

STATE OF NORTH CAROLINA
GUILFORD COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
25CV005614-400

TANGER PROPERTIES LIMITED
PARTNERSHIP,

Plaintiff,

v.

ACE AMERICAN INSURANCE
COMPANY and LIBERTY MUTUAL
FIRE INSURANCE COMPANY,

Defendants.

ORDER ON MOTION FOR STAY

1. **THIS MATTER** is before the Court on Defendants Ace American Insurance Company (“ACE”) and Liberty Mutual Fire Insurance Company’s (“Liberty Mutual”) Motion for Recognition of Automatic Stay Pursuant to N.C.G.S. § 1-294 or for Discretionary Stay (“Motion for Stay,” ECF No. 70). In a nutshell, Defendants seek a stay of all proceedings in this action based on the pendency of their appeal (ECF No. 67) to the Supreme Court of North Carolina of the Court’s order denying their motion to dismiss in this case. For the reasons set out below, the Motion for Stay is **DENIED**.

BACKGROUND¹

2. Plaintiff Tanger Properties Limited Partnership (“Tanger” or “Plaintiff”) is a North Carolina limited partnership with its headquarters and principal place of business in Greensboro, North Carolina. (Am. Compl. ¶ 21, ECF No. 44.)

¹ The factual recitations contained herein are derived from the allegations in the parties’ pleadings. The Court is including these findings solely for the purpose of explaining the background relevant to the present Motion for Stay, and they shall not be used for any other purpose in this lawsuit.

3. Defendant ACE is a Pennsylvania corporation that provided property insurance coverage under a policy issued to Tanger for the policy period of 1 August 2019 through 1 August 2020. (Am. Compl. ¶¶ 23, 31; “ACE Policy,” ECF No. 50.1.)

4. Defendant Liberty Mutual is an insurance company organized under the laws of the Commonwealth of Massachusetts. (Am. Compl. ¶ 24.) Liberty Mutual provided insurance coverage to Tanger in the form of an excess policy during the same policy period as ACE that likewise encompassed Tanger’s thirty-nine outlet centers. (Am. Compl. ¶ 45; “Liberty Policy,” ECF No. 50.2.)

5. The Policies are “all-risk” policies, insuring “against all risks of direct physical loss of or damage to property described herein[.]” (ACE Policy § 23; Liberty Policy § 23; Am. Compl. ¶ 32.)

6. The Policies do not contain a choice-of-law provision identifying which state’s substantive law should apply to coverage disputes. They do, however, include a provision stating that “the Insurer, at the request of the Insured, will submit to the jurisdiction of any court of competent jurisdiction within the United States and will comply with all requirements necessary to give such jurisdiction.” (ACE Policy § 62; Liberty Policy § 62.)

7. Tanger initiated this action by filing a Complaint in Guilford County Superior Court on 12 March 2025 in which it asserted claims for declaratory relief and breach of contract against Defendants. (ECF No. 3.)

8. Tanger's claims are predicated on Defendants' denial of coverage for alleged "direct physical loss of or damage to property" that was caused by government orders restricting business activities and gatherings during the COVID-19 pandemic.

9. Following the filing of the Complaint, Tanger sent a renewed demand letter to ACE on 23 April 2025 and to Liberty Mutual on 24 April 2025 requesting that Defendants reconsider their prior denial of coverage based on the Supreme Court of North Carolina's opinion in *North State Deli, LLC v. Cincinnati Insurance Co.*, 386 N.C. 733 (2024). (Am. Compl. ¶ 131.) In *North State Deli*, our Supreme Court held that under an all-risk policy with no virus exclusion, "a reasonable person in the position of the insured would understand the [businesses'] policies to include coverage for business income lost when virus-related government orders deprived the policyholder [businesses] of their ability to physically use and physically operate property at their insured business premises." *Id.* at 746.

10. Based on Defendants' renewed denials of coverage, on 27 May 2025, Tanger filed an Amended Complaint, which added claims for breach of the implied covenant of good faith and fair dealing and for unfair and deceptive trade practices based on its contention that Defendants had violated North Carolina's Unfair Claims Settlement Practices Act, N.C.G.S. § 58-63-15(11). (Am. Compl. ¶¶ 132, 135, 153–72.)

11. In its Amended Complaint, Tanger contends that any possible doubt previously existing as to whether the claims submitted to Defendants were covered under the Policies was erased by the decision in *North State Deli*.

12. Defendants' Joint Motion to Dismiss the First Amended Complaint for Failure to State a Claim was filed on 26 June 2025 and sought an order dismissing Tanger's Amended Complaint in its entirety. (ECF No. 48.) Specifically, Defendants argued that Georgia law applies to the parties' coverage dispute and that the application of North Carolina law instead would violate Defendants' constitutional right to due process.

