

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-286

Filed 05 September 2023

Davidson County, No. 22-CVS-2161

LATHAM-HALL TECHNOLOGIES LLC, Plaintiff,

v.

VECOPLAN, LLC, Defendant.

Appeal by Defendant from order entered 20 December 2022 by Judge Mark E. Klass in Davidson County Superior Court. Heard in the Court of Appeals 22 August 2023.

Tuggle Duggins P.A., by Richard W. Andrews, Jeffrey S. Southerland, and Shawn V. Poole, for Plaintiff-Appellee.

Roberson Haworth & Reese, PLLC, by Andrew D. Irby and Zachary W. Green, for Defendant-Appellant.

COLLINS, Judge.

Defendant Vecoplan, LLC (“Vecoplan”) appeals from the trial court’s order denying its motion to dismiss a suit filed by Latham-Hall Technologies LLC (“Latham-Hall”) in Davidson County Superior Court (the “Davidson suit”). Vecoplan argues that the trial court should have dismissed the Davidson suit under Rule 13(a)

because Latham-Hall was required to assert its claims as compulsory counterclaims in an ongoing lawsuit between the parties in Guilford County Superior Court (the “Guilford suit”). Latham-Hall moves to dismiss Vecoplan’s appeal as moot because the Guilford suit was voluntarily dismissed and thus is no longer pending. We allow Latham-Hall’s motion to dismiss Vecoplan’s appeal.

I. Background

Latham-Hall is in the business of providing custom precision machining and tooling products and services. Vecoplan is in the business of industrial shredding and recycling technologies for the plastic, paper, wood, and waste industries. Vecoplan regularly purchased shafts from Latham-Hall for use with a piece of machinery sold by Vecoplan known as a “hammer mill.”

Vecoplan filed suit against Latham-Hall in Guilford County Superior Court on 18 November 2020 for negligence, breach of implied warranty, and breach of contract, alleging that certain shafts it had purchased from Latham-Hall were defective. Latham-Hall filed an answer on 25 January 2021.

Latham-Hall sued Vecoplan in Davidson County Superior Court on 17 October 2022 for breach of contract or, in the alternative, quantum meruit, alleging that Vecoplan failed to pay five invoices dated from 21 October 2019 to 21 November 2019 totaling \$105,815.78. Vecoplan filed a motion to dismiss the Davidson suit on 7 November 2022 pursuant to North Carolina Rules of Civil Procedure 12(b)(1), 12(b)(6), and 13(a), alleging that Latham-Hall’s claims were compulsory

counterclaims. The trial court denied Vecoplan’s motion to dismiss the Davidson suit by order entered 20 December 2022. Vecoplan filed a notice of appeal on 5 January 2023.

The parties entered into a written settlement agreement in the Guilford suit on 10 March 2023. Pursuant to the settlement agreement, Vecoplan voluntarily dismissed the Guilford suit on 20 March 2023. Latham-Hall filed a motion to dismiss Vecoplan’s appeal on 6 April 2023.

II. Discussion

Vecoplan argues that the trial court erred by denying its motion to dismiss under Rule 13(a) because Latham-Hall’s claims asserted in the Davidson suit should have been asserted as compulsory counterclaims in the Guilford suit. Latham-Hall moves to dismiss Vecoplan’s appeal, asserting that Vecoplan’s argument is moot because the Guilford suit has been settled and thus is no longer pending.¹

Under Rule 13(a), a counterclaim is compulsory when: (1) it is in existence at the time of serving the pleading against the opposing party, (2) it arises out of the transaction or occurrence that is the subject matter of the opposing party’s claim, and (3) does not require the presence of third parties whom the court cannot acquire. N.C. Gen. Stat. § 1A-1, R. 13(a) (2022). If a claim is determined to be a compulsory

¹ Vecoplan argues in its response to the motion to dismiss that “Latham-Hall’s assertion that the voluntary dismissal renders this appeal moot is disingenuous and contrary to applicable law as well as the express terms of the Settlement Agreement entered into between the parties in the Prior Litigation.” We disagree.

counterclaim, it must on motion either be (1) dismissed with leave to file it in the former case or (2) stayed until the former case has been fully litigated. *Gardner v. Gardner*, 294 N.C. 172, 177, 240 S.E.2d 399, 403 (1978). A party that fails to assert a compulsory counterclaim in an action that has been fully litigated is barred from asserting that claim in a subsequent action. *Jonesboro United Methodist Church v. Mullins-Sherman Architects, L.L.P.*, 359 N.C. 593, 597, 614 S.E.2d 268, 271 (2005). However, where a party asserts what is alleged to be a compulsory counterclaim in a separate action while the underlying suit is pending, a motion to dismiss under Rule 13(a) becomes moot when the underlying suit is no longer pending. *See Coca-Cola Bottling Co. Consol. v. Durham Coca-Cola Bottling Co.*, 141 N.C. App. 569, 581, 541 S.E.2d 157, 165 (2000) (holding that a motion to dismiss or stay an action that was alleged to be a compulsory counterclaim was moot because the suit in which the compulsory counterclaim allegedly should have been asserted was no longer pending); *Richardson v. Mancil*, 208 N.C. App. 569, 706 S.E.2d 843 (2010) (unpublished) (reversing the trial court's order granting defendant's motion to dismiss because the suit in which the compulsory counterclaims should have been asserted was no longer pending).

Here, Vecoplan filed the Guilford suit on 18 November 2020 and Latham-Hall filed the Davidson suit on 17 October 2022, while the Guilford suit was pending. Vecoplan filed its motion to dismiss the Davidson suit on 7 November 2022. The trial court entered its order denying the motion to dismiss on 20 December 2022. The

Guilford suit was voluntarily dismissed on 20 March 2023. Because the Davidson suit was filed while the Guilford suit was pending and because the Guilford suit is no longer pending, the issue of whether the claims raised in the Davidson suit should have been asserted as compulsory counterclaims in the Guilford suit is moot. Accordingly, we allow Latham-Hall's motion to dismiss Vecoplan's appeal.

III. Conclusion

As the Guilford suit is no longer pending, the issue of whether the claims raised in the Davidson suit should have been asserted as compulsory counterclaims in the Guilford suit is moot, and we allow Latham-Hall's motion to dismiss Vecoplan's appeal.

DISMISSED.

Judges ARROWOOD and CARPENTER concur.

Report per Rule 30(e).