

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 ON DEFENDANT'S REQUEST  
FOR STAY PENDING APPEAL**

1. **THIS MATTER** is before the Court *sua sponte* to address the Court's jurisdiction over the above-captioned case in light of a party's recent appeal.

2. Through its Order and Opinion on Cross-Motions for Summary Judgment entered on 14 November 2023 and amended on 16 November 2023, the Court granted Plaintiffs James H. Q. Davis Trust and William R. Q. Davis Trust's (together, "Plaintiffs") Motion for Summary Judgment, denied Defendant Charles B. Q. Davis Trust's ("Defendant") Motion for Summary Judgment, and entered summary judgment for Plaintiffs on their claim for judicial dissolution (the "Order").<sup>1</sup>

3. On 12 December 2023, Defendant filed a Notice of Appeal of the Order, both as originally entered and as amended, to the North Carolina Court of Appeals (the "Appeal").<sup>2</sup>

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<sup>1</sup> (Order & Op. Cross-Mots. Summ. J. ¶ 30, ECF No. 60; Am. Order & Op. Cross-Mots. Summ. J. ¶ 30 [hereinafter "Order"], ECF No. 65.)

<sup>2</sup> (Notice Appeal Order, ECF No. 67.)

4. The Court provided in the Order that it would, “by separate order, notice a conference with counsel to discuss the process for dissolution of JHD [Properties, LLC (“JHD”)] and Berry Hill [Properties, LLC (“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.”<sup>3</sup> The Court thereafter noticed a status conference for 15 December 2023 to discuss these matters.<sup>4</sup>

5. In anticipation of the status conference, Defendant’s counsel sent an e-mail to the Court’s law clerk on 12 December 2023 advising of Defendant’s position that, as a result of the Appeal, “N.C.G.S. § 1-294 stays further proceedings in the trial court while the appeal is pending.”

6. On 15 December 2023, Plaintiffs’ counsel responded by e-mail to the Court’s law clerk advising that “Plaintiffs do not agree with Defendant’s assumption that a perfected appeal of the Court’s [Order] automatically stays the Court’s ability to designate a person and mechanism to liquidate the assets of the LLCs.”

7. In light of the parties’ disagreement concerning the Court’s jurisdiction to proceed further in this action during the pendency of the Appeal, the Court ordered the parties to submit briefs addressing “whether the Appeal divests the Court of jurisdiction to take further action in this case while the Appeal is pending.”<sup>5</sup>

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<sup>3</sup> (Order ¶ 30.)

<sup>4</sup> (Notice Status Conf., ECF No. 66.)

<sup>5</sup> (Scheduling Order ¶ 8, ECF No. 69.)

8. On 3 January 2024, Plaintiffs timely filed their brief on this issue, contending that the stay provisions of N.C.G.S. § 1-294 do not apply because N.C.G.S. § 7A-27 requires that any appeal of this matter be to the Supreme Court of North Carolina, not the North Carolina Court of Appeals, and since the thirty-day appeal period expired on 18 December 2023,<sup>6</sup> Defendant could never perfect an appeal by filing an appeal with the Supreme Court at this late date.<sup>7</sup> As a result, Plaintiffs argue that the Appeal is without legal effect and that the Court retains jurisdiction to proceed with the dissolution of the two defendant LLCs.

9. Two days later, on 5 January 2024, Defendant filed its brief, contending that (i) the Order contemplates further proceedings necessary to effectuate the Order so the action is automatically stayed according to the plain language of section 1-294,<sup>8</sup> and (ii) the propriety of the Appeal is not before the Court at this time because Defendant intends to seek appellate review by the Supreme Court through a writ of certiorari, and alternatively, through a petition for discretionary review.<sup>9</sup> Defendant asserts no basis for a stay of the case apart from the automatic stay provisions of section 1-294.

10. Plaintiffs timely filed their reply brief on 10 January 2024.<sup>10</sup>

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<sup>6</sup> See N.C. R. App. P. 3(c).

<sup>7</sup> (Pls.' Br. Concerning Ct.'s Jurisdiction Pending Appeal, ECF No. 70.)

