

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HAMPTON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2025-001849

RECEIVED

Oct 13 2025

SC Court of Appeals

Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A.,Respondent,

v.

William Barnes and Barnes Law Firm, LLC, Appellants,

v.

Parker Law Group, Third-Party Defendant.

RESPONDENT'S MOTION TO DISMISS

PIERCE. SLOAN, KENNEDY & EARLY, LLC
Carl E. Pierce, II
R. Richard Gergel
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Charleston, SC 29401
(843) 722-7733

ATTORNEYS FOR RESPONDENT

Appellant Barnes is a former employee of PMPED. (Ex. 1, Compl. ¶ 2). After resigning from PMPED, Barnes joined Barnes Law Firm, LLC. (*Id.*). Prior to his resignation, on January 1, 2018, Barnes signed an employment agreement with PMPED that requires the arbitration of all disputes relating to Barnes' employment and termination, in addition to any disputes over the interpretation, performance, or breach of the employment agreement. (Ex. 2, Employment Agreement ¶ 27). The agreement also provides that disputes will be arbitrated pursuant to the South Carolina Uniform Arbitration Act, S.C. Code Ann. §§ 15-48-10 *et seq.*, and that disputes regarding the division of fees associated with transferred cases for which there is no written agreement shall be settled by binding arbitration. (*Id.* at ¶ 18).

As set forth in paragraph 27(a):

Except to the extent referenced in paragraph (b), the Employer and the Employee agree that, to the extent permitted by law, *any dispute or controversy arising out of, relating to, or in connection with this Agreement, or the interpretation, validity, construction, performance, breach, or termination thereof, or the Employee's employment by the Employer or any termination thereof, shall be settled by arbitration.* Arbitration will be held at a location in Hampton County, South Carolina. If the parties proceed to arbitration, it will be conducted in accordance with the South Carolina Uniform Arbitration Act. The parties agree to employ a licensed attorney as their arbitrator and will agree upon one arbitrator. In the event that the parties cannot agree, they will proceed pursuant to S.C. Code Ann. § 15-48-30, again relying on licensed attorneys for the position of arbitrator. The decision of the arbitrator(s) will be final, conclusive and binding on the parties to the arbitration. Judgment may be entered on the arbitrator's decision in any court having jurisdiction. Each party shall bear the costs equally of arbitration.

Like all disputes relating to the employment agreement and Barnes' employment, those relating to the apportionment of attorney fees must be arbitrated. To that end, the employment agreement provides special arbitration procedures for the apportionment of attorney fees to former employees. As set forth in Paragraph 27(b):

The parties agree to resolve certain payment calculations (as provided in Paragraphs 14, 15 and 16) and fee decisions for transferred cases (as provided in Paragraph 18) by a separate arbitration procedure as set out in those Paragraphs.

Following Barnes' resignation from PMPED, certain disputes have arisen between PMPED and Barnes regarding: (1) attorney fees owed to PMPED from cases that originated at PMPED but were transferred to Barnes Law Firm, (2) attorney fees owed to Barnes from cases that remained and resolved at PMPED after Barnes left PMPED, and (3) reimbursement of legal fees related to matters that arose during his employment that were paid by PMPED on behalf of Barnes after his resignation. (*See generally* Ex. 1, Compl.). Barnes refused to arbitrate the disputes as required by the employment agreement. Barnes delayed the initiation of the required arbitration process for almost three years by refusing to provide information regarding the settlements he collected on cases that originated at PMPED and were later transferred to Barnes Law Firm. Barnes also refused to cooperate in the selection of an arbitrator. (Ex. 3, July 17, 2025 Order p. 4).

At a mediation conducted on November 25, 2024, PMPED informed Appellants that PMPED and PLG would demand arbitration if the dispute was not resolved at mediation. (Ex. 4, Mediation Powerpoint Slide). The mediation was not successful. With only weeks remaining before the statute of limitations deadline and pressured by Barnes' continued refusal to participate in an arbitration process he agreed to as an attorney, PMPED had no choice but to file the action giving rise to this appeal on December 16, 2024. (*See generally* Ex. 1 Compl.). To compel Barnes to participate in arbitration and preserve any claims that could potentially be found nonarbitrable, PMPED asked the circuit court to (1) determine whether the claims must be arbitrated, (2) order arbitration for all arbitrable claims, and (3) proceed with a jury trial as to any remaining nonarbitrable issues. The complaint references the arbitration provision eight times:

12. . . . Pursuant to the PMPED Employment Agreement, the division of attorney fees collected from the transferred cases that are not subject to the fifty percent fee sharing agreement *must be determined by an arbitrator*.

