

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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. COA06-660

NORTH CAROLINA COURT OF APPEALS

Filed: 20 March 2007

PERSONNEL PROPERTIES, LLC,

Plaintiff,

v.

Buncombe County
No. 05 CVS 570

COMBINED THERAPY SPECIALTIES
OF ASHEVILLE, INC., DANIEL
P. PAROBK, AND HOWARD L.
DORTCH, III,

Defendants.

Appeal by defendants from an order entered 6 February 2006 by Judge Dennis J. Winner in Buncombe County Superior Court. Heard in the Court of Appeals 26 February 2007.

The Sutton Firm, P.A., by April Burt Sutton, for plaintiff-appellee.

David R. Payne, P.A., by David R. Payne and Peter U. Kanipe, for defendants-appellants.

ELMORE, Judge.

This cause of action arises out of two commercial lease agreements entered into by and between Personnel Properties, LLC (plaintiff) and Combined Therapy Specialties of Asheville, Inc. (Combined Therapy), Daniel P. Parobek (Parobek), and Howard L. Dortch, III (Dortch) (collectively, defendants). On 9 February

2005, plaintiff filed a lawsuit against defendants alleging that defendants breached these lease agreements.

On 26 January 2006, plaintiff filed a motion for partial summary judgment on the issue of liability and submitted affidavits in support of the motion. Defendants thereafter filed their own motion for summary judgment on the issue of liability and likewise submitted affidavits in support of their motion. By order entered 6 February 2006, the trial court granted defendants' motion for summary judgment as to the liability of Parobek and Dortch on the second lease agreement. In the same order the trial court granted plaintiff's motion for summary judgment as to the liability of all defendants on the first lease agreement and as to the liability of Combined Therapy on the second lease agreement.

On appeal, defendants contend that the trial court erred by denying their motion for summary judgment and by granting partial summary judgment in favor of plaintiff. Plaintiff contends the appeal should be dismissed as interlocutory. We agree with plaintiff.

"A grant of partial summary judgment, because it does not completely dispose of the case, is an interlocutory order from which there is ordinarily no right of appeal." *Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 379, 444 S.E.2d 252, 253 (1994) (quoting *Liggett Group, Inc. v. Sunas*, 113 N.C. App. 19, 23, 437 S.E.2d 674, 677 (1993)). Further, the trial court's denial of a motion for summary judgment is an interlocutory order from which an appeal generally cannot immediately be taken. *Lovelace v. City*

of Shelby, 153 N.C. App. 378, 381, 570 S.E.2d 136, 138, *disc. review denied*, 356 N.C. 437, 572 S.E.2d 785 (2002).

There are, however, two means by which an interlocutory order may be immediately appealed: (1) the trial court certifies there is no just reason to delay the appeal pursuant to N.C.R. Civ. P. 54(b) (2006); and (2) the order "affects a substantial right of the appellant that would be lost without immediate review." *McIntyre v. McIntyre*, ___ N.C. App. ___, ___, 623 S.E.2d 828, 831 (2006) (citation omitted). Here, the trial court did not certify its order pursuant to Rule 54(b) of the North Carolina Rules of Civil Procedure. As such, this interlocutory order is reviewable only if it affects a substantial right.

The substantial right test "is satisfied when overlapping issues of fact between decided claims and those remaining create the possibility of inconsistent verdicts from separate trials." *CBP Resources, Inc. v. Mountaire Farms of N.C., Inc.*, 134 N.C. App. 169, 172, 517 S.E.2d 151, 154 (1999). Where, as here, an order resolves the issue of liability and leaves only the issue of damages undetermined, this Court has held there is no danger of inconsistent verdicts, and no substantial right is affected. *Id.* Accordingly, we dismiss defendants' appeal as interlocutory.

Appeal dismissed.

Judges WYNN and GEER concur.

Report per Rule 30(e).