<sup>8</sup> (Charles B. Q. Davis Tr.'s Br. Supp. Automatic Stay Pending Appeal [hereinafter "Def.'s Br."], ECF No. 71.)

<sup>9</sup> (Def.'s Br. 8.)

<sup>10</sup> (Pls.' Reply Br. Concerning Stay, ECF No. 73.)

11. After careful consideration and review, the Court agrees with Plaintiffs and concludes that the automatic stay provisions of N.C.G.S § 1-294 do not apply and that the Court retains jurisdiction to proceed in this case during the pendency of the Appeal.

12. Section 1-294 provides as follows:

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.

13. Section 7A-27(a)(2) likewise makes clear that an appeal from any final judgment<sup>11</sup> in a case designated as a mandatory complex business case “lies of right directly to the Supreme Court [of North Carolina.]” As explained by our Court of Appeals, “[section 7A-27(a)(2)] clearly mandates that appeals from final judgments rendered in the Business Court be brought in the North Carolina Supreme Court and not in [the North Carolina Court of Appeals].” *Christenbury Eye Ctr., P.A. v. Medflow, Inc.*, 246 N.C. App. 237, 240 (2016). Thus, where, as here, a party appeals a Business Court decision to the Court of Appeals, the Court of Appeals “lack[s] jurisdiction over [appellant’s] appeal, and as a result, the appeal must be dismissed.” *Id.*; *see, e.g., Hous. Auth. City of Wilmington v. Sparks Eng’g, PLLC*, 212 N.C. App. 184, 187 (2011)

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<sup>11</sup> Both parties appear to assume that the Order is a final judgment that may be properly appealed. For purposes of the present analysis, the Court will therefore assume without deciding that the Order is a final judgment since the outcome is the same whether or not the Order is a final judgment. The Court also notes that the outcome is the same whether or not the Order is an interlocutory order and whether or not the Order affects a substantial right, each as contemplated under section 1-294.

“A jurisdictional default precludes the appellate court from acting in any manner other than to dismiss the appeal.” (cleaned up)).

14. Applying these rules here, the Court concludes that Defendant’s Appeal to the Court of Appeals is without legal effect, is subject to dismissal, and therefore has not and cannot be perfected. Moreover, since the time for Defendant to file its appeal of the Court’s Order expired on 18 December 2023 without Defendant filing an appeal in the proper court, Defendant has not and cannot belatedly perfect a newly filed appeal in the Supreme Court. As a result, the Court has not been divested of jurisdiction, the stay provisions of section 1-294 do not apply, and the Court may proceed to consider the dissolution of the two defendant LLCs. *See generally, e.g., Veazey v. Durham*, 231 N.C. 357, 364 (1950) (“[W]hen an appeal is taken to the Supreme Court from an interlocutory order of the Superior Court which is not subject to appeal, the Superior Court need not stay proceedings, but may disregard the appeal and proceed to try the action while the appeal on the interlocutory matter is in the Supreme Court.”); *Plasman v. Decca Furniture (USA), Inc.*, 253 N.C. App. 484, 492 (2017) (agreeing with *Veazey* that “an improper interlocutory appeal never deprives a trial court of jurisdiction over a case[ ]” (emphasis omitted)). The fact that Defendant may seek discretionary appellate review now that its right to direct appeal has been foreclosed does not change this analysis.

15. **WHEREFORE**, the Court, in the exercise of its discretion, hereby concludes that the Court has not been divested of jurisdiction by Defendant’s Appeal, section 1-294 does not apply to stay any proceedings in this Court, and the Court may proceed

to consider the dissolution of the two defendant LLCs. Accordingly, the Court, in the exercise of its discretion, hereby **ORDERS** the parties to meet and confer, and thereafter submit no later than 30 January 2024, a Proposed Consent Order addressing 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.<sup>12</sup> Should the parties not reach agreement as to all terms of a Proposed Consent Order, the parties should reflect their areas of agreement and disagreement in the proposed order.

**SO ORDERED**, this the 16th day of January, 2024.

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

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<sup>12</sup> (See Order ¶ 30.)