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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA14-1212

Filed: 18 August 2015

Catawba County, No. 12 CVS 47

CARTER NEIGHBORS LIMITED, Plaintiff,

v.

THE EDWIN RECTOR 1995 CHARITABLE TRUST and EDWIN RECTOR,
Defendants,

and

THE EDWIN RECTOR 1995 CHARITABLE TRUST, by and through its Trustee,
EDWIN RECTOR, Third Party Plaintiff,

v.

SUN RAYE FINANCIAL COMPANY INCORPORATED, a North Carolina Corporation, CARTER NEIGHBORS LIMITED, a North Carolina Corporation d/b/a SONNY'S USED CARS, LANNIE DEAN CARTER, JR., GEORGE K. CLARDY, JR., and EAGLE SERVICES AND TOWING LLC, d/b/a EAGLE AUTO, Third Party Defendants.

Appeal by plaintiff and third-party defendants from orders entered 1 May and 3 July 2014 by Judge Yvonne Mims Evans in Catawba County Superior Court. Heard in the Court of Appeals 6 April 2015.

Law Office of Wayne O. Clontz, by Wayne O. Clontz, for plaintiff- and third party defendants-appellants.

The Law Offices of Lonnie M. Player, Jr., PLLC, by Lonnie M. Player, Jr. and Jennifer L. Malone; Sigmon, Clark Mackie, Hanvey & Ferrell, P.A., by Forrest A. Ferrell and Amber R. Reinhardt, for defendants- and third party plaintiff-appellees.

HUNTER, JR., Robert N., Judge.

This case concerns an accounting dispute between two used car dealers and those who supply financing for the cars they sell. Plaintiff, Carter Neighbors Limited, and Third Party Defendants, Carter Neighbors Ltd. d/b/a Sonny's Used Cars ("Sonny's Used Cars"); Sun Raye Financial Company, Inc. ("Sun Raye Financial"); and Lannie Dean Carter, Jr. ("Carter") (collectively, the "Carter Parties"), appeal from two orders entered against them on 1 May 2014, *nunc pro tunc* 21 April 2014, and one order entered 3 July 2014, *nunc pro tunc* 9 June 2014. These orders were entered following hearings the Carter Parties failed to attend, either through counsel or *pro se*. The first order granted partial summary judgment in favor of Defendants and Third Party Plaintiff, the Edwin Rector 1995 Charitable Trust ("Rector Trust") and Edwin Rector ("Rector"). The second order involuntarily dismissed the Carter Parties' complaint, counterclaims, and cross-claims for failure to prosecute. The third order denied the Carter Parties' motions for new trial and/or relief from judgment on the grounds the Carter Parties received inadequate notice of the hearing underlying the first two orders. Because this dispute is still ongoing below, we lack jurisdiction to review these orders at this time.

I. Factual History

Opinion of the Court

On 6 January 2012, Plaintiff, by and through C. Gary Triggs (“Attorney Triggs”), filed a verified complaint against the Rector Trust and Rector (“Defendants”), seeking emergency injunctive relief and asserting seven causes of action: (1) Fraud/Misrepresentation, (2) Self Dealing/Predatory Lending, (3) Breach of Contract, (4) Breach of Fiduciary Duty, (5) Unfair and Deceptive Trade Practices, (6) Tortious Interference with Contract, and (7) Civil Conspiracy. On 16 February 2012, Defendants filed an answer, counterclaims, and a third party complaint (Defendants and Third Party Plaintiff, collectively the “Rector Parties”) against the Carter Parties: Carter, Sun Raye Financial, and Sonny’s Used Cars; George K. Clardy, Jr. (“Clardy”) and Eagle Services and Towing LLC, d/b/a Eagle Auto (“Eagle Auto”) (collectively, the “Clardy Parties”); and Ace Motor Acceptance Corporation (“Ace”).

