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NO. COA12-441  
NORTH CAROLINA COURT OF APPEALS

Filed: 16 October 2012

VC3, INC.,  
Plaintiff

v.

Mecklenburg County  
No. 11 CVS 1495

VANGUARD WIRELESS TECHNOLOGIES,  
LLC and MATTHEW RYAN KLANN,  
Defendants

Appeal by defendants from order entered 12 December 2011 by Judge Hugh B. Lewis in Mecklenburg County Superior Court. Heard in the Court of Appeals 26 September 2012.

*Ferguson, Scarbrough, Hayes, Hawkins & DeMay, P.A., by James R. DeMay, for plaintiff-appellee.*

*Tuggle Duggins & Meschan, P.A., by Martha R. Sacrinty and J. Nathan Duggins III, for defendant-appellants.*

CALABRIA, Judge.

Vanguard Wireless Technologies, LLC ("Vanguard") and Matthew Ryan Klann ("Klann") (collectively "defendants") appeal from an order granting VC3, Inc.'s ("plaintiff") motion for sanctions. We dismiss the appeal as interlocutory.

On 27 January 2011, plaintiff filed a complaint in Mecklenburg County Superior Court against Vanguard and Klann, Vanguard's sole member and manager, seeking damages for, *inter alia*, breach of contract against Vanguard, piercing the corporate veil against Klann, fraud against Klann, and unfair and deceptive trade practices. Defendants filed an answer and counterclaims, alleging three breach of contract claims, an interference with contract claim, defamation *per se*, interference with a prospective economic advantage, and unfair and deceptive acts and practices. Defendants also filed a motion to dismiss all of plaintiff's claims except the claims for breach of contract. On 1 November 2011 the trial court granted defendants' motion to dismiss<sup>1</sup> all of plaintiff's remaining claims with the exception of the claim for piercing the corporate veil.

During discovery, plaintiff requested bank statements and copies of checks. When defendants failed to produce the requested items, plaintiff filed a motion to compel production of documents. After a hearing, the trial court ordered

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<sup>1</sup> Plaintiff did not file a motion to dismiss any of defendants' counterclaims. According to defendants' brief, with the exception of the defamation claim, all of defendants' counterclaims remain.

defendants to produce the documents. Defendants objected to the order and ultimately only produced the bank statements.

Since defendants refused to produce copies of the checks, plaintiff filed a motion for sanctions and requested, *inter alia*, striking Vanguard's pleadings or dismissing some or all of Vanguard's defenses and counterclaims. The trial court granted plaintiff's request for sanctions. In addition, the trial court's order "judicially established" plaintiff's claim for piercing the corporate veil and prohibited defendants from offering evidence in opposition of this claim. Defendants appeal.

Defendants contend that the trial court abused its discretion by imposing Rule 37 sanctions for their failure to comply with the order compelling production of the check copies. However, defendants appeal from an interlocutory order, and have not included a trial court's certification pursuant to N.C. Gen. Stat. § 1A-1, Rule 54(b) or an explanation regarding how the trial court's order deprives them of a substantial right.

Parties have an appeal of right to this Court "[f]rom any final judgment of a superior court[.]" N.C. Gen. Stat. § 7A-27(b) (2011).

A final judgment is one which disposes of the cause as to all the parties, leaving

nothing to be judicially determined between them in the trial court. 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.

*Veazey v. City of Durham*, 231 N.C. 357, 361-62, 57 S.E.2d 377, 381 (1950) (citations omitted).

[I]mmediate appeal of interlocutory orders and judgments is available in at least two instances. First, immediate review is available when the trial court enters a final judgment as to one or more, but fewer than all, claims or parties and certifies there is no just reason for delay. . . . Second, immediate appeal is available from an interlocutory order or judgment which affects a substantial right.

*Sharpe v. Worland*, 351 N.C. 159, 161-62, 522 S.E.2d 577, 579 (1999) (quotation marks and citations omitted). Absent a trial court's Rule 54(b) certification, the appellant is required to include a "statement of the grounds for appellate review" in its brief to this Court that contains "sufficient facts and argument to support appellate review on the ground that the challenged order affects a substantial right." N.C.R. App. P. 28(b)(4) (2012); *Johnson v. Lucas*, 168 N.C. App. 515, 519, 608 S.E.2d 336, 338, *aff'd per curiam*, 360 N.C. 53, 619 S.E.2d 502 (2005) (appeal dismissed for appellant's failure to comply with Rule 28(b)(4)).

In the instant case, the trial court's order granting plaintiff's motion for sanctions is interlocutory as "it does not dispose of the entire case." *Currin & Currin Constr., Inc. v. Lingerfelt*, 158 N.C. App. 711, 713, 582 S.E.2d 321, 323 (2003). Plaintiff's claims for breach of contract and piercing the corporate veil as well as several of defendants' counterclaims remain unresolved. Therefore, we must determine if the interlocutory order is immediately appealable.

An interlocutory order is immediately appealable when the trial court certifies that there was no just reason for delay according to Rule 54(b). When there is no certification by the trial court, defendants must prove that "the challenged order affects a substantial right." N.C.R. App. P. 28(b)(4) (2012). Although defendants' brief includes a statement of the grounds for appellate review, the brief simply recites that "the Order of the Superior Court affects a substantial right" and cites N.C. Gen. Stat. § 7A-27(d). However, merely claiming that the trial court's order affects a substantial right is insufficient to meet the burden of showing a substantial right. *See Hoke Cnty. Bd. of Educ. v. State*, 198 N.C. App. 274, 277-78, 679 S.E.2d 512, 516 (2009) ("The appellants must present more than a

bare assertion that the order affects a substantial right; they must demonstrate why the order affects a substantial right.").

Since defendants have failed to demonstrate how the trial court's order deprives them of a substantial right, we dismiss the appeal as interlocutory. *See Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 380, 444 S.E.2d 252, 254 (1994) (It is not this Court's duty "to construct arguments for or find support for appellant's right to appeal from an interlocutory order" rather, "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.").

Dismissed.

Judges ELMORE and STEPHENS concur.

Report per Rule 30(e).