

Jun 16 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Vernon F. Dunbar, Circuit Court Judge

Appellate Case No.: 2025-001290

Marvin Barborek,.....Respondent,

v.

Cascades Nursing, LLC and Cascades Retirement, LLC,.....Appellants.

**APPELLANTS' MEMORANDUM
ON APPEALABILITY**

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In response to the Court’s request dated June 11, 2026, the Appellants Cascades Nursing, LLC, and Cascades Retirement, LLC (collectively “Cascades”) respectfully submit this memorandum regarding appealability of the circuit court’s order on appeal. For the reasons set forth below, that order is immediately appealable under South Carolina law, and this appeal should continue in the normal course.

STATEMENT OF THE CASE

This case arises from an injury that Respondent Marvin Barborek (“Barborek”) claims to have sustained while he was a resident at a nursing care facility owned and/or operated by Appellants Cascades Nursing, LLC and Cascades Retirement, LLC (collectively “Cascades”). Barborek filed a Summons and Complaint in the Court of Common Pleas for Greenville County on January 24, 2025. [R. pp. 4-11] Cascades filed a timely Motion to Dismiss and Compel Arbitration on February 19, 2025. [R. pp. 12-24] Cascades then filed an Answer the following day. [R. pp. 25-30]

After the parties received notice of a hearing on Cascades’ Motion to Dismiss and Compel Arbitration, Barborek filed a memorandum in opposition on May 16, 2025. [R. pp. 31-43] The hearing, with the Honorable Vernon F. Dunbar presiding, took place on May 20, 2025. [R. pp. 80-105] Judge Dunbar heard oral arguments from both parties’ counsel and took Cascades’ motion under advisement. [R. pp. 103-104]

On May 30, 2025, Judge Dunbar filed a Form 4 order denying the motion. The order included the following “findings of fact and conclusions of law”:

- 1) Defendant seeks to establish that there exists a contractual waiver of a jury trial in favor of arbitration. Thus, Defendant has the burden of proof to establish that the waive [sic] was signed knowingly, voluntarily, and intentionally. A jury trial right is fundamental and cannot be waived absent clear evidence.

2) This Court is mindful that arbitration agreements enjoy a strong presumption of validity in federal and state courts. See *Simpson v. MSA of Myrtle Beach, Inc.*, 373 SC 19, 24, 644 S.E.2d 663, 558 [sic] (2007).

3) Sufficient genuine issues giving rise to the waiver of a jury trial and the applicability of the arbitration agreement cannot be adjudicated by this Court at this particular point in the proceedings absent sufficient discovery.

Therefore, Defendant's motion to Dismiss is hereby DENIED. Plaintiff has pled facts sufficient to constitute a cause of action.

[R. pp. 1-3] Judge Dunbar did not request or file any subsequent formal order, and Cascades filed and served a timely Notice of Appeal on June 27, 2025.

ARGUMENT

The circuit court's order is immediately appealable because it denied Cascades' motion to compel arbitration. Although the motion on which the circuit court ruled was styled a "Motion to Dismiss and Compel Arbitration," the only stated basis for seeking dismissal of the action was the claimed existence of a binding arbitration agreement between Cascades and Barborek. Thus, this was not a typical denial of a Rule 12 motion to dismiss, which would not be immediately appealable. Rather, it is the denial of a motion to compel arbitration. That is the substance of Cascades' motion and the denial order, and it is the issue properly before this Court on appeal.

It has long been settled in South Carolina that orders denying a request to compel arbitration are immediately appealable. See *Towles v. United Healthcare Corp.*, 338 S.C. 29, 35, 524 S.E.2d 839, 842 (Ct. App. 1999) ("[a]n appeal may be taken from ... [a]n order denying an application to compel arbitration under §15-48-20") (quoting S.C. Code Ann. §15-48-200(a)(1)). As this Court noted in *Towles*, "an order that favors litigation over arbitration – whether it refuses to stay the litigation in deference to arbitration; **refuses to compel arbitration**; ... or grants,

continues or modifies an injunction against arbitration – is immediately appealable, ***even if interlocutory.***” 338 S.C. at 35, 524 S.E.2d at 842 (boldface added; italics in original).

