

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
22CVS008617-910

JAMES H.Q. DAVIS TRUST and
WILLIAM R.Q. DAVIS TRUST,

Plaintiffs,

v.

JHD PROPERTIES, LLC; BERRY
HILL PROPERTIES, LLC; and
CHARLES B.Q. DAVIS TRUST,

Defendants.

**ORDER STAYING ALL ACTIVITY TO
IMPLEMENT SUMMARY JUDGMENT
ORDER PENDING APPEAL**

1. Plaintiffs James H. Q. Davis Trust (the “Jim Trust”) and William R. Q. Davis Trust (the “Tad Trust,” collectively, “Plaintiffs”) filed this action against Defendants JHD Properties, LLC (“JHD”) and Berry Hill Properties, LLC (“Berry Hill”; together with JHD, the “LLCs”) on 12 July 2022, seeking judicial dissolution of the LLCs under N.C.G.S. § 57D-6-02(2)(i).¹

2. On 19 August 2022, the Court granted Defendant Charles B. Q. Davis Trust’s (“Defendant”) Amended Motion to Intervene.²

3. Following the completion of discovery, on 17 July 2023, Plaintiffs and Defendant filed cross-motions for summary judgment on Plaintiffs’ claim for dissolution of the LLCs.³

¹ (Compl., ECF No. 3.)

² (Order Granting Am. Mot. Intervene, ECF No. 11.)

³ (Def. Charles B. Q. Davis Trust’s Mot. Summ. J., ECF No. 47; Pls. James H. Q. Davis Trust and William R. Q. Davis Trust’s Mot. Summ. J., ECF No. 45.)

4. The Court granted Plaintiffs' motion for summary judgment, denied Defendant's motion for summary judgment, and entered summary judgment for Plaintiffs on their claim for judicial dissolution.⁴ *James H. Q. Davis Tr. v. JHD Props., LLC*, 2023 NCBC LEXIS 143, at *14–15 (N.C. Super. Ct. Nov. 14, 2023) (the "Summary Judgment Order"). The Court also indicated in its Summary Judgment Order that it would, "by separate order, notice a conference with counsel to discuss the process for dissolution of JHD and Berry Hill, as well as the entry of a decree of judicial dissolution under N.C.G.S. § 57D-6-05, and the process for the winding up of JHD and Berry Hill under N.C.G.S. § 57D-6-07." *Id.*

5. On 12 December 2023, Defendant filed a Notice of Appeal of the Summary Judgment Order to the North Carolina Court of Appeals.⁵ Since Defendant appealed to the wrong court, *see* N.C.G.S. §§ 7A-27(a)(2)–(3) (requiring appeals from final judgments or certain interlocutory orders in cases designated as complex business cases to be filed directly as of right with the Supreme Court of North Carolina), the Court determined, by order dated 16 January 2024, that it "ha[d] not been divested of jurisdiction by Defendant's [appeal to the Court of Appeals], [N.C.G.S. §] 1-294 d[id] not apply to stay any proceedings in this Court, and the Court [could] proceed to consider the dissolution of the two defendant LLCs."⁶

⁴ (Order & Op. Cross-Mots. Summ. J., ¶ 30, ECF No. 60; Am. Order & Op. Cross-Mots. Summ. J., ¶ 30, ECF No. 65; *James H. Q. Davis Tr. v. JHD Props., LLC*, 2023 NCBC LEXIS 143 (N.C. Super. Ct. Nov. 14, 2023).)

⁵ (Notice Appeal, ECF No. 67.)

⁶ (Order Def.'s Request Stay Pending Appeal ¶ 15, ECF No. 74.)

6. On 5 February 2024, Defendant filed a motion for a discretionary stay (the “Motion to Stay”) in this Court under Rules 8 and 23 of the North Carolina Rules of Appellate Procedure (the “Appellate Rule(s”).⁷ Defendant represented in the Motion to Stay that Defendant had filed a petition in the Supreme Court of North Carolina for a Writ of Certiorari to Review the Summary Judgment Order, and in the alternative, a Petition for Discretionary Review (the “Review Petition”). In light of the Review Petition, Defendant moved the Court to enter a stay “for the duration of all appellate proceedings concerning the Summary Judgment Order[.]”⁸

7. After full briefing and hearing, the Court denied the Motion to Stay on 4 April 2024 on grounds that no appeal was then pending and all parties had agreed that the LLCs’ property should be sold, so therefore there was no reason to delay the sale of the property while Defendant’s Review Petition was pending.⁹ A few days later, on 8 April 2024, Defendant filed a Petition for a Writ of Supersedeas under Appellate Rule 23 (the “Supersedeas Petition”) and a Motion for Temporary Stay with the Supreme Court of North Carolina.

