court’s order dismissing two of plaintiff’s claims against Brandon Sheets, Trascera Investments, LLC, James Chandless, Tristone Investments, LLC, 604 E. Iredell Ave., LLC, (collectively, “defendants”). Plaintiff concedes this appeal is interlocutory, but specifically

contends the trial court's order affects a substantial right and creates the possibility of inconsistent verdicts. Conversely, defendants argue appellate review is improper as plaintiff fails to establish a substantial right is affected. We agree with defendants, and therefore dismiss the appeal as interlocutory.

I. Background

Plaintiff is a single-member North Carolina limited liability company formed by Anthony Casa ("Mr. Casa") for the purpose of investing in real estate located in Iredell County. Plaintiff alleged that on 14 September 2018, plaintiff entered into a contract to purchase two tracts of land located at 604 East Iredell Avenue, Mooresville, North Carolina ("the property") for \$540,000.00. Shortly thereafter, James Chandless ("Mr. Chandless"), a relative of the Casa family, introduced Mr. Casa to Brandon Sheets ("Mr. Sheets"), a potential investor in the property.

On 7 November 2018, plaintiff and Mr. Sheets executed a joint venture agreement ("the agreement") wherein Mr. Sheets agreed to invest \$140,000.00 toward purchasing the property "[i]n exchange for ninety (90) percent of accumulating [e]quity[.]" In accordance with the terms of the agreement, Mr. Sheets signed a gift letter on 14 January 2019.

Mr. Casa, after failing to secure a loan to purchase the property, emailed Mr. Sheets on 29 January 2019, stating:

We're disappointed to report that the lender and the seller are unwilling to budge on their positions. We were unable to gain comfortability with the lender and after much time,

and expense we seem to be at a point that this deal is not moving forward. This would mean the end of the joint venture agreement with 604 E. Iredell Ave. Mooresville, NC 28115.

The property did not get purchased and Mr. Sheets, through his company Transcera Investments, LLC, ultimately purchased the property on or about 30 May 2019. The property was eventually transferred “as a business contribution” to 604 E. Iredell Ave., LLC., a company Mr. Sheets and Mr. Chandless have an ownership interest in.

On 28 January 2022, plaintiff filed a *lis pendens* and complaint against defendants asserting claims of breach of contract, tortious interference with a contract, and piercing the corporate veil. Defendants filed a motion to dismiss (“MTD 1”), motion to set aside *lis pendens*, and a motion for Rule 11 sanctions on 22 February 2022. Plaintiff filed an amended complaint on 1 March 2022, asserting additional claims of wrongful dissolution of partnership, wrongful conveyance of real property, and civil conspiracy.

Defendants’ MTD 1, motion to set aside *lis pendens*, and motion for Rule 11 sanctions was heard in the Iredell County Superior Court on 14 March 2022, Judge Lori Hamilton presiding. Per order entered 17 March 2022, Judge Hamilton granted defendants’ motion to set aside *lis pendens* but denied defendants’ MTD 1 and motion for sanctions.

On 9 May 2022, in response to the amended complaint, defendants filed their answer, defenses, a second motion to dismiss (“MTD 2”), and asserted counterclaims

and a third-party complaint against Mr. Casa and Katherine Casa, Mr. Casa's mother and real estate agent. The matter was heard before Judge Crosswhite on 16 May 2022. On 19 May 2022, the trial court entered an order partially granting defendants' MTD 2, dismissing plaintiff's claims for wrongful dissolution of partnership and wrongful conveyance of real property. Plaintiff filed a notice of appeal on 2 June 2022.

II. Discussion

On appeal, plaintiff contends appellate review is proper because the trial court's pretrial order dismissing the claims of wrongful dissolution of partnership and wrongful conveyance of real property creates a possibility of inconsistent verdicts. We disagree. Because plaintiff has failed to establish the deprivation of a substantial right, we dismiss plaintiff's appeal.

The trial court's grant of a "motion to dismiss certain claims in an action, leaving other claims to go forward, is an interlocutory order." *Mills Pointe Homeowner's Ass'n, Inc. v. Whitmire*, 146 N.C. App. 297, 298, 551 S.E.2d 924, 926 (2001) (citation omitted). It is well-settled that "there is no right of immediate appeal from interlocutory orders and judgments." *Goldston v. Am. Motors Corp.*, 326 N.C. 723, 725, 392 S.E.2d 735, 736 (1990). However, "an interlocutory order may be appealed immediately . . . if (i) the trial court certifies the case for immediate appeal pursuant to N.C. [Gen. Stat.] § 1A-1, Rule 54(b), or (ii) the order 'affects a substantial right of the appellant that would be lost without immediate review.'" *McIntyre v. McIntyre*, 175 N.C.

