

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

NO. COA05-1568

NORTH CAROLINA COURT OF APPEALS

Filed: 17 October 2006

EDWARD RODGERS,  
RODGERS INVFOR LTD.,  
Plaintiffs,

v.

Mecklenburg County  
No. 04CVS15629

LEO INGHAM, VICTOR GAMBLE,  
PAUL LONGHURST, TRINITY COURT  
MANAGEMENT, LTD.,  
Defendants.

Appeal by plaintiffs from an order entered 8 July 2005 by Judge Albert Diaz in Mecklenburg County Superior Court. Cross-appeal by defendants from orders entered 11 March 2005 and 31 October 2005 by Judge Albert Diaz in Mecklenburg County Superior Court. Heard in the Court of Appeals 21 August 2006.

*Vann Law Firm, P.A., by Christopher M. Vann, for plaintiff appellants, cross-appellees.*

*Smith Moore, LLP, by Alan W. Duncan, Manning A. Connors, and Heather H. Wright, for defendant-appellees, cross-appellants.*

McCULLOUGH, Judge.

Plaintiffs appeal from an order granting defendant Victor Gamble ("Gamble") and defendant Paul Longhurst's ("Longhurst") motion to dismiss for lack of personal jurisdiction. Gamble and Longhurst cross-appeal from an order deeming service of the

proposed record timely and from an order entered denying their motion to dismiss for insufficient service of process. We affirm.

#### FACTS

Plaintiff Edward Rodgers ("Rodgers") was a resident of South Carolina. Defendants Leo Ingham ("Ingham") and Gamble were directors of defendant Trinity Court Management, Ltd. ("Trinity Court"), a corporation chartered in the Isle of Guernsey. Gamble was a resident of the Isle of Guernsey. Longhurst was a resident of the Isle of Guernsey and an employee of Trinity Court.

Phillip Hegg ("Hegg"), an attorney and resident of Charlotte, North Carolina, was retained by Trinity Court as its representative in North Carolina. Rodgers claimed Hegg contacted him about an investment opportunity with Trinity Court and that defendants guaranteed the safety of their principal in the investment. Subsequently, Rodgers transferred \$1.4 million to Trinity Court for investment purposes. Rodgers alleged, thereafter, that his investment principal suffered a total loss.

On 30 August 2004, Rodgers and Rodgers Invfor Ltd. filed suit against Ingham, Gamble, Longhurst, and Trinity Court seeking damages for their losses.<sup>1</sup> After the suit was filed, Gamble and Longhurst filed a motion to dismiss for lack of personal

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<sup>1</sup> A companion case was filed involving different plaintiffs and the same defendants, *Robbins v. Ingham*, (No. COA05-1567), \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (filed 17 October 2006). The legal issues and material facts of that case and the instant case are the same.

jurisdiction and improper service. Affidavits were submitted and a hearing occurred. On 11 March 2005, the trial court denied the individual defendants' motion to dismiss for insufficient service of process. On 8 July 2005, the trial court granted Gamble and Longhurst's motion to dismiss for lack of personal jurisdiction, but denied Ingham's.

On 5 August 2005, Ingham filed a notice of appeal.<sup>2</sup> On 8 August 2005, plaintiffs filed a notice of appeal from the order granting Gamble and Longhurst's motion to dismiss for lack of personal jurisdiction. On 18 August 2005, Gamble and Longhurst filed a cross notice of appeal from the earlier order denying their motion to dismiss for insufficiency of service of process.

On 26 August 2005, Ingham filed a motion for an extension of time up to and including 10 October 2005 to serve his proposed record on appeal because he needed additional time in which to prepare the record because he claimed he had engaged in ongoing settlement discussions. Ingham's motion stated that counsel for all parties consented to it and an order granting the motion was entered 26 August 2005. Subsequent to the trial court's order entered 26 August 2005, plaintiffs' counsel stated in a motion to deem service timely it became apparent that Ingham would not continue his appeal as a result of a tentative settlement.

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<sup>2</sup> The actual notice of appeal was not included in the record on appeal, but was referred to in a consent motion for extension of time to file the record on appeal filed 26 August 2005 by Ingham. It was also referenced in defendant cross-appellants' brief and defendants note it is uncontested that Ingham filed his notice of appeal on 5 August 2005.

Therefore, plaintiffs' counsel prepared the proposed record on appeal and served it on defendants. On 17 October 2005, plaintiffs filed a motion to deem the service of the proposed record timely. On 18 October 2005, Gamble and Longhurst filed a motion to dismiss plaintiffs' appeal pursuant to Rule 11 of the Rules of Appellate Procedure asserting that plaintiffs' proposed record on appeal was not served timely. On 31 October 2005, the trial court entered an order finding plaintiff's service of the proposed record timely, and denying Gamble and Longhurst's motion to dismiss. Finally, on 7 November 2005, Gamble and Longhurst filed a further cross notice of appeal from an order filed 31 October 2005 which denied their motion to dismiss plaintiffs' appeal.

A companion case involving different plaintiffs but the same defendants was filed in Mecklenburg County. An appeal and cross-appeal were filed therefrom in which the legal issues and material facts are identical to the instant case. Therefore, the decision of *Robbins v. Ingham*, (No. COA05-1567), \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (filed 17 October 2006), is controlling in the instant case, and we therefore affirm.

Affirmed.

Chief Judge MARTIN and Judge HUNTER concur.

Report per Rule 30(e).