Carter, a seasoned used car dealer, is the president and sole shareholder of two North Carolina corporations: Carter Neighbors Limited, which does business as Sonny’s Used Cars, which operates used car lots in North and South Carolina, and Sun Raye Financial, which does business in North Carolina (collectively, the “Carter Corporations”). Sonny’s Used Cars sells vehicles to customers with poor credit by generating automobile installment sales contracts for the purchase of each vehicle and providing “on the lot” financing. This is possible because the sales contracts are serviced by Sun Raye Financial, an automobile finance company, and funded by third-

Opinion of the Court

party financing entities, such as the Rector Trust, which purchase the sales contracts for a discounted price and are assigned the future stream of monthly payments made by the vehicle purchasers.

Rector, a Virginia citizen, is an attorney, certified public accountant, and a banker. Rector is the trustee and registered agent of the Rector Trust, a Virginia trust, which invests in loans generated by the Carter Parties. The Rector Trust “purchases the right to receive the future stream of monthly payments from vehicle purchasers under the Sales Contracts for a reduced lump sum ‘present value.’”

Clardy, a South Carolina citizen, owns and operates Eagle Auto, a used car lot in Fountain Inn, South Carolina. Like Sonny’s Used Cars, Eagle Auto similarly generates installment sales contracts for the purchasers of its vehicles. Its sales contracts are funded by third-party financing entities. Ace, a North Carolina corporation, is such a third-party financing entity like the Rector Trust, and purchases automobile installment sales contracts at a discount generated by both Sonny’s Used Cars and Eagle Auto.

Prior to 31 January 2011, Carter and Rector entered into business agreements. Between 31 January and 17 March 2011, the Rector Parties purchased 24 installment sales contracts from Sonny’s Used Cars for \$187,590.00. Between 14 April and 15 December 2011, the Rector Parties purchased 215 installment sales contracts from Sun Raye Financial for \$1,526,624.32. Accounting problems arose between Carter

Opinion of the Court

and Rector as to which contracts were secured by the Rector Trust's purchase agreements and which were secured by Ace. Disputes also arose over which entity had first priority lien status on the stream of income.

Carter alleged that on or about 28 December 2011, Rector breached their agreement by contacting the vehicle purchasers and advising them the financing contracts to their vehicles had been assigned to the Rector Trust and to submit future payments directly to the Rector Parties. Furthermore, Carter alleged Rector "[was] aware of a master automobile loan purchase agreement which existed between Sun Raye Financial . . . and [Eagle Auto,] under which various retail installment contracts were purchased by Sun Raye [Financial] from Eagle Auto Sales some of which were later assigned to the [Rector Trust]." However, Rector allegedly entered into agreements for the termination of various contracts between the Carter Corporations and Eagle Auto, without Carter's knowledge or consent.

The Rector Parties responded in its pleadings that the Carter Parties, *inter alia*, (1) failed to ensure the Rector Trust appeared as first lienholder on the certificates of title to the vehicles subject to the automobile installment contracts it purchased from the Carter Corporations; (2) failed to pay the Rector Trust all monies collected from the purchasers of said vehicles; and (3) resold the contracts already sold to the Rector Trust to other third party finance companies, "in effect 'double financing' those vehicle purchases[,]" such as to Ace.

Opinion of the Court

The Rector Parties asserted 65 of the 215 installment sales contracts it purchased from Sun Raye Financial were originally contracts between Clardy and vehicle purchasers of automobiles sold by Eagle Auto. These contracts were sold twice: once to Sun Raye Financial, and then again to the Rector Trust. Rector alleged Carter represented to him that because Sun Raye Financial was servicing these contracts, they would receive the payment streams from the vehicle purchasers; however, Rector asserted Clardy was actually collecting the payment streams from the vehicles. In some cases, Rector claimed, Clardy was repossessing vehicles whose contracts Rector Trust purchased and paying monies collected to Sun Raye Financial. Furthermore, Rector alleged the Carter Corporations failed to ensure the subject vehicles listed the Rector Trust as the first lienholder on the vehicles' certificates of title. Rector alleged the monthly payments it received from the Carter Corporations started to decline in early December 2011, which is what prompted Rector to contact the vehicle purchasers directly.

