IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-473

No. COA21-717

Filed 5 July 2022

Wake County, No. 18 CVS 3241

SHEARON FARMS TOWNHOME OWNERS ASSOCIATION II, INC., Plaintiff,

v.

SHEARON FARMS DEVELOPMENT, LLC; DAN RYAN BUILDERS-NORTH CAROLINA, LLC; ABBINGTON HEIGHTS, LLC; JELD-WEN, INC.; AND JELD-WEN HOLDING, INC., Defendants.

DAN RYAN BUILDERS-NORTH CAROLINA, LLC, Third-Party Plaintiff,

v.

JP&M ENTERPRISE, INC.; JP&M ENTERPRISE, INC. D/B/A ACE VINYL SIDING; ALPHA OMEGA CONSTRUCTION GROUP OF RALEIGH INC.; ALPHA OMEGA CONSTRUCTION GROUP OF RALEIGH INC. D/B/A ALPHA OMEGA CONST. GROUP OF RALEIGH; BMC EAST, LLC; BMC EAST, LLC D/B/A BMC; BMC EAST, LLC F/K/A STOCK BUILDING SUPPLY, LLC D/B/A STOCK BUILDING SUPPLY; BRINLEY'S GRADING SERVICE, INC.; BRINLEY'S GRADING SERVICE, INC. D/B/A BRINLEY'S GRADING SERVICE; GMA SUPPLY INC.; GMA SUPPLY INC. F/K/A GMA SUPPLY LLC D/B/A GMA SUPPLY; LOCKLEAR ROOFING INC.; LOCKLEAR INC.; LOCKLEAR ROOFING INC. D/B/A LOCKLEAR ROOFING; LOCKLEAR INC. D/B/A LOCKLEAR ROOFING; TAYLOR'S LANDSCAPING, INC.; TAYLOR'S LANDSCAPING, INC. D/B/A TAYLOR'S LANDSCAPING INC., Third-Party Defendants,

LOCKLEAR ROOFING INC.; LOCKLEAR INC.; LOCKLEAR ROOFING INC. D/B/A LOCKLEAR ROOFING; LOCKLEAR INC. D/B/A LOCKLEAR ROOFING, Fourth-Party Plaintiff,

v.

GONZALEZ ROOFING NC, LLC; GABRIEL'S ROOFING, INC.; CASTRO ROOFING, INC.; CONTRERAS ROOFING, LLC; CG CONSTRUCTION, LLC, Fourth-Party Defendants.

Appeal by plaintiff from order entered 18 August 2021 by Judge Mark A. Sternlicht in Wake County Superior Court. Heard in the Court of Appeals 8 June 2022.

Jordan Price Wall Gray Jones & Carlton PLLC, by Brian S. Edlin and H. Weldon Jones, III for plaintiff-appellant Shearon Farms Townhome Owners Association II, Inc.

The Law Office of John T. Benjamin, Jr., PA, by John T. Benjamin, Jr. and Jake R. Garris for defendant-appellee Dan Ryan Builders- North Carolina, LLC.

TYSON, Judge.

¶ 1 Shearon Farms Townhome Owners Association II, Inc. ("Association") appeals from order entered 18 August 2021 granting Dan Ryan Builders-North Carolina, LLC's ("Dan Ryan") Rule 12(b)(1) and 12(b)(6) motions to dismiss. We affirm.

I. Background

¶ 2 The Association is a non-profit homeowners' association for the property owners in Shearon Farms Townhomes development. The primary purpose of the Association is to perform the duties and obligations set forth in the Articles of

Incorporation, Bylaws, and Declarations of Covenants, Conditions, Restrictions for the development, management, and maintenance of Shearon Farms Townhomes, which are filed in Book 14219, page 2379, Wake County Registry.

¶ 3 Dan Ryan is a limited liability company organized and existing under the laws of North Carolina. Dan Ryan was the initial owner and builder of the Shearon Farms Townhomes development.

¶ 4 In 2018, individual unit owners of the Association noticed problems with the Shearon Farms Townhomes. These issues included: severely distorted, warped, and "melted" siding on townhomes; roofs missing shingles, loose shingles, nail pops lifting shingles, and shingles "flying off" of roofs during routine wind events; various deficiencies with respect to the landscaping; and, significant drainage issues, erosion, and pooling of water upon common areas.

¶ 5 In May 2018, the Association filed this action against various parties involved in the construction of the Shearon Farms Townhomes. JELD-WEN, INC ("JELD-WEN"), which is not a party to this appeal, and the manufacturer of the windows installed in the units within Shearon Farms Townhomes, moved to dismiss the claims asserted against it for lack of standing. Following a hearing, the trial court granted JELD-WEN's motion to dismiss. The Association appealed to this Court, which affirmed the trial court's order by opinion dated 4 August 2020. *See Shearon Farms Townhome Owners Ass'n II, Inc. v. Shearon Farms Dev., LLC*, 272 N.C. App. 643, 847

S.E2d 229 (2020).