⁷ (Charles B. Q. Davis Tr.’s Mot. Stay Pursuant Rules 8 and 23 North Carolina Rules Appellate Procedure [hereinafter, “Stay Mot.”], ECF No. 78.)

⁸ (Stay Mot.)

⁹ (Order Charles B. Q. Davis Tr.’s Mot. Stay Pursuant Rules 8 and 23 North Carolina Rules Appellate Procedure, ECF No. 86.)

8. On 12 April 2024, the Supreme Court granted both the Review Petition and the Supersedeas Petition, issued a Writ of Certiorari (the “Appeal”) and a Writ of Supersedeas, and denied Defendant’s Motion for Temporary Stay as moot.¹⁰

9. On 14 May 2024, the Court held a status conference (the “Conference”) to discuss the effect of the Writ of Supersedeas on proceedings in this Court pending resolution of Defendant’s Appeal. All parties were present and represented by counsel at the Conference.¹¹

10. Plaintiffs argued at the Conference that because Defendant’s Supersedeas Petition sought a writ only to prevent the sale of the LLCs’ real property and did not specifically seek to prevent the Court from appointing a receiver over the LLCs, the Court should appoint a receiver for the limited purpose of addressing the LLCs’ administrative matters, including the payment of taxes and insurance, pending final resolution of the Appeal. Defendant disagreed and argued at the Conference that the Writ of Supersedeas stays all activity in the trial court pending the resolution of the Appeal.

11. Rule 23 of the Appellate Rules provides that a party may apply to the appropriate appellate court “for a writ of supersedeas to stay the execution or enforcement of any judgment, order, or other determination of a trial tribunal[.]” Our Supreme Court has described a writ of supersedeas as “a writ issuing from an appellate court to preserve the status quo pending the exercise of the appellate court’s

¹⁰ (Order North Carolina Supreme Court Granting Intervenor Def.’s Pets. Writs Cert. and Supersedeas and Denying Intervenor Def.’s Mot. Temp. Stay, ECF No. 87.)

¹¹ (Notice Status Conference, ECF No. 88.)

jurisdiction[]” and has instructed that it “is used only to hold that matter in abeyance pending review, and may be issued only by the court in which an appeal is pending.” *City of New Bern v. Walker*, 255 N.C. 355, 356 (1961).

12. In the Summary Judgment Order, the Court concluded that dissolution was appropriate under N.C.G.S. § 57D-6-02(2)(i) and entered summary judgment on Plaintiffs’ dissolution claim. The Court did not, however, appoint a receiver, enter a decree of dissolution, or order the dissolution and winding up of the LLCs in that ruling. *See James H. Q. Davis Tr.*, 2023 NCBC LEXIS 143, at *13–15. Instead, the Court left those matters for subsequent determination after input from the parties.

13. Defendant’s Appeal is of the Summary Judgment Order. The status quo that the Writ of Supersedeas is intended to enforce, therefore, is the state of affairs existing at the time the Summary Judgment Order was entered—when summary judgment had been entered on Plaintiffs’ dissolution claim, but before any action had been taken to implement the Summary Judgment Order. *See Craver v. Craver*, 298 N.C. 231, 237–38 (1979) (“[The writ of supersedeas’s] office is to preserve the [s]tatus quo pending the exercise of appellate jurisdiction.”) In these circumstances, the Court concludes that appointing a receiver or taking any other action to implement the Summary Judgment Order pending the resolution of the Appeal would violate the stay ordered by the Supreme Court through the Writ of Supersedeas.

14. **WHEREFORE**, for the reasons discussed above, the Court hereby **STAYS** all activity to implement the Summary Judgment Order pending the final resolution of Defendant’s Appeal or until otherwise ordered by the Court.

SO ORDERED, this the 15th day of May, 2024.

/s/ Louis A. Bledsoe, III
Louis A. Bledsoe, III
Chief Business Court Judge