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NO. COA14-466
NORTH CAROLINA COURT OF APPEALS

Filed: 4 November 2014

PATRICK J. HENDERSON, CO-TRUSTEE
of the WALTON BURTON JAMES, SR.
TESTAMENTARY TRUST (AS AMENDED),
Plaintiff,

v.

GARCIA MOTORRAD, LLC, d/b/a DUCATI
RALEIGH; and NEXT LEVEL CUSTOMS,
LLC,
Defendants,

Wake County
No. 13 CVS 5714

v.

GARCIA MOTORRAD, LLC, d/b/a DUCATI
RALEIGH,
Third-Party Plaintiff,

v.

MUSE M. JAMES and WALTON JAMES,
JR.,
Third-Party Defendants.

Appeal by plaintiff from an order entered 8 January 2014 by
Judge Shannon R. Joseph in Superior Court, Wake County. Heard
in the Court of Appeals 25 September 2014.

*Boxley, Bolton, Garber & Haywood, L.L.P. by Ronald H.
Garber and Hemphill, Gelder, Jenkins & Monroe, P.C. by John
R. Hemphill, for plaintiff-appellant.*

Nicholls & Crampton, P.A. by Adam M. Gottsegen, for defendant-appellee Garcia Motorrad, LLC, d/b/a Ducati Raleigh.

Smith Debnam Narron Drake Saintsing & Myers, LLP by Bettie Kelley Sousa, for defendant-appellee Next Level Customs, LLC.

STROUD, Judge.

Patrick J. Henderson ("plaintiff"), co-trustee of the Walton Burton James, Sr. Testamentary Trust ("trust"), appeals from an order dismissing his claims against Garcia Motorrad, LLC, d/b/a Ducati Raleigh and Next Level Customs, LLC ("defendants"). Because the order from which plaintiff appeals is interlocutory and he has failed to argue that he is entitled to an interlocutory appeal based upon impairment of a substantial right, we dismiss his appeal.

I. Background

On or about 1 January 2011, Muse M. James leased a parcel of Raleigh real property to Next Level. On or about 23 July 2012, James leased another parcel of Raleigh real property to Garcia Motorrad. Since 22 February 2010, plaintiff and James have contested the ownership of these two parcels in a separate litigation. See *James v. Schoonderwoerd*, ___ N.C. App. ___, 750

S.E.2d 920 (unpublished), *disc. rev. denied*, ___ N.C. ___, 752 S.E.2d 467 (2013).

On 19 April 2013, plaintiff sued defendants for trespass, quantum valebant, quantum meruit, breach of implied contract, and unpaid rent. Plaintiff alleged that the trust owns at least a one-half undivided interest in the parcels.

On or about 7 June 2013, Garcia Motorrad filed a third-party complaint against James and her son, Walton James, Jr., ("third-party defendants") for fraud, unfair and deceptive trade practices, unjust enrichment, quantum meruit, and breach of contract. On 12 June 2013, Garcia Mottorrad moved to dismiss plaintiff's complaint. The trial court entered a preliminary injunction ordering Garcia Motorrad to pay half of the monthly rent under its lease agreement to the Clerk of the Superior Court of Wake County. On 24 June 2013, Next Level also moved to dismiss plaintiff's complaint. Next Level and third-party defendants agreed to a preliminary injunction ordering Next Level to pay half of the monthly rent under its lease agreement to the Clerk of the Superior Court of Wake County.

On 2 October 2013, the trial court held a hearing on defendants' motion to dismiss. On 8 January 2014, the trial

court granted defendants' motion. On 5 February 2014, plaintiff filed a notice of appeal.

II. Jurisdiction

Next Level contends that we do not have jurisdiction, because the trial court's order dismissing plaintiff's claims was interlocutory.

Generally, there is no right of immediate appeal from interlocutory orders and judgments. 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. On the other hand, 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.

Sarno v. Sarno, ___ N.C. App. ___, ___, 762 S.E.2d 371, 372-73 (2014). "The reason for this rule is to prevent fragmentary, premature, and unnecessary appeals by permitting the trial court to bring the case to final judgment before it is presented to the appellate courts." *Id.* at ___, 762 S.E.2d at 373. Despite this general rule, we may review interlocutory orders and judgments 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 pursuant to [North Carolina

Rule of Civil Procedure 54(b)]. Second, immediate appeal is available from an interlocutory order or judgment which affects a substantial right.

Peters v. Peters, ___ N.C. App. ___, ___, 754 S.E.2d 437, 439 (2014). When an appeal is interlocutory and not certified for appellate review pursuant to North Carolina Rule of Civil Procedure 54(b), the appellant must include in the statement of grounds for appellate review sufficient facts and argument to support appellate review on the ground that the challenged order affects a substantial right. *Id.* at ___, 754 S.E.2d at 440. If the interlocutory order is not immediately appealable, we dismiss the appeal for lack of jurisdiction. See *Sarno*, ___ N.C. App. at ___, 762 S.E.2d at 373-74; *Peters*, ___ N.C. App. at ___, 754 S.E.2d at 442.

In its order granting defendants' motion to dismiss, the trial court stated that "the claims raised in the Third-Party Complaint are not affected by this order and remain pending." Because the trial court did not "dispose[] of the cause as to all the parties," the trial court's order was interlocutory. See *Sarno*, ___ N.C. App. at ___, 762 S.E.2d at 373. The trial court did not certify this case for immediate appeal pursuant to North Carolina Rule of Civil Procedure 54(b). See N.C. Gen. Stat. § 1A-1, Rule 54(b) (2013). Plaintiff has not acknowledged that the

order is interlocutory and has not made any argument as to any substantial interest that would be impaired by delay in the appeal. Accordingly, we hold that we lack jurisdiction to review this case and thus dismiss plaintiff's appeal. See *Sarno*, ___ N.C. App. at ___, 762 S.E.2d at 373-74; *Peters*, ___ N.C. App. at ___, 754 S.E.2d at 442.

III. Conclusion

For the foregoing reasons, we must dismiss plaintiff's appeal as interlocutory.

DISMISSED.

Chief Judge MCGEE and Judge GEER concur.

Report per 30(e).