23. Pursuant to the PMPED Employment Agreement, attorney fees collected from transferred cases that are not subject to the fifty percent fee sharing agreement described in Paragraph 10 *must be divided between Plaintiff PMPED and Defendant Barnes by an arbitrator.*

32. Further, a binding agreement existed between Plaintiff PMPED and Defendant Barnes under which *Plaintiff PMPED and Defendant Barnes would divide attorney fees collected in the remaining transferred cases (those not subject to the fifty percent fee sharing agreement) according to the determination of an arbitrator* to be agreed to by the parties. Upon information and belief, Defendants Barnes and Barnes Law Firm have collected attorney fees from transferred cases where *the division of attorney fees must be determined by an arbitrator.*

49. As described herein, including but not limited to Paragraph 12, a valid contract exists concerning fees collected in all other transferred cases *that requires the division of attorney fees collected in those cases to be determined by an arbitrator.*

54. WHEREFORE, Plaintiff PMPED, incorporating all allegations and averments set forth above, demands and prays for as follows:

g. *That the Court order Defendant Barnes to arbitrate, before a licensed attorney selected by Plaintiff or mutual agreement of the parties, any issue determined to be subject to arbitration and that the Court issue an Order as to any rules the Court deems necessary for the arbitration proceedings*

i. That a trial be had by jury on all *triable issues*

On January 3, 2025, prior to the Appellants' filing of a responsive pleading, counsel for PMPED wrote to counsel for Appellants memorializing that he had previously emailed Appellants asking about arbitration and asking again if Appellants could propose an arbitrator. (Ex. 5, Jan. 3, 2025 Email). On January 15, 2025, Appellants answered the complaint, and *both* Appellants brought numerous counterclaims against PMPED and third-party claims against Parker Law Group, LLP ("PLG"), including claims for breach of contract, quantum meruit, unjust enrichment, accounting, and a declaratory judgment. (Ex. 6, Answer). The counterclaims and third-party claims sought to have the circuit court enforce alleged terms of the employment agreement and make declarations interpreting the employment agreement in Appellants' favor.

On May 9, 2025, PMPED filed a motion to stay the action and compel arbitration. (Ex. 7, Resp't's Mot. Compel Arbitration). On July 17, 2025, the circuit court filed a formal order granting a stay and compelling arbitration. (*See generally* Ex. 3, July 17, 2025 Order). Appellants filed a motion for reconsideration on July 25, 2025, which was denied by the circuit court on August 29, 2025. (Ex. 8, Appellants' Mot. Reconsideration; Ex. 9, Aug. 29, 2025 Order). This appeal followed on September 12, 2025.

ARGUMENT

Because the circuit court's order is not a final order involving the merits or discontinuing the action, it is not immediately appealable. Vitaly, PMPED did not move the circuit court to dismiss the action, which has only been stayed, so the circuit court's order is interlocutory. PMPED's motion did not invoke Rule 12, SCRCP, and specifically asks the circuit court to stay, rather than dismiss, the proceedings. The circuit court's July 11, 2025 order, which grants the motion to stay and compel arbitration, specifies that it does not end the case. (Ex. 10, July 11, 2025 Form 4 Order). The formal order that followed did not dismiss the case or end the action and only stayed it. (*See generally* Ex. 3, July 17, 2025 Order). The circuit court's August 29, 2025 Order specifies that it does not end the case. (Ex. 8, Aug. 29, 2025 Order). As set forth by the Supreme Court:

[S]tatutes at both the federal and state level have been enacted which restrict the right to appeal orders which favor arbitration over litigation. 9 U.S.C.A. § 16 (West Supp. 1995); S.C. Code Ann. § 15-48-200 (Supp. 1994).

Section 15-48-200(a) provides as follows:

An appeal may be taken from: (1) An order denying an application to compel arbitration made under § 15-48-20; (2) An order granting an application to stay arbitration made under § 15-48-20(b); (3) An order confirming or denying confirmation of an award; (4) An order modifying or correcting an award; (5) An order vacating an award

without directing a rehearing; or (6) A judgment or decree entered pursuant to the provisions of this chapter.

By application of the rule of statutory construction “expression unius est exclusion alterius” (the mention of one is the exclusion of another), *all other orders related to arbitration are not immediately appealable. Pennsylvania Nat. Mut. Cas. Ins. Co. v. Parker*, 282 S.C. 546, 320 S.E.2d 458 (Ct. App. 1984). Therefore, the order in this case, which stays this action and compels arbitration, is not immediately appealable under § 15-48-200.