¶ 6 Dan Ryan filed a motion to dismiss and motion for judgment on the pleadings on 19 July 2021. Following a hearing, the trial court allowed Dan Ryan's Rule 12(b)(1) and Rule 12(b)(6) motions for lack of standing by order on 18 August 2021. The Association appeals.

II. Jurisdiction

¶ 7 An "appeal lies of right directly to the Court of Appeals . . . from any final judgment of a superior court." N.C. Gen. Stat. § 7A-27(b)(1) (2021). "A final judgment is one which disposes of the cause[s of action] as to all the parties, leaving nothing to be judicially determined between them in the trial court." *Veazey v. Durham*, 231 N.C. 357, 361-62, 57 S.E.2d 377, 381 (1950) (citation omitted). "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." *Id.* at 362, 57 S.E.2d at 381.

¶ 8 "Generally, 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). "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 Our Supreme Court has held there are two circumstances where a party is permitted to appeal an interlocutory order:

> First, a party is permitted to appeal from an interlocutory order when the trial court enters a final judgment as to one or more but fewer than all of the claims or parties and the trial court certifies in the judgment that there is no just reason to delay the appeal. Second, a party is permitted to appeal from an interlocutory order when the order deprives the appellant of a substantial right which would be jeopardized absent a review prior to a final determination on the merits.

Jeffreys v. Raleigh Oaks Joint Venture, 115 N.C. App. 377, 379, 444 S.E.2d 252, 253 (1994) (internal citations and quotation marks omitted).

¶ 10 This Court has held: "immediate appeal of interlocutory orders and judgments is available . . . when the trial court certifies, pursuant to N.C.G.S. § 1A-1, Rule 54(b), that there is no just reason for delay of the appeal[.]" *Id.* Here, the order allowing Dan Ryan's motion to dismiss, is a "final judgment as to one or more but fewer than all of the claims or parties." *Id.* The trial court certified there was "no just reason for delay of" appeal to this Court. *Id.* **(R p 190)**

III. Issues

¶ 11 The Association argues the trial court erred by granting Dan Ryan's motion to dismiss.

IV. Motion to Dismiss

¶ 12 Standing is a question of subject matter jurisdiction which implicates Rule 12(b)(1). *See Neuse River Found., Inc. v. Smithfield Foods, Inc.*, 155 N.C. App. 110, 113-114, 574 S.E.2d 48, 51 (2002). Before this Court, the Association and Dan Ryan refer to the standard of review for a Rule 12(b)(6) motion to dismiss.

¶ 13 A Rule 12 motion to dismiss "is properly treated according to its substance rather than its label" and this Court will treat a Rule 12(b)(6) motion asserting jurisdictional issues as one brought under Rule 12(b)(1). *Williams v. New Hanover Cty Bd. of Educ.*, 104 N.C. App. 425, 428, 409 S.E.2d 753, 755 (1991) (internal citations and quotation marks omitted).

A. Standard of Review

¶ 14 "Whether a trial court has subject-matter jurisdiction is a question of law, reviewed de novo on appeal." *McKoy v. McKoy*, 202 N.C. App. 509, 511, 689 S.E.2d 590, 592 (2010).

B. Analysis

¶ 15 The Association argues it is contractually obligated to perform repair and maintenance for the alleged damages to the individual owners' properties that was not caused by normal weathering or use, but is instead due to alleged construction defects. All the Associations allegations are related to alleged exterior and construction defects within and across the Shearon Farms Townhomes.

¶ 16 In the prior appeal, this Court held the Association lacked standing to assert

the claims for alleged casualty damages to the property. *Shearon Farms Townhome Owners Ass'n II*, 272 N.C. App. at 654, 847 S.E.2d at 237 ("[T]his action seeks monetary recovery for damage to the exterior surfaces of townhomes owned by individual members of the association. Under settled standing precedent, those claims for individual money damages cannot be pursued by a homeowners' association under theories of associational standing.").

¶ 17 Both the Supreme Court of North Carolina and this Court have long recognized that "[w]here a panel of the Court of Appeals has decided the same issue, albeit in a different case, a subsequent panel of the same court is bound by that precedent, unless it has been overturned by a higher court." *In re Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989). We are without authority to overturn the ruling of a prior panel of this Court on the same issue, and particularly on identical claims against another party arising in the same litigation. *See id.* The Association's argument is overruled.

V. Conclusion

¶ 18 The Association lacks standing to pursue the claims against Dan Ryan. The trial court's order dismissing those claims for lack of standing is affirmed. *It is so ordered.*

AFFIRMED.

Judges DILLON and JACKSON concur.

Report per Rule 30(e).