Rector further contended that in late December 2011, Carter and Clardy began to sell to Ace installment sales contracts that had already been purchased by the Rector Trust, again without listing the Rector Trust as first lienholder on the vehicle's certificate of title, "in effect 'double financing' the purchase of these vehicles." Rector claimed he discovered in September 2011 that Carter, Clardy, and Sun Raye Financial "entered into a conspiracy fraudulently [to] sell, assign[,] and otherwise

Opinion of the Court

transfer to . . . Ace the first lienholder interests and payment streams arising out of seven (7) Sales Contracts that had previously been sold to [the Rector Trust] on or about June 8, 2011.” These lienholder interests and payment streams, Rector claimed, were purchased by Ace and the purchase proceeds were paid to Carter, Clardy, and Sun Raye Financial.

Carter responded the “title on the subject vehicles correctly stated that Sun Raye Financial . . . was the first lien holder.” Carter alleged: “When we assigned the contracts on the face of the contract we utilized a stamp provided by Edwin Rector for the [Rector Trust] which did an assignment of the installment contract thus assigning the first lien position of Sun Raye Financial . . . to the [Rector Trust].” Carter further alleged they had “assigned [their lien priority] position by the assignment notation on the installment agreements which placed him in the same position we held as a first lien holder.”

II. Procedural History

Plaintiff initiated this action on 6 January 2012. On 16 February 2012, Defendants filed its answer, counterclaims, and third party complaint against Carter, Sonny’s Used Cars, Sun Raye Financial, Clardy, Eagle Auto, and Ace (“Third Party Defendants”), seeking, among other things, injunctive relief. On 12 March 2012, Attorney Triggs represented the Carter Parties in a hearing on Defendants’ motion for a preliminary injunction. On 27 March 2012, the Carter Parties, by and through

Opinion of the Court

Attorney Triggs, filed a Rule 12(b)(6) motion to dismiss. On 25 April 2012 (*nunc pro tunc* 12 March 2012), a preliminary injunction was entered against the Carter Parties and Clardy Parties, ordering them to refrain from selling or disposing of any vehicles forming the subject of Defendant's answer, counterclaims, and third party complaint without first providing a full accounting to all interested parties and paying the proceeds in full to the Catawba County Clerk of Superior Court.

On 11 May 2012, Defendants voluntarily dismissed its third party claims against Ace without prejudice. On 28 January 2013, the trial court entered an order allowing the Rector Parties' motion to amend its counterclaims and third party complaint, which the Rector Parties filed on 4 February 2013.

On 8 March 2013, the Carter Parties filed its response to the Rector Parties' amended counterclaims and third party complaint, by and through H. Russell Neighbors, Jr. ("Attorney Neighbors"). At some point prior to 8 March 2013, Attorney Triggs withdrew from representing the Carter Parties and was replaced by Attorney Neighbors, but the record on appeal is silent as to when. On 5 April 2013, the Clardy Parties filed its answer and affirmative defenses to the Rector Parties' third party complaint, wherein the Clardy Parties "admitted that Eagle Auto had a business arrangement with Sun Raye [Financial]." On 22 April 2013, the trial court heard and subsequently granted the Rector Parties' motion to appoint a referee. Attorney Neighbors represented the Carter Parties at the hearing. The court ordered the

Opinion of the Court

Carter Parties to advance \$5,000.00 towards the cost of a referee by 22 May 2013, which to date was never paid.

On 14 June 2013, Attorney Neighbors filed a motion to withdraw as attorney for the Carter Parties. In his motion to withdraw, Attorney Neighbors alleged he “was retained for a stop gap measure to make entry in the case and attempt to provide discovery and seek discovery in this action while counsel’s represented parties sought permanent counsel.” Attorney Neighbors further alleged he had advised the Carter Parties “to obtain their other counsel by June 1, 2013 to make entry in the case and relieve the undersigned[.]” On 20 November 2013, *nunc pro tunc* 12 July 2013, the trial court entered an order that permitted Attorney Neighbors to withdraw from representation and noted “[Carter] may hereafter be served at the address of: 1495 Buckhorn Tavern Road, Morganton, NC 28655.”