Heffner v. Destiny, Inc., 321 S.C. 536, 537-38, 471 S.E.2d 135, 135-36 (1995) (emphasis added).

Therefore, under South Carolina law, all orders relating to arbitration not mentioned in S.C. Code Ann. § 15-48-200(a) are not immediately appealable. The only remaining avenue for the Court of Appeals to somehow have appellate jurisdiction to review this case, despite the language of *Heffner*, would be for the order to be immediately appealable under S.C. Code Ann. § 14-3-330.

Under section 14-3-330(1), the order could be immediately appealable if it involved the merits of the underlying case. Motions to compel arbitration by definition do not involve the merits as they do not finally determine some substantial matter forming the whole or part of some cause of action or defense. *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 306, 705 S.E.2d 475, 480 (Ct. App. 2011). The circuit court’s order compelling arbitration does not finally determine any element of PMPED’s four causes of action or the defenses in this case, is interlocutory, and therefore is subject to revision by the circuit court at any time prior to the entry of final judgment. *See Mid-State Distribs. v. Century Imps.*, 310 S.C. 330, 335, 426 S.E.2d 777, 780 (1993) (stating that an order is interlocutory if it leaves any further act that must be done by the court prior to a determination of the rights of the parties.).

The circuit court’s July 11, 2025 order clearly indicates that the order compelling arbitration and staying the case does not end the case. There is no finality in the grant of the motion, and there could be some form of newly discovered evidence that would support Appellants’

arguments and persuade the circuit court to revise its order. Future circumstances (for example, if the arbitration breaks down or fails to resolve the dispute) could dictate that the parties return to the circuit court. In sum, because the order does not finally determine the merits of any of PMPED's four causes of action or Appellants' counterclaims, third-party claims, and affirmative defenses, the order is not immediately appealable under section 14-3-330(1).

The order is not immediately appealable under section 14-3-330(2) either, even though it affects the parties' rights to a jury trial. Section 14-3-330(2) states that

An order affecting a substantial right made in an action [is immediately appealable] when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action

S.C. Code Ann. § 14-3-330(2). Because the order does not dismiss or otherwise finally discontinue the action, it does not determine the action or prevent a judgment. Appellants have not lost any defenses “and in fact, their defense will remain viable until there is a final order in the case.” *Mid-State Distribs.*, 310 S.C. at 335 n.4, 426 S.E.2d at 780 n.4. An order compelling arbitration that does not dismiss the action does not finally determine any of the rights of the parties. *Cf. Widener v. Fort Mill Ford*, 381 S.C. 522, 524, 674 S.E.2d 172, 173-74 (Ct. App. 2009) (stating that an order *dismissing* an action and compelling arbitration finally determines the rights of the parties and is immediately appealable pursuant to section 14-3-330). The order is therefore not immediately appealable, the Court does not have appellate jurisdiction over this matter, and it should be dismissed.¹

¹ Similarly, under the Federal Arbitration Act, an order staying a case and compelling arbitration is not immediately appealable. *See Smith v. Spizzirri*, 601 U.S. 472, 477, 144 S. Ct. 1173, 1177, 218 L. Ed. 2d 494 (2024) (“When a court compels arbitration, by contrast, Congress made clear that, absent certification of a controlling question of law by the district court under 28 U.S.C. § 1292(b), the order compelling arbitration is not immediately appealable.”).

CONCLUSION

For the foregoing reasons, the Court should grant PMPED's motion and dismiss this appeal.

Respectfully submitted,

PIERCE, SLOAN, KENNEDY & EARLY,
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BY: /s/ R. Richard Gergel

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PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing Respondent’s Motion to Dismiss has been served upon the following counsel of record by emailing a copy of the same this 13th day of October, 2025:

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October 13, 2025

BY EMAIL & U.S. MAIL

The Honorable Jenny Abbott Kitchings
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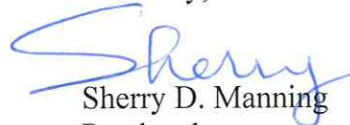
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Re: *Peters, Murdaugh, Parker, Eltzroth & Detrick, PA v. William Barnes and Barnes Law Firm, LLC v. Parker Law Group*
Appellate Case No.: 2025-001849

Dear Ms. Kitchings:

Enclosed for filing by email is Respondent's Motion to Dismiss, Exhibits 1-8 to same, and Proof of Service in the above-referenced matter. Our firm's check in the amount of \$50.00 for the filing fee will follow by U.S. Mail, along with this cover letter.

Sincerely,


Sherry D. Manning
Paralegal

/sdm
enclosure