13. On 27 October 2025, this Court entered an Order and Opinion denying Defendants' Joint Motion to Dismiss (the "27 October Order," ECF No. 63). In the 27 October Order, the Court ruled that North Carolina law applied to Plaintiff's claims and that Defendants had not made any substantive arguments that dismissal of Plaintiff's claims was appropriate under North Carolina law. (27 October Order ¶¶ 33–57.)

14. On 14 November 2025, Defendants jointly filed a notice of appeal of the 27 October Order. (ECF No. 67.)

15. The present Motion for Stay was filed on 3 December 2025. In that Motion, Defendants ask this Court to recognize an automatic stay of all proceedings in this case pursuant to N.C.G.S. § 1-294 pending the resolution of their appeal. Alternatively, Defendants request that this Court grant a discretionary stay until such time as the appeal is resolved.

16. The Motion for Stay has been fully briefed and is ripe for resolution.

17. The Court, in the exercise of its discretion under BCR 7.4, elects to enter this Order without a hearing.

ANALYSIS

18. As noted above, Defendants request the entry of an automatic stay pursuant to N.C.G.S. § 1–294 or, in the alternative, a discretionary stay until the Supreme Court has ruled on their appeal of the 27 October Order. The Court will address each request in turn.

I. AUTOMATIC STAY UNDER § 1–294

19. This Court has previously noted that the automatic stay provision of Section 1–294

stays all further proceedings in the court below upon the judgment appealed from, or upon the matter embraced therein. However, this rule is not without exceptions. When a party appeals from a non-appealable interlocutory order, the appeal does not deprive the trial court of jurisdiction and thus the court may properly proceed with the case.

Howard v. IOMAXIS, LLC, 2024 NCBC LEXIS 46, at *5–6 (N.C. Super. Ct. Mar. 12, 2024) (cleaned up).

20. An interlocutory order “is one made during the pendency of an action, which does not dispose of the case, but leaves [matters] for further action by the trial court in order to settle and determine the entire controversy.” *Veazey v. Durham*, 231 N.C. 357, 362 (1950). Because interlocutory orders do not represent a final judgment, they are generally not appealable. *Goldston v. Am. Motors Corp.*, 326 N.C. 723, 725 (1990).

21. An exception to this general rule exists where an interlocutory order impacts a substantial right. *See* N.C.G.S. § 1–277(a) (“An appeal may be taken from every judicial order or determination . . . that affects a substantial right claimed in

any action or proceeding[.]”; N.C.G.S. § 7A–27(a)(3)(a) (“[An] [a]ppeal lies of right directly to the Supreme Court . . . [f]rom any interlocutory order of a Business Court Judge that . . . [a]ffects a substantial right.”); *see also Stanback v. Stanback*, 287 N.C. 448, 453 (1975) (“Ordinarily, an appeal from an interlocutory order will be dismissed as fragmentary and premature unless the order affects some substantial right and will work injury to appellant if not corrected before appeal from final judgment.”).

22. Our Supreme Court has made clear that an attempted appeal from an interlocutory order that is not subject to appeal is a “nullity,” and that under such circumstances the trial court need not stay proceedings in the case. *Cox v. Cox*, 246 N.C. 528, 532 (1957); *Veazey*, 231 N.C. at 365.

23. The appellant bears the burden to establish that its substantial rights will be “irremediably adversely affected” if the interlocutory order is not reviewed before final judgment. *Howard*, 2024 NCBC LEXIS 46, at *6.

24. Our Court of Appeals has provided some degree of guidance on the subject of how to determine whether an interlocutory order affects a substantial right in this context. *See Plasman v. Decca Furniture (USA), Inc.*, 253 N.C. App. 484, 493 (2006) (cleaned up) (“[T]he right itself must be substantial, and the deprivation of that substantial right must potentially work injury to the appellant if not corrected before appeal from final judgment.”); *Barnes v. Kochhar*, 178 N.C. App. 489, 497 (2006) (cleaned up) (“A right is substantial when it affects or involves a matter of substance as distinguished from matters of form: a right materially affecting those

interests which [a party] is entitled to have preserved and protected by law: a material right.”).

25. The Court acknowledges, however, that the test is sometimes easier stated than applied. “No hard and fast rules exist for determining which appeals affect a substantial right.” *Cagle v. Teachy*, 111 N.C. App. 244, 246 (1993). Accordingly, courts must “resolve the question in each case by considering the particular facts of that case and the procedural context in which the order from which appeal is sought was entered.” *Hanesbrands Inc. v. Fowler*, 369 N.C. 216, 219 (2016); *see also Red Valve, Inc. v. Titan Valve, LLC*, 2019 NCBC LEXIS 108, at *7–8 (N.C. Super. Ct. Dec. 17, 2019) (holding that a case-by-case inquiry is required to determine if an interlocutory order affects a substantial right).