On 28 August 2013, the Rector Parties filed a motion for contempt against both the Carter Parties and Clardy Parties for failure to comply with the 25 April 2012 preliminary injunction. This motion was predicated on the failure of Third Party Defendant Clardy to deposit funds as required by the preliminary injunctions in the approximate amount of \$130,284.25 and by Third Party Defendant Carter of \$226,590.00. On 1 October 2013, the Rector Parties mailed a notice of hearing to Attorney Neighbors, which advised the Carter Parties its motion for contempt was scheduled for 28 October 2013. On 7 November 2013, Defendants mailed an amended

Opinion of the Court

notice of hearing to Attorney Neighbors, which advised the Carter Parties the motion for contempt was scheduled for “Monday, November, 2013[,]” but did not include a date. On 12 November 2013, Defendants mailed an amended notice of hearing that advised the hearing would be scheduled on 18 November 2013 but that Defendants requested the hearing be held on 20 November 2013.

On 20 November 2013, Rector filed another affidavit, wherein he asserted Clardy submitted information to him indicating “at least 10 vehicles that were subject to the Preliminary Injunction [were sold or transferred] without informing or providing any accounting to the Court (or to the Trust) and without paying the proceeds of such sales to the Court as required by the Preliminary Injunction.” Rector then identified several vehicles which he claims were disposed of in violation of the preliminary injunction. Rector alleged “[m]any of these vehicles Mr. Clardy has sold or transferred in violation of the Preliminary Injunction were done in collaboration with Sun-Ray Financial owned by [Carter].”

On 18 November 2013, the Rector Parties’ motion for contempt was heard at Catawba County Superior Court. On 20 November 2013, *nunc pro tunc* 12 July 2013, the trial court entered an order that permitted Attorney Neighbors to withdraw from representation and noted “[Carter] may hereafter be served at the address of: 1495 Buckhorn Tavern Road, Morganton, NC 28655.”

Opinion of the Court

On 6 December 2013, *nunc pro tunc* 20 November 2013, the trial judge entered a show cause order finding the Carter Parties in civil contempt for violating the terms of the 25 April 2012 preliminary injunction by failing to account for vehicles sold or otherwise disposed of and failing to pay proceeds therefrom to the clerk of superior court. In its show cause order, the trial judge noted “the Carter Related Parties each failed to appear despite being duly noticed by and through their former counsel in this matter, [Attorney Neighbors,] now withdrawn[.]” The trial judge also noted the “[the Rector Parties have] been unable to obtain personal service of its Motion for Contempt upon the Carter Related Parties in that Plaintiff and Third Party Defendant Sun Ray Financial . . . no longer appear to operate as going concerns and in that Third Party Defendant [Carter] has managed to avoid all means of service upon him, both ordinary and extraordinary, other than through his former counsel[.]” The trial judge ordered Carter to appear on 16 December 2013 and show cause to the court. The trial judge then ordered that “[s]ervice of this Order upon the Carter Related Parties is to be effected in accordance with Rule 4 of the North Carolina Rules of Civil Procedure[.]”

On 11 December 2013, the Rector Parties filed a “Notice to Appear,” which is dated 10 December and the record indicates was mailed to Carter’s Morganton address. The Notice to Appear advised Carter the show cause order entered against him was to be heard on 16 December 2013. Private Investigator Gary Lafone filed

Opinion of the Court

an affidavit notarized on 16 December 2013, which indicates that on 10 December 2013, he left his business card at the residence. On 12 December 2013, Lafone returned and saw his business card had been removed from the residence. On 16 December 2013, Lafone called Carter, who answered the phone, and Lafone advised Carter he had a Notice to Appear and a Show Cause Order that he needed to serve on him, and that “the Notice was for [Carter] to appear in court in Catawba County on Tuesday, December 17, 2013.” Carter responded that he was not in North Carolina and that he would not be back in North Carolina until Thursday, 19 December 2013.

