IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No.: 2012-CP-23-7156

Toyota of Greenville, Inc.....Appellant,

v.

David Carroll.....Respondent.

REPLY IN SUPPORT OF MOTION TO DISMISS

Respondent submits this memorandum in reply to the Appellant's Return to the Motion to Dismiss Appeal. The Order is not immediately appealable and the appeal should therefore be dismissed.

Appellant raises four arguments why the Order is immediately appealable but all of the arguments are meritless. Appellant asserts that it "is being denied its right to arbitrate with Respondent alone, which is immediately appealable under §15-48-200(a)(1)." Return to Respondent's Motion to Dismiss Appeal, p. 1. Section 15-48-200(a)(1) provides that "[a]n appeal may be taken from . . . [a]n order denying an application to compel arbitration made under § 15-48-20." The Order clearly does not fall within this subsection because the order **granted** Appellant's application and compelled arbitration. The argument is without merit.

To the extent Appellant argues the Order somehow compels class-wide arbitration, the Appellant's own argument disproves this contention. Appellant asserts "[t]he lower court

specifically found that the arbitration agreement . . . requires bilateral arbitration. Therefore, the private attorney general finding **may** have the effect of ordering arbitration in a representative capacity, thus denying Appellant's motion that arbitration can only proceed in a bilateral manner." Return to Respondent's Motion to Dismiss Appeal, p. 4 (emphasis added). Appellant's own argument recognizes the Order does not compel class-wide or representative arbitration. Respondent does not seek to arbitrate the case in a representative capacity and has never sought to do so. Respondent does not and will not attempt to arbitrate on behalf of a class or in a representative capacity.

Appellant's argument that the Order is immediately appealable pursuant to Section 15-48-200(a)(6) likewise fails. Subsection (6) permits appeals from "[a] judgment or decree entered pursuant to the provisions of this chapter." Without citing any authority on point, Appellant argues the Order is a "decree entered pursuant to . . . the Uniform Arbitration Act and one from which an appeal can be taken." Return to Respondent's Motion to Dismiss Appeal, p. 5. The Order is not a judgment and it is not a decree. A "decree" is "the judgment of a court of equity or chancery, answering for the most purposes to the judgment of a court of law." BLACK'S LAW DICTIONARY 410 (6TH ed. 1990). See also, Reid v. McGowan, 28 S.C. 74, 5 S.E. 215 (1888) (The final adjudication of the rights of parties litigant is the judgment of the court, whether it be in a case at law or one involving an equity cause, and the rules enacted and established for the enforcement of liens of judgments apply to all, so that now a decree in chancery is a judgment to all intents and purposes, and is governed by the requirements of the Code and acts on the subject of judgments as fully as a judgment at law.).

Appellant cites Good v. Hartford Accident & Indem. Co., 201 S.C. 32, 21 S.E.2d 209 (1942), for the proposition that "the court's deciding a question of fact and applying that fact to

the law makes this a final judgment." Return to Respondent's Motion to Dismiss Appeal, p. 1. That case stands for the proposition that interlocutory orders are not immediately appealable and supports Respondent's motion to dismiss. Good concludes that

> [A] judgment, order, or decree, although determining the law applicable to the issues of an action, yet, leaving questions of fact unsettled, is not final . . . [.] [I]f the question involved will be inherent in the final judgment and can be presented in an appeal from that judgment, it will be treated as an interlocutory order, review of which can only be had upon the general appeal.

Id., 201 S.C. 32, 21 S.E.2d at 212 (internal citations omitted). Later, Good recognizes that "the law frowns upon the practice of bringing cases in fragments to the appellate Courts." The Court explained that "[t]he rule in restriction of piecemeal appellate procedure, dating back to the common law, is based upon sound reason and practical utility. If it were otherwise, endless delays would be encountered-delays which are unnecessary . . . , which can be decided upon an appeal from such final judgment as may later be entered by the trial Court." Id., 201 S.C. 32, 21 S.E.2d at 213.

Good supports Respondent's motion to dismiss. Nothing in Good remotely suggests the Court should address the interlocutory matters Appellant seeks to raise here. Respondent agrees not to attempt to arbitrate the case in a representative capacity as private attorney general. To the extent the trial court's even addresses this issue (which is not necessary to the court's decision compelling arbitration), that portion of the court's order is not binding on the arbitrator. See Oxford Health Plans LLC v. Sutter, 133 S.Ct. 2064 (2013) (arbitrator determines the scope of an arbitration agreement and whether a party may proceed in a representative capacity). Appellant implicitly recognizes this legal truism where it says that the trial court's "private attorney general finding **may have the effect** of ordering" representative arbitration. Return to Respondent's Motion to Dismiss Appeal, p. 4 (emphasis added). Later, Appellant asserts that an "arbitrator

may feel bound to apply the lower court's finding that Respondent is a private attorney general and can proceed in a bilateral arbitration in that capacity." Return to Respondent's Motion to Dismiss Appeal, p. 6 (emphasis added).

Nothing in the trial court's order addressing Respondent's status as a private attorney general is binding on the arbitrator. Appellant acknowledges this throughout its Response. Respondent expressly agrees not to arbitrate the matter in a representative capacity as a private attorney general. This concession, and the law set forth above, should dispense with the matter.

CONCLUSION

The appeal is from an interlocutory order and should be dismissed. Appellant prevailed in the trial court and received the relief it requested. The arguments Appellant raises in its opposition to the motion to dismiss are completely meritless. Further, Respondent agrees not to attempt to proceed to arbitration as a private attorney general in a representative capacity. For these reasons, and those additional reasons set forth in his motion to dismiss, Respondent respectfully asks the Court to dismiss the appeal.

Respectfully submitted,

January 30, 2014.

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Circuit Court Case No.: 2012-CP-23-7156
South Carolina Court of Appeals Case No.: 2013-002599

Toyota of Greenville, Inc.....Appellant,

v.

David Carroll.....Respondent.

CERTIFICATE OF SERVICE

I, Heather Hardy, Paralegal to RICHARD A. HARPOOTLIAN, P.A., attorney for the Respondent David Carroll, do hereby certify that I have served the below listed document, Via U.S. Mail and Electronic Mail, on January 30, 2014, to the individuals listed below:

Document: 1) *Reply to Motion to Dismiss Appeal.*

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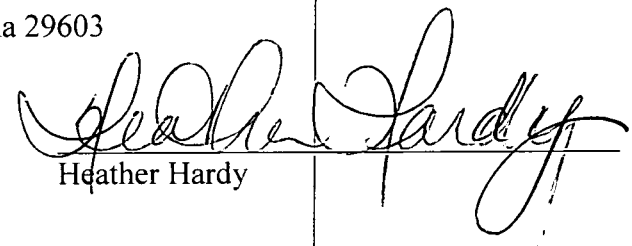

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