NO. COA01-1073

NORTH CAROLINA COURT OF APPEALS

Filed: 7 May 2002

STEPHEN MALDARI,
Plaintiff-Appellee

v. Alexander County
No. 01CVD199

JOHNNY HOLLAR,
Defendant-Appellant

Appeal by defendant from order entered 10 August 2001 by Judge Wayne Michael in Alexander County District Court. Heard in the Court of Appeals 22 April 2002.

Robert E. Campbell for plaintiff-appellee.

Edward Jennings for defendant-appellant.

MARTIN, Judge.

Plaintiff initiated this civil action on or about 19 April 2001 when he filed a document entitled "Complaint and Attachment Proceeding Motion for Temporary Restraining Order," alleging that defendant had breached a commercial lease executed by the parties on or about 29 September 1995. As a result of the alleged breach, plaintiff sought an order of attachment for certain items of inventory located in the leased premises, a temporary restraining order, and damages in the amount of $14,807.12 plus attorneys fees, costs, and interest. The trial court issued an *ex parte* order of

attachment, along with a summons to garnishee and notice of levy on that same day. In accordance with plaintiff's request in the complaint, the Sheriff was not required by the trial court to remove the property from the leased premises. Instead, the order of attachment "restrained [defendant] from removing [said] property from the premises." On 8 May 2001, defendant answered, moved to dismiss plaintiff's complaint, and asserted four counterclaims. In a separate motion filed the same day, defendant moved to dissolve the order of attachment based upon a defect on the face of the record. The trial court subsequently found and concluded that there were "no defects appearing upon the face of the record concerning the entry of the order of attachment, summons to garnishee or notice of levy." Defendant appeals.

While neither party raises the issue, we note that the district court's order does not adjudicate all of the claims or rights and liabilities of the parties to this action, and is therefore, interlocutory. *See Abe v. Westview Capital*, 130 N.C. App. 332, 334, 502 S.E.2d 879, 881 (1998) (raising *sua sponte* the issue of the interlocutory nature of an appeal). Generally, an interlocutory order is not immediately appealable. *Id.* A party, however, may be entitled to immediate appeal pursuant to G.S. § § 1-277 and 7A-27(d), or N.C.R. Civ. P. 54(b). *Id.*

This matter was not certified by the trial court pursuant to Rule 54(b) as being immediately appealable; therefore, the only basis upon which this appeal may rest is that the order from which defendant appeals affects a substantial right. *See* N.C. Gen. Stat.

§§ 1-277(a) and 7A-27(d)(1) (1999). Pursuant to sections 1-277(a) and 7A-27(d)(1), an otherwise interlocutory order may be appealed upon a showing that: (1) the order affects a substantial right; and (2) the deprivation of that right will potentially work injury to the appellant if not corrected before appeal of the final judgment. *Goldston v. American Motors Corp.*, 326 N.C. 723, 392 S.E.2d 735 (1990). In *Jeffreys v. Raleigh Oaks Joint Venture*, this Court stated, "[i]t is not the duty of this Court to construct arguments for or find support for appellant's right to appeal from an interlocutory order; instead, the appellant has the burden of showing this Court that the order deprives the appellant of a substantial right which would be jeopardized absent a review prior to a final determination on the merits." 115 N.C. App. 377, 380, 444 S.E.2d 252, 254 (1994). Failure to make such a showing subjects an appeal to dismissal. *Id.* Defendant-appellant presents no argument that any substantial right will be irreparably lost should this appeal not be immediately entertained by the Court, and we discern none. Accordingly, this appeal is dismissed.

Dismissed.

Judges HUNTER and BRYANT concur.

Report per Rule 30(e).