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Jul 10 2026

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

Appellate Case No. _____

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas, Ninth Judicial Circuit
The Honorable Dale E. Van Slambrook, Circuit Court Judge
Lower Court Case No. 2025-CP-10-06032

Paul Thomas Capo, Jr., as Next Friend of Ryan
McDermott,

Respondent,

v.
Active Day, Inc.,

Appellant.

RESPONDENT'S MOTION TO DISMISS APPEAL

Respondent Paul Thomas Capo, Jr., as Next Friend of Ryan McDermott (“Respondent”), respectfully moves this Court, pursuant to Rule 240, SCACR, to dismiss this appeal for want of an appealable order and, therefore, for lack of appellate jurisdiction. The grounds for this Motion are:

1. The order denying Appellant Active Day, Inc.’s motion to compel arbitration is not appealable under the South Carolina Uniform Arbitration Act. Section 15-48-200(a)(1), S.C. Code Ann., authorizes an appeal only from the denial of an application to compel arbitration “made under Section 15-48-20”; and Section 15-48-10(b)(4) provides that the Act “shall not apply to” any claim arising out of personal injury. This is a personal-injury action. The Act therefore does not authorize this appeal.
2. Section 14-3-330, S.C. Code Ann., does not independently authorize the appeal. An order denying arbitration does not “in effect determine[] the action” or “prevent[] a judgment”; it permits the action to proceed. It thus falls within none of the categories of immediately appealable orders enumerated in that statute.

The grounds summarized above, the procedural history, and the supporting legal authorities are set forth more fully in Respondent's Memorandum of Authorities in Support of Motion to Dismiss Appeal, filed and served together with this Motion pursuant to Rule 240(c)(2), SCACR. Pursuant to Rule 240(b), SCACR, the filing of this Motion automatically stays the time limits for perfecting the appeal until the Motion is decided.

WHEREFORE, Respondent respectfully requests that this Court dismiss the appeal for lack of appellate jurisdiction; or, in the alternative, require Appellant to establish an affirmative statutory basis for appellate jurisdiction before the appeal proceeds; together with costs pursuant to Rule 222, SCACR, and such other relief as the Court deems just and proper.

Respectfully submitted,

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Mount Pleasant, South Carolina

Dated this 10th day of July, 2026.

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RESPONDENT'S MEMORANDUM OF AUTHORITIES IN
SUPPORT OF MOTION TO DISMISS APPEAL

I. PROCEDURAL HISTORY AND TIMELINE

Respondent Paul Thomas Capo, Jr., as Next Friend of Ryan McDermott, commenced this personal-injury action in the Charleston County Court of Common Pleas, No. 2025-CP-10-06032. The material chronology, drawn from the circuit court record and the Notices of Electronic Filing, is as follows:

May 21, 2026 — The circuit court (the Honorable Dale E. Van Slambrook) held a hearing on Active Day, Inc.'s motion to stay the action and compel arbitration.

May 26, 2026 — The circuit court entered its Order Denying Motion to Stay Action and Compel Arbitration (filed May 26, 2026; Notice of Electronic Filing time-stamped 08:48:20 a.m.).

June 2026 — Active Day moved for reconsideration of the Order denying arbitration; the motion was fully briefed (Respondent's reply was filed June 12, 2026).

July 7, 2026 — The circuit court entered its Order disposing of Active Day's motion for reconsideration (filed July 7, 2026; Notice of Electronic Filing time-stamped

04:11:28 p.m.). The Notice of Electronic Filing constituted written notice of entry for purposes of Rule 203(b)(1), SCACR.

July 10, 2026 — Active Day served its Notice of Appeal on all parties by United States Mail and electronic mail, and filed the Notice of Appeal with the Clerk of the Court of Appeals by electronic mail to ctappfilings@sccourts.org. Service of the Notice of Appeal effected the automatic stay under Rule 241(a), SCACR. The Notice of Appeal is timely, having been served within thirty days of the July 7, 2026 order. Rule 203(b)(1), SCACR.

July 10, 2026 — Respondent filed this Motion to Dismiss the Appeal and this Memorandum in support.