For purposes of determining immediate appealability, therefore, it does not matter that the circuit court’s order might otherwise be considered interlocutory. All that matters is that the circuit court denied Cascades’ request to compel arbitration. That decision is immediately appealable under established South Carolina law, regardless of what the order otherwise did or did not do.

Over the past one-year period, this Court has considered and ruled upon numerous immediate appeals involving denials of motions to compel arbitration. *See, e.g., Bryan v. THI of South Carolina at Charleston, LLC*, 2026-UP-261 (S.C. Ct. App., June 3, 2026); *Vaughn v. St. Matthews Healthcare, LLC*, 2026-UP-260 (S.C. Ct. App., June 3, 2026); *Peoples v. Pruitt Health-Ridgeway*, 2026-UP-180 (S.C. Ct. App., April 29, 2026); *Mazyck v. THI of South Carolina at Charleston, LLC*, 2026-UP-077 (S.C. Ct. App., February 18, 2026); *Calloway v. Oakbrook Healthcare, LLC*, 2026-UP-044 (S.C. Ct. App., February 4, 2026); *Kilpatrick v. Pruitthealth-Ridgeway, LLC*, 2026-UP-043 (S.C. Ct. App., February 4, 2026); *White v. St. George Healthcare, LLC*, 2026-UP-042 (S.C. Ct. App., February 4, 2026); *Voros v. Pacifica Skylyn, LLC*, 2025-UP-317 (S.C. Ct. App., September 17, 2025); *Foster v. Riviere*, 2025-UP-298 (S.C. Ct. App., August 20, 2025); *Blume v. Starbucks Corp.*, 2025-UP-274 (S.C. Ct. App., July 30, 2025); *Phillips v. Renu Energy Solutions, LLC*, 2025-UP-225 (S.C. Ct. App., July 2, 2025).

In at least three of the cases cited above, the request to compel arbitration was contained in a motion styled, at least in part, a motion to dismiss. *See Peoples v. Pruitt Health-Ridgeway*, 2026-UP-180 (S.C. Ct. App., April 29, 2026); *Voros v. Pacifica Skylyn, LLC*, 2025-UP-317 (S.C. Ct. App., September 17, 2025); *Phillips v. Renu Energy Solutions, LLC*, 2025-UP-225 (S.C. Ct. App., July 2, 2025); *see also Wilson v. Hedges*, 2024-UP-152 (S.C. Ct. App., May 1, 2024) (addressing

and ruling upon an immediate appeal of the circuit court’s denial of the appellant’s motion to dismiss and compel arbitration).

Although in some of these cases the motion to dismiss also included an alternative motion to stay (i.e. “motion to dismiss and/or stay and compel arbitration”), that does not create any meaningful difference from the present case. In those cases, as well as in this one, the key and dispositive factor as to immediate appealability was the denial of a motion to compel arbitration. Whatever else those appellants’ motions did, or did not, seek along with the request to compel arbitration is of no consequence for determining appealability.

Thus, the fact that Cascades’ motion was not captioned a “motion to dismiss **and/or stay** and to compel arbitration” does not impact the question of appealability. Were this Court to reverse the circuit court’s order in this case, it might then remand with instructions to compel arbitration and stay the case, rather than dismiss it. But that is a question of the potential remedy available to Cascades if the Court reverses the order on appeal. It is not relevant to the separate question of whether that order is immediately appealable.

Nevertheless, even if it mattered whether or not Cascades asked the circuit court for a stay as an alternative to dismissal as part of the request to compel arbitration, the body of the motion reveals that Cascades did just that. The motion begins with the following sentence: “[Cascades] respectfully move this honorable Court for an Order compelling arbitration, **staying all activities and discovery**, and requiring that all claims or causes of action between Plaintiffs and Defendants be submitted to binding arbitration in accordance with the terms of the Admission Agreements and Arbitration Agreement mutually entered into between the parties on or around March 6, 2024” [R. p. 12 (emphasis added)] This sentence makes it clear that the primary goal of Cascades’ motion was to obtain an order compelling arbitration and halting the litigation process in the circuit court.

