

COURT OF APPEALS OF THE STATE OF GEORGIA

James C. Barnes et al. v. Matthew Scott Harkins et al.

Barnes v. Harkins · No. A17A1643 · Decided June 8, 2017

SUMMARY

The Georgia Court of Appeals dismissed the appeal for lack of jurisdiction. It held that a motion seeking a stay to enforce compliance with OCGA § 8-2-38 was not an application for injunctive relief appealable directly under OCGA § 5-6-34(a)(4), and that the defendants had failed to follow the interlocutory appeal procedure.

CASE DETAILS

COURT	Court of Appeals of the State of Georgia
JURISDICTION	Georgia
DECIDED	June 8, 2017
DOCKET	A17A1643
DISPOSITION	dismissed
PROCEDURAL POSTURE	Builders appealed from the trial court's denial of their compound motion seeking an injunction, dismissal, and summary judgment. The appeal was initially taken to the Supreme Court of Georgia and transferred to the Court of Appeals.
STANDARD OF REVIEW	The court construed the motion according to its substance rather than its nomenclature and reviewed its own appellate jurisdiction de novo.
PRECEDENTIAL VALUE	Published Georgia Court of Appeals opinion
PARTIES	James C. Barnes, Nick Stewart v. Matthew Scott Harkins, Laura X. Harkins

TOPICS

[appellate jurisdiction](#)[interlocutory appeal](#)[injunctions](#)[construction law](#)[statutory interpretation](#)

PRACTICE AREAS

[appellate procedure](#)[civil procedure](#)[construction law](#)

QUESTIONS PRESENTED

1. Whether the denial of the builders' motion seeking enforcement of OCGA § 8-2-38 constituted the denial of an application for an interlocutory injunction permitting a direct appeal under OCGA § 5-6-34(a)(4).
2. Whether the Court of Appeals had jurisdiction when the builders failed to comply with Georgia's interlocutory-appeal procedure.

HOLDINGS

1. A motion that substantively seeks a stay of proceedings to enforce compliance with OCGA § 8-2-38 is not an application for injunctive relief within the meaning of OCGA § 5-6-34(a)(4); therefore, denial of the motion does not authorize a direct appeal under that provision.
2. Because the builders were required to follow the interlocutory-appeal procedure and failed to do so, the failure deprived the Court of Appeals of jurisdiction and required dismissal of the appeal.

KEY QUOTATIONS

“In substance, the Defendants’ motion sought to stay proceedings in order to enforce compliance with OCGA § 8-2-38.” (order)

“The denial of this motion does not constitute the denial of an application for injunctive relief as contemplated by OCGA § 5-6-34 (a) (4) for purposes of seeking a direct appeal.” (order)

“Their failure to do so deprives us of jurisdiction over this appeal, which is hereby DISMISSED.” (order)

FACTUAL BACKGROUND

Homeowners Matthew Scott Harkins and Laura X. Harkins sued builders James C. Barnes and Nick Stewart concerning alleged construction defects. The builders sought to enforce OCGA § 8-2-38 by moving for a stay or injunction, dismissal, and summary judgment, asserting that the homeowners were deemed to have accepted an offer to remedy the defects. The trial court denied the motion.

PROCEDURAL HISTORY

The homeowners sued the builders over construction defects. The builders moved for an injunction, dismissal, and summary judgment, arguing that the homeowners were barred under OCGA § 8-2-38(m) because they had accepted a settlement offer. The trial court denied the motion, addressing the statute-of-limitations issue rather than the application of OCGA § 8-2-38. The builders attempted a direct appeal under OCGA § 5-6-34(a)(4); the Supreme Court transferred the appeal to the Court of Appeals, which dismissed it for failure to use the interlocutory-appeal procedure.

DISPOSITION

dismissed

CASES CITED

- Planet Ins. Co. v. Ferrell, 228 Ga. App. 264, 266 (491 S.E.2d 471) (1997)

- Grange Mut. Cas. Co. v. Riverdale Apartments, Ltd. Partnership, 218 Ga. App. 685, 686 (463 S.E.2d 46) (1995)

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