App. 558, 562, 623 S.E.2d 828, 831 (2006) (citation omitted). Here, the trial court did not certify the case for immediate review.

“The appellants must present more than a bare assertion that the order affects a substantial right; they must demonstrate *why* the order affects a substantial right.” *Hoke Cnty. Bd. of Educ. v. State*, 198 N.C. App. 274, 277-78, 679 S.E.2d 512, 516 (emphasis in original) (citation omitted), *disc. review denied*, 363 N.C. 653, 686 S.E.2d 515 (2009). Our Supreme Court has determined that “[a] substantial right is ‘a legal right affecting or involving a matter of substance as distinguished from matters of form: a right materially affecting those interests which [one] is entitled to have preserved and protected by law: a material right.’” *Gilbert v. N.C. State Bar*, 363 N.C. 70, 75, 678 S.E.2d 602, 605 (2009) (alteration in original) (quoting *Oestreicher v. Am. Nat’l Stores, Inc.*, 290 N.C. 118, 130, 225 S.E.2d 797, 805 (1976)).

A party seeking immediate appellate review has the “burden to present appropriate grounds for this Court’s acceptance of an interlocutory appeal, . . . and [it is] not the duty of this Court to construct arguments for or find support for appellant’s right to appeal[.]” *Johnson v. Lucas*, 168 N.C. App. 515, 518, 608 S.E.2d 336, 338 (alterations in original) (citation and internal quotation marks omitted), *aff’d*, 360 N.C. 53, 619 S.E.2d 502 (2005). “Where the appellant fails to carry the burden of making such a showing to the court, the appeal will be dismissed.” *Id.* (citation omitted).

In the case *sub judice*, plaintiff contends the remaining claims and the dismissed claims share the same factual issues pertaining to the effect of the

agreement, entitling plaintiff to immediate appellate review. We disagree. The two dismissed claims allege violations of the North Carolina Uniform Partnership Act, however, the parties never established a partnership, only a joint venture. Furthermore, plaintiff's allegations contend "[t]he [p]roperty was obtained with partnership funds and is therefore property of the partnership" thus, plaintiff seeks "to recover the [p]roperty back into the [p]artnership of [p]laintiff." This is a mischaracterization of the facts. The property was purchased after plaintiff terminated the agreement and it was not purchased with partnership funds. Our case law holds:

[a] joint venture is an association of persons with intent, by way of contract, express or implied to engage in and carry out a single business adventure for joint profit, for which purpose they combine their efforts, property, money, skill and knowledge, but *without creating a partnership in the legal or technical sense of the term.*

Rifenburg Constr., Inc. v. Brier Creek Assocs. Ltd. P'ship, 160 N.C. App. 626, 632, 586 S.E.2d 812, 817 (2003) (citation and internal quotation marks omitted).

Plaintiff's remaining claims involve allegations of breach of contract, tortious interference with a contract, fraud, piercing the corporate veil, and civil conspiracy. Even though the facts underlying the remaining claims overlap with the facts surrounding the joint venture, each claim is distinct. "The mere fact that claims arise from a single event, transaction, or occurrence does not, without more, necessitate a conclusion that inconsistent verdicts may occur unless all of the affected claims are

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considered in a single proceeding.” *Hamilton v. Mortg. Info. Servs., Inc.*, 212 N.C. App. 73, 80, 711 S.E.2d 185, 190 (2011) (citation omitted).

Before a substantial right is affected on the basis of inconsistent verdicts, a plaintiff must establish “that the same factual issues are present in both trials *and* that [plaintiff] will be prejudiced by the possibility that inconsistent verdicts may result.” *Hien Nguyen v. Taylor*, 200 N.C. App. 387, 391, 684 S.E.2d 470, 473-74 (2009) (citing *Moose v. Nissan of Statesville*, 115 N.C. App. 423, 426, 444 S.E.2d 694, 697 (1994)). Plaintiff did not meet this burden. Accordingly, plaintiff’s appeal is dismissed. *Bailey v. Gooding*, 301 N.C. 205, 208, 270 S.E.2d 431, 433 (1980) (“[I]f an appealing party has no right of appeal, an appellate court . . . should dismiss the appeal[.]”).

III. Conclusion

For the foregoing reasons, plaintiff’s appeal is dismissed as interlocutory.

DISMISSED.

Chief Judge STROUD and Judge GRIFFIN concur.

Report per Rule 30(e).