Yet, to the extent it was required for Cascades to request a stay as part of that request, the quoted passage from the motion did so.

It is also of no consequence for purposes of appealability that the final line of the circuit court's order references only a "motion to dismiss" and concludes that "Plaintiff has pled facts sufficient to constitute a cause of action." [R. p. 2] This is true for multiple reasons.

First, the order makes multiple references to Cascades' request to compel arbitration. *See, e.g.*, R. p. 1 ("This order arises as a result of a hearing before the undersigned held on May 20, 2025 to decide Defendant's Motion to Dismiss **and Compel Arbitration**") (emphasis added); R. p. 2 ("Sufficient genuine issues giving rise to the waiver of a jury trial **and the applicability of the arbitration agreement** cannot be adjudicated by this Court at this particular point in the proceedings absent sufficient discovery.") (emphasis added). These passages, along with the order as a whole, clearly demonstrate that the circuit court was ruling on, and denying, a request to compel arbitration.

Second, the South Carolina Supreme Court has noted that it is the substance of an order (i.e. what it does) that matters for purposes of appealability, not the title of an order (i.e. what it is called). *See Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 773 S.E.2d 144 (2015). In *Morrow*, the Court concluded that the challenged order was immediately appealable, regardless of what it was called, because it implicated the appellant's substantial rights. As the Court stated, "Our review of the trial court order is not constrained by how the order is styled." *Id.* at 539, 773 S.E.2d at 147. The Court further cited *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 304, 705 S.E.2d 479 (Ct. App. 2011), for the proposition that "an appellate court should look to the **effect** of an interlocutory order to determine its appealability." *Id.* at 540, 773 S.E.2d at 147 (emphasis added). Here, there can be no doubt that the effect of the circuit court's

order was to deny Cascades' motion to compel arbitration. That means the order is immediately appealable under South Carolina law.

Finally, it is also of no significance that the circuit court's order referenced a need for discovery, thereby at least implying a right for Cascades to reassert its request to compel arbitration at a later stage in the case. This Court's decision in *Towles, supra*, plainly demonstrates this point.

As the Court explained in that case:

The circuit court's order stated: "[D]efendants' motion to compel arbitration is denied, at this time, with leave to refile it at the completion of discovery in this action." The circuit court's order favored litigation over arbitration by refusing to compel arbitration until the parties conducted additional discovery. Therefore, United may appeal the circuit court's order denying its motion to compel arbitration.

338 S.C. at 35, 524 S.E.2d at 842-43. This is the same situation that exists in the present case, if one assumes the circuit court intended to delay a ruling on the request to compel arbitration until after the completion of discovery. Under *Towles*, therefore, the specific wording of the circuit court's order does not prevent that order from being immediately appealable. However the circuit court worded the order, or whatever the court's intention might have been, the necessary end result was the denial of Cascades' motion to compel arbitration. As a result, the order is immediately appealable.

CONCLUSION

The circuit court denied Cascades' request to compel arbitration. There is no other reasonable way to interpret the order given the relief requested in Cascades' motion. As a denial of a motion to compel arbitration, that order is immediately appealable under established South Carolina law. This is true regardless of whatever else the order stated or intended to rule upon.

Therefore, the challenged order is properly before this Court, and the appeal should continue in its normal course.

Respectfully submitted,

s/ R. Hawthorne Barrett

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PROOF OF SERVICE

The undersigned attorney of record for Appellants certifies that on **June 16, 2026**, a copy of the Appellants' Memorandum on Appealability was served on Joe Mooneyham and Mitch Appleby, attorneys for Respondent, via email to the following addresses: joe@mbllc.com and mitch@mbllc.com.

s/ R. Hawthorne Barrett

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