The hearing was held on 16 December 2013 and the trial court on 30 December 2013 entered an order of civil arrest and a finding of contempt against Carter for violating the 25 April 2012 preliminary injunction. In its order, the trial court noted that no party or counsel appeared on behalf of the Carter Parties.

On or around 28 February 2014, the record indicates the Rector Parties mailed to Carter at his Morganton address its motion for involuntary dismissal of the Carter Parties’ complaint, crossclaims, and counterclaims pursuant to Rule 41(b) of the North Carolina Rules of Civil Procedure for failure to prosecute. This motion was filed on 3 March 2014. The record also contains a certificate of service, indicating the motion was served on Carter via fax, but fails to include a fax number.

On or around 8 April 2014, the record indicates the Rector Parties mailed several documents to Carter at his Morganton address. The cover letter listed the

Opinion of the Court

following enclosures: “two (2) Affidavits, Notice of Hearing, and Defendant and Third Party Plaintiff’s Motion for Partial Summary Judgment.”

The partial summary judgment motion enclosed indicated on the first page it was “against Third Party Defendants Carter Neighbors Limited (“CNL”), Sun Raye Financial Company, Inc. (“Sun Raye”), and Lannie Dean Carter, Jr. (“Carter”), jointly and severally.” The body of the motion made various allegations against only the Carter Parties. The last page prayed the court “enter Summary Judgment as against Third Party Defendants CNL, Sun Raye, and Carter, jointly and severally, on the claims of breach of contract, breach of guaranty, fraud, civil conspiracy, and unfair and deceptive trade practices.”

The two affidavits enclosed were made by Rector. One affidavit, notarized on 11 March 2014, stated it served as “a continuation of information provided in [Rector’s] two prior affidavits submitted in support of the Motion of [the Rector Trust] to find Third Party Defendants [Carter and Clardy] in contempt of the Court for violating the requirements of the Temporary Restraining Order and Preliminary Injunction.” In this affidavit, Rector addresses a 24 January 2014 letter allegedly submitted by Clardy’s attorney,¹ which contains “information that, [Clardy] contends, should exculpate him from his acts that violated the court orders.” In the body of this affidavit, Rector responds to various contentions allegedly made by Clardy for the

¹ This letter is not included in the record on appeal.

Opinion of the Court

purpose of exculpating him from civil contempt due to violating the terms of the preliminary injunction. This affidavit addresses only issues as to Clardy. The other affidavit, notarized on 12 March 2014, pertained only to the Carter Parties and contained a listing of the amounts allegedly owed to the Rector Parties. This affidavit also contained a listing of allegedly fraudulent transactions made by the Carter Parties.

The Notice of Hearing enclosed indicated three motions concerning the litigation would be heard on 21 April 2014 at Catawba County Superior Court. The notice provided: “MOTION TO BE HEARD: Defendant and Third Party Plaintiff’s Motion for Involuntary Dismissal, Motion for Partial Summary Judgment, and Motion for Contempt (with respect to Third Party Defendants Clardy and Eagle, only).”

On 21 April 2014, the Rector Parties’ motions were heard at Catawba County Superior Court before the Honorable Yvonne Mims Evans. The Carter Parties failed to appear, either *pro se* or through counsel. The trial judge granted the Rector Parties’ motion for partial summary judgment as to its claims of unfair and deceptive trade practices and fraud against the Carter Parties. The trial judge also granted the motion for involuntarily dismissal of all of the Carter Parties’ claims for failure to prosecute. In its order involuntarily dismissing the Carter Parties’ claims, the trial judge found “Carter has absconded from the area and is in hiding[]” and that “[a]s a

Opinion of the Court

result of Carter's absence, his failure to comply with the orders of this Court, and the lack of an attorney for Plaintiff, the progress in litigating and / or resolving this case halted months ago, and the case is presently stagnating."

