IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-218

Filed: 6 November 2018

Carteret County, No. 15 CVS 1415

THE GRANDE VILLAS AT THE PRESERVE CONDOMINIUM HOMEOWNERS ASSOCIATION, INC., Plaintiff,

v.

INDIAN BEACH ACQUISTION LLC and THOMAS P. RYAN, Defendants.

Appeal by defendants from order entered 19 October 2017 by Judge Benjamin G. Alford in Carteret County Superior Court. Heard in the Court of Appeals 17 September 2018.

Lewis & Roberts, PLLC, by Matthew C. Bouchard, for plaintiff-appellee.

Morris, Russell, Eagle & Worley, PLLC, by Benjamin L. Worley, for defendants-appellants.

DIETZ, Judge.

Defendants appeal the trial court's partial summary judgment order, which rejected their statute of limitations defense but sent the remainder of the case, including other affirmative defenses as well as the merits of the underlying claim, to the jury. As explained below, this Court repeatedly has held that an order granting

partial summary judgment on a statute of limitations defense is not immediately appealable. We therefore dismiss this interlocutory appeal for lack of appellate jurisdiction.

Facts and Procedural History

The Grande Villas at the Preserve Condominium Homeowners Association is a homeowners' association for a condominium community in Indian Beach. In 2016, the Association sued Defendants—the community's developers—for breach of fiduciary duty. The Association alleged that Defendants' actions (and, in some cases, inaction) caused severe damage to the condominium properties.

In September 2017, the trial court held a hearing on cross-motions for partial summary judgment concerning several of Defendants' affirmative defenses. The court later entered a written order granting summary judgment in favor of the Association on Defendants' statute of limitations defense. The court denied summary judgment on Defendants' separate laches defense, holding that it involved genuine issues of material fact. Defendants timely appealed the court's partial summary judgment order.

Analysis

We begin our analysis by addressing our jurisdiction to hear this appeal. Defendants acknowledge that this appeal is interlocutory because the challenged order only resolved a single affirmative defense concerning the statute of limitations;

the rest of the case, including the merits of the Association's underlying claim as well as Defendants' other affirmative defenses, remains to be litigated below. *See State v. Oakes*, 240 N.C. App. 580, 582, 771 S.E.2d 832, 834 (2015). Because the challenged order is not a "final judgment that leaves nothing further to be done in the trial court," this Court lacks jurisdiction to hear the appeal unless Defendants establish that one of the bases for an immediate, interlocutory appeal exists. *Id.*

Defendants contend that the trial court's partial summary judgment order is immediately appealable because it affects a substantial right. Specifically, Defendants assert that the order prevents them "from raising a defense at trial that would serve as an absolute bar to the Association's claims" which, in turn, would cause "substantial harm" to Defendants. As explained below, we reject this argument.

First, Defendants' substantial rights argument is squarely at odds with our precedent. This Court has long held that "[o]rders denying motions to dismiss based upon the statute of limitations are interlocutory and not immediately appealable." *Nello L. Teer Co. v. N. Carolina Dep't of Transp.*, 175 N.C. App. 705, 711, 625 S.E.2d 135, 139 (2006). We have likewise applied this rule to partial summary judgment rulings rejecting a statute of limitations defense, holding that there is "no reason to treat a motion for summary judgment based on the statute of limitations differently than a motion to dismiss based on the statute of limitations." *Barfield v. N. Carolina*

Dep't of Crime Control and Pub. Safety, 202 N.C. App. 114, 120, 688 S.E.2d 467, 471 (2010).

Defendants ignore this controlling precedent and instead rely on a series of readily distinguishable cases involving the grant of "a motion to strike an *entire* further answer or defense." *Faulconer v. Wysong and Miles Co.*, 155 N.C. App. 598, 600, 574 S.E.2d 688, 691 (2002). But *Faulconer* and its progeny involve circumstances where the trial court's order, in effect, resolved the entire case on the merits, leaving only the question of remedies remaining. That is not what happened here. Defendants have other defenses remaining in this case, including a laches defense as well as their general denial of various key material facts on which the Association relies. Thus, the order resolving the statute of limitations issue is not the sort of order that is immediately appealable under the *Faulconer* line of cases.

Second, even setting aside the controlling case law concerning immediate appeal of statute of limitations issues, Defendants have not shown that the challenged order affects a substantial right. Defendants contend that the order prevents them "from raising a defense at trial that would serve as an absolute bar to the Association's claims." Although Defendants do not explain why this outcome affects a substantial right, one can infer that Defendants seek to avoid the time and expense of a trial because they believe they ultimately will prevail on their statute of limitations defense as a matter of law on appeal. But this Court repeatedly has held

that the "avoidance of the time and expense of a trial is not a substantial right justifying immediate appellate review of an interlocutory order." *Filipowski v. Oliver*, 219 N.C. App. 398, 399, 723 S.E.2d 789, 790 (2012). Because Defendants offer no other reason why the challenged order affects a substantial right, we lack jurisdiction to hear this appeal and must dismiss it. *Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 380, 444 S.E.2d 252, 254 (1994).

DISMISSED.

Chief Judge McGEE and Judge CALABRIA concur.

Report per Rule 30(e).