26. Here, the Court finds that Defendants have failed to show that the 27 October Order affects a substantial right.

27. Defendants’ substantial right argument hinges on their contention that the Court’s ruling on the choice-of-law issue in its 27 October Order would result in a denial of their due process rights. This is so, Defendants contend, because the Court’s application of North Carolina law to the underlying multistate insurance claim would serve to nullify the defenses to that claim existing under the substantive laws of the states in which the insured properties are located.

28. In making this argument, Defendants rely on two cases from the United States Supreme Court. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 814–20 (1985) (finding that Kansas law could not be applied to all leases in an interstate class

action contract case when 99% of the gas leases and 97% of the plaintiffs had no connection to Kansas, there was no common fund in Kansas, and there were no identifiable resources in Kansas from which to pay class royalties such that class members would have a reasonable expectation that Kansas law would apply); *Home Ins. Co. v. Dick*, 281 U.S. 397, 408 (1930) (due process was violated when Texas law was applied to a contract in which all acts relating to that contract were performed in Mexico).

29. But the due process concerns at issue in those two cases simply are not present here. As discussed in detail in the Court’s 27 October Order, it cannot seriously be denied that Tanger *has* significant contacts with North Carolina, including the location of its headquarters and principal place of business. Moreover, a portion of the insured property is located in North Carolina.

30. Therefore, a “close connection” exists between North Carolina and the interests insured under Defendants’ policies under N.C.G.S. § 58-3-1—meaning that the application of North Carolina law on the facts of this case is consistent with due process. *See, e.g., Fortune Ins. Co. v. Owens*, 351 N.C. 424, 428 (2000).

31. Furthermore, as Defendants concede in their briefs, our appellate courts have never held that a choice-of-law ruling affects a substantial right.² For purposes of the substantial right doctrine, courts differentiate between, on the one hand, a

² Defendants cite two cases from our Court of Appeals in which a choice-of-law issue was ruled upon in an interlocutory appeal. However, in neither of those cases did the Court of Appeals hold that the appeal affected a substantial right. Instead, the Court of Appeals elected to treat the appeals as petitions for certiorari. *See Harco Nat’l Ins. Co. v. Grant Thornton LLP*, 206 N.C. App. 687, 691 (2010); *United Virginia Bank v. Air-Lift Assocs.*, 79 N.C. App. 315, 319 (1986).

defense to an asserted claim, and, on the other hand, a right to avoid trial. A substantial right is one that “is effectively lost if a case is erroneously permitted to go to trial,” *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985), whereas a defense can be “fully and adequately protected” on appeal from a final judgment. *Arrington v. Arrington*, 298 N.C. App. 622, 633 (2025).

32. Here, Defendants’ choice-of-law argument is more akin to a defense. As such, they will, of course, be free to raise this issue in an appeal from a final judgment in this case, but they are not entitled to have proceedings in this Court halted in the midst of this litigation while they seek an interlocutory ruling on that issue.

33. For these reasons, Defendants have failed to show that the 27 October Order affects a substantial right.

II. Discretionary Stay

34. In the alternative, Defendants request that the Court enter a discretionary stay. The Court, in the exercise of its discretion, declines to do so.

35. This Court recently articulated two factors that a trial court should consider when faced with a request for a discretionary stay pending appeal: “(1) the potential prejudice to the parties of a stay or of continued proceedings and (2) whether the appellant can show a substantial likelihood of success on the merits.” *State ex. rel. Jackson v. E.I. DU Pont de Nemours & Co.*, 2025 NCBC LEXIS 144, at *2 (N.C. Super. Ct. Oct. 10, 2025).

36. With regard to the prejudice prong, Defendants argue that absent a stay they will be prejudiced by being forced to expend substantial resources in continuing

to litigate this case. However, Defendants have not cited any legal authority for the proposition that being subjected to the expenses of litigation justifies a stay in this context. Moreover, Tanger would be prejudiced by the significant delay in the final adjudication of their claims that would ensue if a stay was entered.

37. As for the second prong, Defendants' arguments fare no better as they have not succeeded in showing a likelihood of success. As noted above, the record reveals a close connection between North Carolina and the insured interests in this case such that no due process violation exists as a result of the Court's 27 October Order.

38. Accordingly, the Court finds that there is no basis for a discretionary stay.

CONCLUSION

THEREFORE, for the reasons set out above and in the exercise of the Court's discretion, Defendants' Motion for Stay is **DENIED**.

SO ORDERED, this the 9th day of February, 2026.

/s/ Mark A. Davis
Mark A. Davis
Special Superior Court Judge
for Complex Business Cases