On 21 May 2014, the Carter Parties, by and through its newly retained attorney, Wayne O. Clontz ("Attorney Clontz"), filed a motion for new trial and/or relief from judgment pursuant to Rules 59 and 60 of the North Carolina Rules of Civil Procedure. Supporting its motion, the Carter Parties filed two affidavits and a notice of representation. In its motion for a new trial and/or relief, the Carter Parties asserted:

2. The Plaintiff and Third Party Defendants, [Carter Neighbors d/b/a Sonny's Used Cars], [Sun Raye Financial], and [Carter] were initially represented by C. Gary Triggs of the Burke County Bar who was required to withdraw from the matter at which time substitute counsel H. Russell Neighbors, Jr., of the McDowell County bar made an appearance and represented [Carter Neighbors d/b/a Sonny's Used Cars], [Sun Raye Financial], and [Carter] until an Order allowing him to withdraw due to conflicts which had arisen was entered on November 20th, 2013 by [Judge] Poovey. Since that time, [Carter Neighbors d/b/a Sonny's Used Cars], [Sun Raye Financial], and [Carter] have made diligent efforts to retain substitute counsel without success until the notice of representation filed by the undersigned in this matter. While [Carter Neighbors d/b/a Sonny's Used Cars], [Sun Raye Financial], and [Carter] were unrepresented, issues regarding service arose which are addressed in the "Supplemental Affidavit" filed by [Carter] which appears of record. A Show Cause Order as well as an "Order for Civil Arrest" were enter [sic] which [Carter Neighbors d/b/a Sonny's Used Cars], [Sun Raye Financial], and [Carter] contend were the result of a

Opinion of the Court

hearing held without proper notices, copies of which appear of record.

....

4. On April 4th, 2014, counsel for the Defendant's, Third Party Plaintiff filed a "Notice of Hearing[.]" . . . The notice, as drafted, was ambiguous in that it purported to Notice a hearing "with respect to Third Party Defendants Clardy and Eagle, only". Given the fact that the Plaintiff and Third Party Defendants [Carter, Sun Raye Financial, and Sonny's Used Cars] were actively engaged in seeking replacement counsel and in the sincere belief given the statement in the Notice that the hearing scheduled for April 21st, 2014 was only as to Clardy and Eagle, [Carter, Sun Raye Finical, and Sonny's Used Cars] did not appear. Since substitute counsel had not yet been retained, no counsel appeared on their behalf at the hearing resulting in the entry of the two (2) Orders which are the subject of this Motion.

Carter, in his "Supplemental Affidavit" notarized on 15 April 2014, asserted "I have read the [Rector Parties'] Motion for Involuntary Dismissal pursuant to N.C.R.Civ.P. 41(b)" and responded to its allegations in the affidavit. In his "Second Supplemental Affidavit" notarized on 21 May 2014, Carter asserted:

4. On or about April 3rd, 2014, I received a Notice of Hearing[.]

....

8. When I received the notice of hearing marked "Exhibit 1" it clearly stated, or in good faith I understood it to say that the Hearing notice was "with respect to Third Party Defendants Clardy and Eagle, only" as stated in the document. Since I was in the process of obtaining counsel to represent my interest and those of the Corporate Third Party Defendants, I did not appear

Opinion of the Court

believing in good faith that the motions involving me and the corporations were not on according to the docket maintained by the Clerk and the Trial Court Administrator.

The Carter Parties' motions were heard on 9 June 2014. At the hearing, the Carter Parties called to the stand Judy Hoke Sherrill, trial court coordinator of Catawba County Superior Court. Sherrill testified she received a call from then-disbarred Attorney Triggs concerning the 21 April 2014 hearing. Sherrill did not recall her exact conversation with Attorney Triggs but testified "if [she] was looking at the notice [she] would say it would be with respect to the third party defendants, [Clardy] and Eagle only. That's the way that [she] would interpret it." When asked if that was the interpretation she gave Attorney Triggs, she stated: "I'm sure it was."

