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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-1017

Filed: 16 February 2016

Wake County, No. 14 CVS 7795

THE BARNEY G. JOYNER FAMILY TRUST, a North Carolina trust, DAVID LEE JOYNER, individually and as co-trustee and co-beneficiary of the Barney G. Joyner Family Trust, PHYLLIS M. JOYNER, individually and as co-trustee and co-beneficiary of the Barney G. Joyner Family Trust, and PHYLLIS JOYNER CHAPPELL, individually and as co-trustee and co-beneficiary of the Barney G. Joyner Family Trust, Plaintiffs,

v.

CAROLYN JOYNER DRIGGERS, individually and as co-trustee and co-beneficiary of the Barney G. Joyner Family Trust, WILLIAM E. DRIGGERS, JR., APPLETREE DAYCARE, INC., and APPLETREE CHILD DEVELOPMENT CENTER, INC., Defendants.

and

CAROLYN JOYNER DRIGGERS, individually and as co-trustee and co-beneficiary of the Barney G. Joyner Family Trust, Third-Party Plaintiff,

v.

DAVID LEE JOYNER, individually and as trustee, co-trustee, and attorney-in-fact for the trustees of the Barney G. Joyner Family Trust, and as Executor of the Estate of Barney G. Joyner, and as attorney-in-fact for Phyllis M. Joyner, and RONALD DORRESTEIN, individually and in his capacity as attorney for the Barney G. Joyner Family Trust and the Estate of Barney G. Joyner, Third-Party Defendants.

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Appeal by defendants from orders entered 30 March 2015 and 5 June 2015 by Judge Paul G. Gessner in Wake County Superior Court. Heard in the Court of Appeals 26 January 2016.

*Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P., by Lauren H. Bradley, and Scott A. Miskimon, for plaintiff-appellees.*

*Patterson Dilthey, LLP, by Ronald C. Dilthey, for Third-Party defendant-appellee Ronald Dorrestein.*

*Bryant & Ivie, PLLC, by John Walter Bryant and Amber J. Ivie; and Emanuel & Dunn, by Stephen A. Dunn and S. Michael Dunn, for plaintiff-appellants.*

ZACHARY, Judge.

Carolyn Joyner Driggers, William E. Driggers, Jr., Appletree Daycare, Inc., and Appletree Child Development Center, Inc., (defendants) appeal from an order entered 5 June 2015, denying defendants' motion to dismiss the complaint filed by the Barney G. Joyner Family Trust, David Lee Joyner, Phyllis M. Joyner, and Phyllis Joyner Chappell (plaintiffs). We conclude that defendants' appeal should be dismissed as moot.

I. Factual and Procedural Background

A. Joyner I

In May 1989, Barney G. Joyner established the Barney G. Joyner Family Trust ("the Trust"), naming his wife, Phyllis Joyner; his son, David Joyner; and his daughters, Ms. Driggers and Phyllis Joyner Chappell, to serve as co-trustees and co-

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beneficiaries. When Barney Joyner died in 2006, the Trust had an indebtedness of more than \$25,000,000. On 24 August 2011, the trustees executed the Global Transfer Agreement, resolving certain financial issues involving the Trust.

On 30 November 2012, Ms. Driggers filed a lawsuit (“*Joyner I*”), individually and as co-trustee and co-beneficiary of the Trust, and on behalf of two other plaintiffs, the Trust and Ms. Driggers’ mother, Phyllis Joyner, against Ms. Driggers’ brother, David Joyner, and an attorney hired by the Trust, Ronald Dorrestein. The complaint asserted claims for breach of fiduciary duty, fraud, constructive fraud, civil conspiracy, and unfair or deceptive trade practices, and sought an accounting, compensatory and punitive damages, an injunction barring further mismanagement of Trust assets by defendants, and the imposition of a constructive trust on Trust assets that had been transferred to defendants. Thereafter, the Trust and Ms. Joyner filed dismissals with prejudice of the claims that had been asserted on their behalf, leaving Ms. Driggers as the only plaintiff in *Joyner I*.

The defendants filed motions to dismiss *Joyner I*, and on 10 January 2014, a hearing was conducted before the trial court. On 18 March 2014, Ms. Driggers filed a motion to amend her complaint in *Joyner I*. On 28 July 2014 and 4 August 2014, the trial court entered orders dismissing *Joyner I*. On 7 August 2014, Ms. Driggers filed a “Motion for Reconsideration,” which the trial court denied on 26 November 2014. Ms. Driggers appealed to this Court from the orders dismissing her complaint and denying her motion for reconsideration. On 22 September 2015, we dismissed

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Ms. Driggers' appeal in *Joyner I*. On 20 October 2015, Ms. Driggers filed a petition with our Supreme Court, seeking issuance of a writ of *certiorari*. On 29 January 2016, the Supreme Court denied plaintiffs' petition for *certiorari*.

