

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM HORRY COUNTY  
Court of Common Pleas  
Honorable Larry B. Hyman, Circuit Court Judge, Fifteenth Judicial Circuit

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Case No. 2008-CP-26-6014

Travelers Casualty and Surety Company of America,  
Dunes Village Properties, LLC and  
Dunes Vacations, LLC, .....Appellants,

v.

Baiden & Associates, Inc.....Respondent.

AND

Case No. 2010-CP-26-0176

Dunes Village Properties, LLC,.....Appellant,

v.

Baiden & Associates, Inc.....Respondent.

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**NOTICE OF APPEAL**

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NOW COMES DUNES VILLAGE PROPERTIES, LLC and hereby notices all parties hereto of the intent to appeal the above referenced case.

Pursuant to Order of The South Carolina Court of Appeals (hereto attached as Exhibit A), the matter was returned to Horry County, South Carolina.

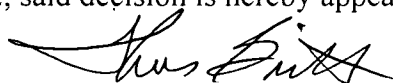
Further, the case was set and heard for arbitration on February 16, 2012. Pursuant to Order of the Arbitrator, William Edward Lawson, Esquire, (hereto attached as Exhibit B) delivered and received by email on April 13, 2012, said decision is hereby appealed.

**RECEIVED**

MAY 08 2012

**SC Court of Appeals**

May 7, 2012  
Myrtle Beach, South Carolina



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Attorney for Dunes Village Properties, LLC

# The South Carolina Court of Appeals

2008-CP-26-06014

Baiden & Associates, Inc., Respondent,

v.

Travelers Casualty and Surety  
Company of America, Dunes Village  
Properties, LLC, and Dunes Vacations,  
LLC, Appellants.

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2010-CP-26-00176

Dunes Village Properties, LLC, Appellant,

v.

Baiden & Associates, Inc., Respondent.

The Honorable Larry B. Hyman, Jr.  
Horry County  
Trial Court Case No. 2010-CP-26-00176  
2010-CP-26-00614

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## ORDER

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This case involves the phased arbitration of multiple disputes between the parties, each arising out of contracts for the renovation of Dunes Village Resort in Myrtle Beach. After the first claims were arbitrated and the circuit court confirmed the arbitration award as to those claims, Appellant Dunes Village Properties, LLC, filed a notice of appeal stating Appellant "appeals the judgment of the Honorable Larry B. Hyman denying appellant's motion to reconsider and affirming previous order compelling arbitration." Appellant states it does not

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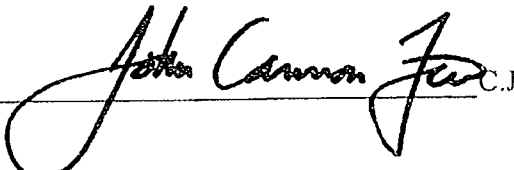
SC Court of Appeals



challenge the arbitration award but only whether the trial court erred in compelling arbitration of the claims. Respondent moves to dismiss the appeal, arguing an order compelling arbitration is not immediately appealable. Because some of the claims have not yet been arbitrated, the trial court's order is not appealable at this time.

The right of appeal arises from and is controlled by statutory law. Ex parte Capital U-Drive-It, Inc., 369 S.C. 1, 630 S.E.2d 464 (2006). South Carolina Code section 14-3-330 (1976) provides that in certain situations an interlocutory order is immediately appealable. However, where there is a specialized statute, section 14-3-330 does not govern the right to review. Charlotte-Mecklenburg Hosp. Auth. v. South Carolina Dep't of Health and Env'tl. Control, 387 S.C. 265, 266, 692 S.E.2d 894 (2010). In this case, South Carolina Code section 15-48-200 lists the only orders relating to arbitration that are appealable. See Toler's Cove Homeowners Ass'n, Inc. v. Trident Constr. Co., Inc., 355 S.C. 605, 610, 586 S.E.2d 581, 584 (2003) (noting a prior supreme court case "held all orders relating to arbitration not mentioned in S.C.Code Ann. § 15-48-200(a) (Supp.2002) are not immediately appealable"). An order compelling arbitration is not appealable until the arbitration award has been confirmed as to all claims ordered to be arbitrated. Id. (holding an order compelling arbitration is not immediately appealable). Accordingly, the motion to dismiss is granted.

IT IS SO ORDERED.

  
C.J.

Columbia, South Carolina

cc: Andrew Preston Brittain, Esquire  
Cordes Ford, Esquire

**FILED**  
6/27/11

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM HORRY COUNTY  
Court of Common Pleas  
Honorable Larry B. Hyman, Circuit Court Judge, Fifteenth Judicial Circuit

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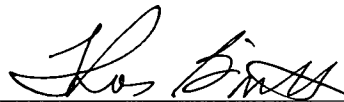
Baiden & Associates, Inc.....Respondent.

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PROOF OF SERVICE

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I certify that I have served the Notice of Appeal on Baiden & Associates, Inc. by depositing a copy of it in United States Certified Mail, postage prepaid, on May 7, 2012, addressed to its attorneys of record at their respective law firms, Dunn D. Hollingsworth, Esq., Robertson & Hollingsworth, Wachovia Center, 177 Meeting Street, Suite 300, Charleston, South Carolina, 29401, and William H. Monckton, VI, Esquire, Monckton Law Firm, P.A., 1300 Professional Drive, #102, Myrtle Beach, South Carolina 29577.