On 25 June 2014, *nunc pro tunc* 9 June 2014, the trial court entered an order denying the Carter Parties' motions for a new trial and/or relief from judgment. In the order, the trial judge made the following findings of fact:

1. [The Carter Parties] herein have sought relief in their Motion from the involuntary dismissal of all claims and counterclaims brought by Plaintiff, Carter-Neighbors Limited, pursuant to Rule 41(b) of the North Carolina Rules of Civil Procedure, as well as from the entry of partial summary judgment as against all [the Carter Parties], pursuant to Rule 56 of the North Carolina Rules of Civil Procedure;

.....

4. At the hearing of this matter in open court, Movants' abandoned all base for their Motions under Rules 59 and

Opinion of the Court

60 save those of improper notice of the April 21, 2014 hearings;

5. Affidavits of Third Party Defendant [Carter] accompanied Movants' Motions under Rules 59 and 60;

....

7. In those affidavits, [Carter] admits having actually received notice of the April 21, 2014 hearings on behalf of [the Carter Parties] from which [the Carter Parties] seek relief;

8. [The Carter Parties] failed to appear at the April 21, 2014 hearings either *pro se* or through counsel.

Based on the foregoing, the trial judge concluded the following as law:

1. [The Carter Parties] received actual notice of the hearings from which they seek relief and nonetheless failed to appear and contest said notices or the substance of the involuntary dismissal and partial summary judgment motions themselves;

2. As such, [the Carter Parties] have failed to recite a basis to support either their Motion for New Trial, pursuant to Rule 59 of the North Carolina Rules of Civil Procedure, or their Motion for Relief from Judgment, pursuant to Rule 60 of the North Carolina Rules of Civil Procedure.

The Carter Parties seek appeal from three orders: the two orders that granted the Rector Parties' motions for partial summary judgment and involuntary dismissal, which arose from the 21 April 2014 hearing, and the order that denied their motions for a new trial and/or relief from judgment, which arose from the 9 June 2014 hearing.

II. Analysis

Opinion of the Court

We must first examine our jurisdiction to review an appeal. The appellate rules require that an appellant clearly set forth the statutory grounds for this Court to consider an appeal. See N.C. R. App. P. 28(b)(4) (2014). The parties' briefs on this jurisdictional issue are either ambiguous or silent.

Even when not raised by the parties, this Court is required to consider whether a party has a right of appeal and, if not, must dismiss for lack of jurisdiction. See *Waters v. Qualified Personnel, Inc.*, 294 N.C. 200, 201, 240 S.E.2d 338, 340 (1978). Indeed, "it is the duty of an appellate court to dismiss an appeal if there is no right to appeal." *Pasour v. Pierce*, 46 N.C. App. 636, 639, 265 S.E.2d 652, 653 (1980).

"Generally, there is no right of immediate appeal from interlocutory orders[.]" *Goldston v. Am. Motors Corp.*, 326 N.C. 723, 725, 392 S.E.2d 735, 736 (1990). "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, 362, 57 S.E.2d 377, 381 (1950). Orders adjudicating fewer than all the claims are interlocutory. See *Mozingo v. N. Carolina Nat. Bank*, 27 N.C. App. 196, 218 S.E.2d 506 (1975). "Orders which do not dispose of the action as to all parties are treated as interlocutory." *James River Equip., Inc. v. Tharpe's Excavating, Inc.*, 179 N.C. App. 336, 339, 634 S.E.2d 548, 552 (2006) (citation omitted); see also *Estate of Redding v. Welborn*, 170 N.C. App. 324, 328, 612 S.E.2d 664, 667-68 (2005). The general

Opinion of the Court

preclusion from appealing interlocutory orders serves “to prevent fragmentary and premature appeals that unnecessarily delay the administration of justice and to ensure that the trial divisions fully and finally dispose of the case before an appeal can be heard.” *Bailey v. Gooding*, 301 N.C. 205, 209, 270 S.E.2d 431, 434 (1980).