B. *Joyner II*

On 12 June 2014, after the hearing on the motion by defendants to dismiss the complaint in *Joyner I*, but before the entry by the trial court of orders dismissing the complaint in *Joyner I*, plaintiffs filed their complaint in the instant case ("*Joyner II*"). In *Joyner II*, plaintiffs alleged that Ms. Driggers refused to terminate the trust as the parties had previously agreed, that Ms. Driggers had obtained financial benefits from the Global Transfer Agreement without complying with the agreement's terms, and that she had engaged in various improper financial transactions. *Joyner II* sought damages for fraudulent inducement, unfair and deceptive trade practices, breach of fiduciary duty, civil conspiracy, constructive fraud, and breach of contract. The lawsuit also sought removal of Ms. Driggers as a trustee, termination of the Trust and imposition of a constructive trust on assets that Ms. Driggers had wrongfully obtained.

On 8 August 2014, defendants filed an answer, motion to dismiss plaintiffs' complaint, and counterclaims against third-party defendants, Mr. Joyner and Mr. Dorrestein. The counterclaims were generally the same as the claims asserted by Ms. Driggers in *Joyner I*. On 20 March 2015, a hearing was conducted on defendants' motion to dismiss plaintiffs' complaint on the grounds that the complaint asserted

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claims that were compulsory counterclaims in *Joyner I*, and the third-party defendants' motion to dismiss defendants' counterclaims. On 30 March 2015, the trial court entered an order dismissing defendants' counterclaims in *Joyner II*. On 5 June 2015, the trial court entered an order denying defendants' motion to dismiss plaintiffs' complaint.

Defendants appealed to this Court on 16 June 2015 from the orders entered on 30 March 2015 and 5 June 2015 in *Joyner II*. On 6 November 2015, plaintiffs filed a motion in this Court to dismiss defendants' appeal from both orders. On 13 January 2016, we granted plaintiffs' motion to dismiss defendants' appeal from the order entered 30 March 2015 dismissing defendants' counterclaims, and denied plaintiffs' motion to dismiss defendants' appeal from the order entered 5 June 2015 denying defendants' motion to dismiss plaintiffs' complaint. As a result, the only issue remaining is defendants' appeal from the trial court's order denying defendants' motion to dismiss plaintiffs' claims as compulsory counterclaims in the *Joyner I* lawsuit.

II. Compulsory Counterclaims under N.C. Gen. Stat. § 1A-1 Rule 13

Defendants appeal from an order denying their motion under N.C. Gen. Stat. § 1A-1, Rule 13 to dismiss the claims brought by plaintiffs in *Joyner II*, on the grounds that plaintiffs' claims should be pursued as compulsory counterclaims in *Joyner I*. N.C. Gen. Stat. § 1A-1, Rule 13(a) (2013) provides in relevant part that:

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A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction.

“The purpose of Rule 13(a), making certain counterclaims compulsory, is to enable one court to resolve all related claims in one action, thereby avoiding a wasteful multiplicity of litigation[.]” *Gardner v. Gardner*, 294 N.C. 172, 176-77, 240 S.E. 2d 399, 403 (1978) (quotation omitted). Where two complaints exist simultaneously, “to give effect to the purpose of Rule 13(a) once its applicability to a second independent action has been determined, this second action must on motion be either (1) dismissed with leave to file it in the former case or (2) stayed until the former case has been finally determined.” *Gardner* at 177, 240 S.E.2d at 403. Thus, we might ordinarily dismiss the claims in *Joyner II* with leave to file them as counterclaims in *Joyner I*, or in the alternative, stay *Joyner II* pending the outcome of *Joyner I*. In this case, however, *Joyner I* has been dismissed.

The procedural posture of the present case is similar to that of *Coca-Cola Bottling Co. Consol. v. Durham Coca-Cola Bottling Co.*, 141 N.C. App. 569, 541 S.E.2d 157 (2000), *disc. review denied*, 353 N.C. 370, 547 S.E.2d 433 (2001). In *Coca-Cola*, two lawsuits involving overlapping issues and parties were pending in different counties. On appeal, we determined that one of these cases (the “Consolidated” case)

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should be dismissed and that the issues should be tried in the other case (the “Durham” case). We then addressed the issue of compulsory counterclaims:

On appeal in the Durham suit, Consolidated assigns error to the trial court’s 7 July 1999 order denying defendants’ motion to dismiss or stay pursuant to N.C.R. Civ. P. 13(a) on the grounds that Durham’s claims are compulsory counterclaims in the prior pending Mecklenburg lawsuit. Because we have determined that the Mecklenburg suit should be dismissed pursuant to G.S. § 1-257, that suit is no longer pending and Consolidated’s motion to dismiss or stay in the Durham suit is moot.

*Coca-Cola*, 141 N.C. App. at 581, 541 S.E.2d at 165 (emphasis added). We conclude that the fact that the Consolidated lawsuit was dismissed by this Court, while *Joyner I* was dismissed by the trial court, has no substantive effect on our analysis. We hold that, as in *Coca-Cola*, because *Joyner I* has been dismissed, the issue of whether the claims raised in *Joyner II* should properly have been asserted as counterclaims in *Joyner I* is moot. Accordingly, defendants’ appeal must be

DISMISSED AS MOOT.

Judges BRYANT and DILLON concur.

Report per Rule 30(e).