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May 7, 2012

**VIA FEDERAL EXPRESS**

The Honorable Jenny Kitchings, Clerk  
South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, SC 29211

**Re: Travelers Casualty and Surety Company of America, Dunes Village Properties,  
LLC and Dunes Vacations, LLC, vs Baiden & Associates, Inc.  
AND  
Dunes Village Properties, LLC vs. Baiden & Associates, Inc**

Dear Ms. Kitchings:

Enclosed please find a Notice of Appeal and Proof of Service regarding the above referenced matter. Please file the original and return a filed copy in the self-addressed stamped envelope, provided for your convenience.

Thank you in advance and if you should have any questions, please do not hesitate to contact me.

With warm regards, I am  
Yours truly,

THE BRITTAIN LAW FIRM, P.A.



Thomas C. Brittain

TCB/mgm

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MAY 08 2012

SC Court of Appeals

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

IN ARBITRATION

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Baiden & Associates, Inc., )  
 )  
Plaintiff, )  
 )  
vs. )  
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Dunes Village )  
 )  
Defendant )

**ORDER**

And )  
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Dunes Village Properties, LLC )  
 )  
vs )  
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Baiden & Associates, Inc. )  
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This matter came to be heard before me on February 16, 2012 to consider the issue of alleged misuse and/or diversion of labor and materials in connection with the construction project which is the subject of this arbitration.

I previously entered an Order awarding judgment, dated December 14, 2009, that dealt with the parking garage at the Dunes Village Resort; Phase I of the Dunes Village Resort; Phase I of the Dunes Village Resort; and Phase II of the Dunes Village Resort.



That Order awarding judgment was entered after hearing all of the issues raised by the pleadings with the exception of the alleged diversion and labor and/or materials from the owner's project to the personal residences of the owners of Baiden & Associates, Inc. The hearing, held on February 16, 2012, considered only the issue of the alleged diversion of labor and/or material.

At the hearing conducted on February 16, 2012, I heard testimony from Robert McElvene, III, of Case Company; reviewed the responses to written discovery on behalf of Tripp Baiden; reviewed deposition testimony of Robert D. Booth; reviewed deposition testimony of Hayward Bullock; reviewed deposition testimony of Bronson R. Summers; reviewed deposition testimony of Kevin N. Murray; reviewed deposition testimony of Robert French; reviewed deposition testimony of Victor Woods; reviewed deposition testimony of Craig Stiles and Eddie Baiden; reviewed subcontractor subpoenas to Case Mechanical Contractors, Commercial Systems, Inc., Finish Works, Inc., and SMP Painting Contractors, Inc. where no documents were returned. I also reviewed subpoenas to subcontractors where documents were returned. This included Nobles Roofing and Sheet Metal, Inc.; Reliable Floor Systems; and Thompson Electric, Inc.

I also reviewed subpoenas to subcontractors that indicated that they provided no service or labor to the houses built by the owners of Baiden & Associates, Inc. This included Angus Electric Company, Inc.; Coastal Drywall, Inc.; Coastal Forming; Contractor Services; C.O.D. Concrete; Dowel, Inc.; Earthworks of Myrtle Beach, Inc.; Palmetto Portamix; Staff Zone; Terry R. Bufkin & Son; Unique Flooring and Unique Floor, LLC.

I also reviewed subpoenas to subcontractors that did not respond to the subpoenas. This included Adams Products Company; Division Nine of the Carolinas, Inc.; Gentry Layout

Service; Impressive Concrete; Low Country Concrete and Low Country Paving.

I also heard testimony from Curtis Palmer, Arthur Willis Thompson of Thompson Electric and Danny Bonnell of Commercial Systems, Inc.

On behalf of Baiden & Associates, Inc., I heard testimony from Frank E. Baiden, III and Ebbie Baiden.

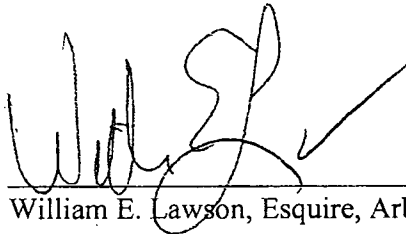
Also reviewed were Exhibits:

- O-1: thru wall ac unit document;
- O-2: Plaintiff's Answers to Interrogatories of Dunes Village Properties, LLC and Dunes Vacations, LLC;
- O-4: Baiden's accounting of claim;
- O-5: Horry County State Bank documents;
- C-1: Certificate of Occupancy for Pan American Properties, LLC;
- C-2: Invoices and receipts for Baiden House;
- C-3: Additional invoices for Baiden House;
- C-4: Job Cost Analysis;
- C-5: Time Line;
- C-6: AIA document between Dunes Vacations, LLC and Baiden & Associates, Inc. for Dunes Village Resort Phase I.

After reviewing all the testimony and exhibits, I find that there was block and concrete charged to Dunes Village Phase I that was utilized in the construction of the personal residence. The amount of concrete in dollars was \$33,000.00. Accounting wise, this was included in Baiden's accounting of its claim and taken into consideration under my previous order dated December 14, 2009. The evidence presented does not support any misuse and/or diversion of labor and materials other than the concrete block.

THEREFORE, I find for Baiden & Associates, Inc. in this matter as it relates to the alleged misuse and/or diversion of labor and material in the matter.

**IT IS SO ORDERED.**



William E. Lawson, Esquire, Arbitrator

April 13, 2012  
Myrtle Beach, South Carolina