

STATE OF NORTH CAROLINA
CATAWBA COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
12 CVS 2832

CHRISTIAN G. PLASMAN, in his individual capacity and derivatively for the benefit of, on behalf of and right of nominal party BOLIER & COMPANY, LLC,

Plaintiff,

v.

DECCA FURNITURE (USA), INC., DECCA CONTRACT FURNITURE, LLC, RICHARD HERBST, WAI THENG TIN, TSANG C. HUNG, DECCA FURNITURE, LTD., DECCA HOSPITALITY FURNISHINGS, LLC, DONGGUAN DECCA FURNITURE CO. LTD., DARREN HUDGINS, DECCA HOME, LLC, and ELAN BY DECCA, LLC,

Defendants,

and BOLIER & COMPANY, LLC,

Nominal

Defendant,

v.

CHRISTIAN J. PLASMAN a/k/a BARRETT PLASMAN,

Third-Party

Defendant.

ORDER STAYING CASE

1. **THIS MATTER** is before the Court *sua sponte* to determine whether further proceedings on the merits in this case must be stayed under N.C. Gen. Stat. § 1-294 pending Plaintiff Christian G. Plasman (“Chris Plasman”) and Third-Party Defendant Barrett Plasman’s (“Barrett Plasman”) (collectively, the “Plasmans”) appeal of this Court’s Order and Opinion on Defendants’ Motion to Dismiss Second

Amended Complaint and Motion to Dismiss Supplemented and Amended Third Party Counterclaims (the “Order on Defendants’ Motions to Dismiss”) in the above-captioned case.

2. On October 21, 2016, the Court issued the Order on Defendants’ Motions to Dismiss, which dismissed all of Chris Plasman’s and Barrett Plasman’s claims against Defendants. Defendants’ counterclaims and third-party claims against Chris Plasman and Barrett Plasman still remain in this case. Plaintiffs filed a Notice of Appeal of the Order on Defendants’ Motions to Dismiss on November 21, 2016 (the “Appeal”). At the invitation of the Court, the parties filed statements with the Court regarding whether the Plasmans’ appeal of the Order on Defendants’ Motions to Dismiss stays further proceedings in this Court.

3. “When an appeal is perfected . . . it stays all further proceedings in the court below upon the judgment appealed from, or upon the matter embraced therein, . . . but the court below may proceed upon any other matter included in the action and not affected by the judgment appealed from.” N.C. Gen. Stat. § 1-294. Furthermore, “if a party appeals an immediately appealable interlocutory order, the trial court has no authority, pending the appeal, to proceed with the trial of the matter.” *Rpr & Assocs. V. Univ. of N. Carolina-Chapel Hill*, 153 N.C. App. 342, 347, 570 S.E.2d 510, 514 (2002). Accordingly, the Court must stay this case pending the Appeal if the Order on Defendants’ Motions to Dismiss is immediately appealable.

4. The Order on Defendants’ Motions to Dismiss is not a final judgment as to all claims and parties, and the Court did not certify the Order for immediate appeal

pursuant to N.C. R. Civ. P. 54(b). Accordingly, the Order on Defendants' Motions to Dismiss is "immediately appealable [only] if it affects a substantial right" of the Plasmans. *New Bern Assocs. V. Celotex Corp.*, 87 N.C. App. 65, 67 359 S.E.2d 481, 483 (1987).

5. "A 'substantial right' is one 'which will clearly be lost or irremediably adversely affected if the order is not reviewable before final judgment.'" *Id.* (citation omitted). The North Carolina appellate courts have found a substantial right to be affected by "[a] judgment which creates the possibility of inconsistent verdicts." *Id.*; *see also Liggett Grp. v. Sunas*, 113 N.C. App. 19, 24, 437 S.E.2d 674, 677 (1993) ("A substantial right is considered affected if 'there are overlapping factual issues between the claim determined and any claims which have not yet been determined' because such overlap creates the potential for inconsistent verdicts resulting from two trials on the same factual issues.") (citation omitted).

6. Defendants' Amended Counterclaims and Amended Third Party Complaint focus on events surrounding the termination of the Plasmans' employment with Bolier, and these allegations depend on Decca USA's contention that Decca USA was a 55% owner and Chris Plasman was a 45% owner of Bolier. The claims dismissed in the Order on Defendants' Motion to Dismiss involved many of the same factual issues regarding Chris Plasman's ownership interest in Bolier and the events leading up to and following Decca USA's decision to cause Bolier to terminate the Plasmans' employment. Because of the overlapping nature of Defendants' counterclaims and third-party claims, the Court concludes that its Order on Defendants' Motions to

Dismiss affects a substantial right of the Plasmans and is therefore immediately appealable. Accordingly, the Court concludes that it should grant a stay pending the Appeal.

7. **WHEREFORE**, the Court hereby **STAYS** further discovery and proceedings on Defendants' counterclaims and third party claims pending the resolution of the Plasmans' Appeal or until such other time as the Court may order.

SO ORDERED, this the 11th day of January, 2017.

/s/ Louis A. Bledsoe, III
Louis A. Bledsoe, III
Special Superior Court Judge
for Complex Business Cases