II. STANDARD

Whether an order is immediately appealable presents a question of appellate jurisdiction. The right to appeal in South Carolina is conferred by statute; a party invoking this Court's jurisdiction bears the burden of identifying the statute that authorizes the appeal. Where no statute authorizes an immediate appeal from the order challenged, the appeal must be dismissed.

III. ARGUMENT

A. The Uniform Arbitration Act does not authorize this appeal because the Act does not apply to personal-injury claims.

The South Carolina Uniform Arbitration Act supplies the statutory right to an immediate appeal from an order denying a motion to compel arbitration. Section 15-48-200(a)(1) provides that an appeal may be taken from:

An order denying an application to compel arbitration made under Section 15-48-20[.]

S.C. Code Ann. § 15-48-200(a)(1). By its terms, that right of appeal attaches only to the denial of an application “made under Section 15-48-20” — an application made under the Act. The Act, however, does not reach this dispute. Section 15-48-10(b)(4) provides that the Act “shall not apply to”:

Any claim arising out of personal injury, based on contract or tort, or to any insured or beneficiary under any insurance policy or annuity contract.

S.C. Code Ann. § 15-48-10(b)(4). This is a personal-injury action brought on behalf of Ryan McDermott. Because the Act “shall not apply” to it, Active Day’s motion to compel arbitration was not, and could not have been, an application “made under Section 15-48-20” of the Act. It follows that Section 15-48-200(a)(1) — which authorizes an appeal only from the denial of an application made under the Act — does not, by its terms, authorize this appeal.

Respondent candidly acknowledges that no South Carolina appellate decision appears to have squarely construed the interaction between the Section 15-48-10(b)(4) personal-injury exclusion and the Section 15-48-200(a)(1) right of appeal, and Respondent does not represent otherwise. The point is one of statutory text: a statute conferring a right to appeal from an order entered under the Uniform Arbitration Act cannot supply appellate jurisdiction over an order entered in a matter to which the Act does not apply.

B. Section 14-3-330 does not independently authorize the appeal.

Active Day is expected to invoke the general appealability statute, S.C. Code Ann. § 14-3-330. It does not save the appeal. Subsection (2) permits an appeal from:

An order affecting a substantial right made in an action 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). An order denying a motion to compel arbitration does none of these things. It does not “determine the action” or “prevent a judgment”; to the contrary, it

permits the action to proceed in the circuit court toward a judgment. It neither grants nor refuses a new trial, and it strikes no pleading. Nor does the order fall within Section 14-3-330(1), which reaches intermediate orders “involving the merits”: an order resolving only the forum in which a dispute will be heard does not involve the merits of the dispute. Subsection (4), addressed to injunctions and receivers, has no application. Because the order allows the case to go forward rather than determining it, Section 14-3-330 does not authorize the appeal.

IV. CONCLUSION

The order denying arbitration is not appealable. The Uniform Arbitration Act does not authorize the appeal because the Act does not apply to this personal-injury action, and Section 14-3-330 does not independently authorize an appeal from an order that merely permits the action to proceed. Respondent respectfully requests that the Court dismiss the appeal for lack of appellate jurisdiction, or, in the alternative, require Appellant to establish an affirmative statutory basis for the appeal.

V. AUTHORITIES CITED

Statutes:

S.C. Code Ann. § 14-3-330
S.C. Code Ann. § 15-48-10(b)(4)
S.C. Code Ann. § 15-48-20
S.C. Code Ann. § 15-48-200(a)(1)

Rules:

Rule 203(b)(1), SCACR
Rule 222, SCACR
Rule 240, SCACR
Rule 241(a), SCACR

Respectfully submitted,

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Co-Counsel for Respondent

Mount Pleasant, South Carolina

Dated this 10th day of July, 2026.

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below I served a true and correct copy of the foregoing Respondent's Motion to Dismiss Appeal and this Memorandum of Authorities in Support upon counsel of record for Appellant by electronic transmission (electronic mail), contemporaneously with the electronic transmission of the filing to the Clerk of the Court of Appeals at ctappfilings@sccourts.org, addressed to counsel of record at the electronic mail addresses set forth below:

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Counsel for Appellant Active Day, Inc.

/s/ Rhett D. Klok
Rhett D. Klok, Esq.
Dated: July 10, 2026

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