

Global Textile Alliance, Inc. v. TDI Worldwide, LLC, 2019 NCBC Order 6.

STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
17 CVS 7304

GLOBAL TEXTILE ALLIANCE,
INC.,

Plaintiff,

v.

TDI WORLDWIDE, LLC et. al.,

Defendants.

ORDER STAYING CASE

THIS MATTER is before the Court upon Steven Graven’s (“Steven”) Motion to Clarify the Scope of the Section 1-294 Stay Pending Appeal. (“Motion”; ECF No. 437.) Steven moves the Court to “enter an order confirming that all proceedings in this Court except resolution of the pending dispositive motions and continued production of documents by Plaintiff, along with resolution of any issues arising therefrom, are stayed pursuant to N.C. Gen. Stat. § 1-294” (hereinafter “G.S.”). Alternatively, “[Steven] moves the Court to exercise its discretion to stay all proceedings pending resolution of Plaintiff’s appeal.” (*Id.* at p. 6.)

In response, Plaintiff filed a Brief in Opposition to the Motion. (ECF No. 443.) Plaintiff contends that the “Court has been divested of jurisdiction over this matter, and requests that it enter an Order staying all further proceedings *nunc pro tunc* to March 8, 2019 (the date GTA noticed its appeal) pending the appeal and denying [Steven]’s request for a stay of the entire matter except for decision on the pending motions to dismiss filed by Steven Graven, Timothy Dolan and TDI Worldwide, LLC, that GTA continue to be required to produce documents, excluding the documents

which are the subject of the appeal, and that Defendants be allowed to pursue proceedings before the Special Discovery master regarding Plaintiff's production." (*Id.* at p. 10.)

THE COURT, having considered the Motion, the Opposition, the applicable law, and other matters of record, concludes that the Motion should be GRANTED, in part, and DENIED, in part, and that all proceedings in this matter should be stayed in its entirety pending the outcome of the appeal for the reasons stated herein.

BACKGROUND FACTS AND ANALYSIS

1. On February 26, 2019, the Court entered an Order Adopting Special Discovery Master's Recommendation on Steven Graven's Motion to Compel (the "Adoption Order"; ECF No. 428.) In the Adoption Order, the Court adopted the Special Discovery Master's ("SDM") Amended Recommendation and held that "GTA waived the attorney-client privilege by Haspeslagh's participation in communication between GTA and its counsel." (*Id.* at pp. 7–8.) Consequently, the Court ordered that Plaintiff "produce the documents withheld on the basis of attorney client privilege on the grounds that they constituted '[c]onfidential correspondence between [Plaintiff] and/or its outside counsel and Stefaan Haspeslagh conveying and/or summarizing legal advice regarding the matters giving rise to the instant litigation'" and "make Remy Tack, who was instructed not to answer questions in his deposition about communications between [Plaintiff] and its counsel in which Haspeslagh participated based on the claim of attorney-client privilege, available to respond to such questions and other questions reasonably to follow from such responses." (*Id.* at p. 8.)

2. On March 8, 2019, Plaintiff filed a notice of appeal of the Adoption Order to the North Carolina Supreme Court. (ECF No. 436.)

3. Section 1-294 provides in relevant part:

When an appeal is perfected as provided by this Article it stays all further proceedings in the court below upon the judgment appealed from, or upon the matter embraced therein, unless otherwise provided by the Rules of Appellate Procedure; but the court below may proceed upon any other matter included in the action and not affected by the judgment appealed from.

4. “The longstanding, general rule in North Carolina is that when a party gives notice of appeal, the trial court is divested of jurisdiction until the appellate court returns a mandate in the case.” *SED Holdings, LLC v. 3 Star Props., LLC*, 250 N.C. App. 215, 219, 791 S.E.2d 914, 918 (2016). “If a party appeals from an interlocutory order that is immediately appealable, the trial court’s jurisdiction is removed and it may not proceed on any matters embraced by the order.” *Id.* at 220, 791 S.E.2d at 919. “Where a party appeals from a *non*appealable interlocutory order, however, such appeal does not deprive the trial court of jurisdiction, and thus the court may properly proceed with the case.” *RPR & Assocs., Inc. v. Univ. of N. Carolina-Chapel Hill*, 153 N.C. App. 342, 347, 570 S.E.2d 510, 514 (2002) (emphasis in original). An interlocutory order is immediately appealable when it affects a substantial right. *Plasman v. Decca Furniture (USA)*, 800 S.E.2d 761, 767–68, 2017 N.C. App. LEXIS 394, at *14–15 (2017). “A right is substantial when it will clearly be lost or irremediably and adversely affected if the order is not reviewed before final judgment.” *RPR & Assocs., Inc.*, 153 N.C. App. at 347, 570 S.E.2d at 514.

5. Claims of privilege and immunity are substantial rights that would be lost if orders affecting them were not immediately reviewed. *Berens v. Berens*, 247 N.C. App. 12, 17, 785 S.E.2d 733, 738 (2016) (“[W]here a party asserts a privilege or immunity that directly relates to the matter to be disclosed pursuant to the interlocutory discovery order and the assertion of the privilege or immunity is not frivolous or insubstantial, the challenged order affects a substantial right and is thus immediately appealable.” (internal citation and quotations omitted)); *Hammond v. Saini*, 229 N.C. App. 359, 362, 748 S.E.2d 585, 588 (2013), *aff’d*, 367 N.C. 607, 766 S.E.2d 590 (2014) (where the challenged order compels disclosure of matters a party asserts are privileged or immune from disclosure, the order affects a substantial right); *Evans v. United Servs. Auto. Ass’n*, 142 N.C. App. 18, 23–24, 541 S.E.2d 782, 786 (2001) (considering privilege claims substantial rights); *Nationwide Mut. Fire Ins. Co. v. Bournalon*, 172 N.C. App. 595, 617 S.E.2d 40 (2005) (permitting interlocutory appeal from trial court order compelling production of privileged material).

6. Plaintiff’s claim of privilege here is not frivolous or insubstantial, and Steven does not argue otherwise. Accordingly, Plaintiff’s appeal involves a substantial right and is immediately appealable, and this Court is divested of jurisdiction to proceed in this matter.

7. Therefore, pursuant to G.S. § 1-294, all further proceedings in this case are STAYED pending disposition of the appeal.

SO ORDERED, this, the 20th day of March, 2019.

/s/ Gregory P. McGuire
Gregory P. McGuire
Special Superior Court Judge for
Complex Business Cases