Here, the Carter Parties comprise three among the five Third Party Defendants in the Third Party Plaintiff’s suit. The orders appealed do not combine to render a final judgment in this case, with respect either to the Rector Parties’ claims still remaining against the Carter Parties or its claims still remaining against the Clardy Parties. The Rector Parties advanced breach of contract and breach of guaranty claims against the Carter Parties; a claim of piercing the corporate veil against Eagle Auto Sales; and claims of unjust enrichment, fraud, civil conspiracy, and unfair and deceptive trade practices against both the Carter and Clardy parties. The partial summary judgment order only disposed of the Rector Parties’ claims of unfair and deceptive trade practices and fraud against the Carter Parties. The involuntary dismissal order only disposed of the Carter Parties’ claims against the Rector Parties. Still remaining are the Rector Parties’ claims of unjust enrichment and civil conspiracy against both the Clardy and Carter Parties; its claims of breach of contract and breach of guaranty against the Carter Parties; and its claims of fraud, unfair and deceptive trade practices, and piercing the corporate veil against the Clardy Parties. Therefore, the trial court’s orders granting partial summary

Opinion of the Court

judgment and involuntary dismissal did not dispose of the case to the degree of finality required to confer jurisdiction in this Court. *See Combs & Assocs., Inc. v. Kennedy*, 147 N.C. App. 362, 367, 555 S.E.2d 634, 638 (2001) (“[A]n appeal from an order granting summary judgment to fewer than all of a plaintiff’s claim is premature and subject to dismissal.”) (citation omitted).

Nonetheless, a party may be permitted to appeal an interlocutory order under two circumstances: (1) when the trial court certifies pursuant to Rule 54(b) “there is no just reason to delay the appeal after it enters a final judgment as to fewer than all of the claims or parties in an action[;]” or (2) when the interlocutory order “affects some substantial right claimed by the appellant and will work an injury to him if not corrected before an appeal from the final judgment.” *Dep’t of Transp. v. Rowe*, 351 N.C. 172, 174-75, 521 S.E.2d 707, 709 (1999) (citations omitted). Under either circumstance, the appellant bears the “burden to present appropriate grounds for this Court’s acceptance of an interlocutory appeal[.]” *Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 379, 444 S.E.2d 252, 253 (1994). Here, the trial court did not certify any of its orders for immediate appellate review pursuant to Rule 54(b); therefore, “[t]he only way [the Carter Parties] may establish appellate jurisdiction . . . is by showing grounds for appellate review based on the order affecting a substantial right.” *Larsen v. Black Diamond French Truffles, Inc.*, __ N.C. App. __, __, 772 S.E.2d 93, 96 (2015) (emphasis omitted). “It is not the duty of this Court to construct

Opinion of the Court

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[.]” *Jeffreys*, 115 N.C. App. at 380, 444 S.E.2d at 254.

Here, the Carter Parties failed to identify a substantial right that would be lost absent immediate review of the interlocutory orders it seeks to appeal. Rule 28(b)(4) of the North Carolina Rules of Appellate Procedure mandates that “[w]hen an appeal is interlocutory, the statement must contain 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) (2014). This Court has held that when an appeal is taken from an interlocutory order, an appellant's failure to show grounds for appellate review based on the order affecting a substantial right, in violation of Rule 28(b)(4), requires dismissal. *See, e.g., Larsen*, __ N.C. App. at __, 772 S.E.2d at 96. Therefore, we dismiss the Carter Parties' appeals. *See, e.g., Hamilton v. Mortgage Info. Servs., Inc.*, 212 N.C. App. 73, 77, 711 S.E.2d 185, 189 (2011) (“If a party attempts to appeal from an interlocutory order without showing that the order in question is immediately appealable, we are required to dismiss that party's appeal on jurisdictional grounds.”) (citation omitted).

III. Conclusion

We dismiss as interlocutory the Carter Parties' appeals.

CARTER NEIGHBORS LTD. V. THE EDWIN RECTOR 1995 CHARITABLE TR.

Opinion of the Court

DISMISSED.

Chief Judge McGee and Judge Dietz concur.

Report per Rule 30(e).