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MAY 26 2017

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Benjamin H. Culbertson, Circuit Court Judge

Case No. 2016-CP-26-03317
Appellate Case No. 2017-000254

Paul Sasser, M.D., Mark R. Borowicz, M.D., Lane Ingram
Moore, M.D., FACS and Goatee Vascular, LLC, Appellants,

v.

Dominick Ronga, Mid Atlantic Vascular, LLC and Fresenius
Vascular Care Myrtle Beach MSO, LLC,..... Respondents.

MEMORANDUM ADDRESSING APPEALABILITY AND REQUEST FOR DISMISSAL

On May 23, 2017, this Court issued a directive requiring the parties to file memoranda addressing the issue of appealability. In accordance with the Court’s directive, Respondents Mid Atlantic Vascular, LLC and Dominick Ronga (“Mid Atlantic and Ronga”) hereby file this memorandum and request immediate dismissal of the appeal.

The circuit court granted two separate motions to compel arbitration and compelled this matter to binding arbitration. An order granting a motion to compel arbitration is not immediately appealable pursuant to S.C. Code Ann. § 15-48-200(a). Thus, the appeal must be dismissed as the Court is without jurisdiction to proceed.

Background

The following concise procedural background informs the issues concerning appealability:

1. The circuit court granted Mid Atlantic and Ronga's motion to compel by Form 4 Order dated November 9, 2016.

2. The Form 4 Order granted the motion in total but the order did "not end the case" as shown on the first page of the order.

3. Subsequently, the circuit court denied a motion to reconsider by Form 4 Order dated January 9, 2017.

4. The Form 4 Order denying the motion to reconsider also indicated that the order did "not end the case."

5. Appellants filed a notice of appeal purporting to appeal from the circuit court's orders compelling arbitration and denying the motion to reconsider.

6. Co-defendant/Respondent, Fresenius Vascular Care Myrtle Beach MSO, LLC, also moved to compel arbitration on the same basis as previously argued by Mid Atlantic and Ronga.

7. The circuit court granted Fresenius Vascular Care Myrtle Beach MSO, LLC's motion to compel by full written order dated April 6, 2017. The circuit court's order on Fresenius Vascular Care Myrtle Beach MSO, LLC's motion to compel also did not end the case but instead compelled the parties to binding arbitration.

8. Appellants' moved to reconsider the second order compelling arbitration.

9. By order dated May 3, 2017, the circuit court denied the motion to reconsider.

10. Appellants filed a second notice of appeal in connection with the circuit court's orders. Again, Appellants purported to appeal from the orders granting the motion to compel arbitration and denying the motion to reconsider.

11. On May 23, 2017, this Court consolidated the two appeals.

12. Also on May 23, 2017, this Court directed the parties to file memoranda as to whether the orders are of the nature that are immediately appealable.

13. As shown herein, an order granting a motion to compel arbitration is not immediately appealable. The appeal should be summarily dismissed.

Law/Analysis

Appellants have appealed from the orders of the circuit court granting Respondents' motions to compel arbitration as well as the circuit court's orders denying Appellant's motions to reconsider the arbitration orders.

The South Carolina Supreme Court has held that a court order compelling arbitration is not immediately appealable. *Toler's Cove Homeowners Ass'n, Inc. v. Trident Const. Co., Inc.*, 355 S.C. 605, 610, 586 S.E.2d 581, 584 (2003). The South Carolina Supreme Court has specified that "all orders relating to arbitration not mentioned in S.C. Code Ann. § 15-48-200(a) (Supp. 2002) are not immediately appealable." *Id.* (emphasis added). That statute limits arbitration-related appeals to: "(1) an order denying an application to compel arbitration; (2) an order granting an application to stay arbitration; (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 Uniform Arbitration Act." *Id.* 355 S.C. at 610 n. 2, 586 S.E.2d at 584 n. 2. Because a court order granting a motion to compel arbitration is not among the orders subject to appeal expressly listed in S.C. Code Ann. § 15-48-200(a), Appellants' appeal is improper. The appeal must be dismissed.

Moreover, the November 9, 2016 Form 4 Order issued by the circuit court on Mid Atlantic and Ronga's motion to compel indicated on its face that the order "does not end the

case.” This Court has held that when a Form 4 Order notes it does not end the case, it is not a final judgment and is not capable of being appealed. *See Stone v. Thompson*, 418 S.C. 599, 603, 795 S.E.2d 49, 51 (Ct. App. 2016) (noting that a Form 4 Order indicating that it does not end the case is not a final judgment and is not immediately appealable).

Conclusion

For these reasons, this Court should immediately dismiss this appeal. The parties must proceed to binding arbitration as ordered by the circuit court.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

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Attorneys for Mid Atlantic Vascular, LLC and Dominick Ronga

Columbia, South Carolina
May 26, 2017

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Vascular Care Myrtle Beach MSO, LLC,

Respondents.

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Respondents Mid Atlantic Vascular, LLC and Dominick Ronga, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):


Pleadings:

Memorandum Addressing Appealability and Request for
Dismissal

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May 26, 2017

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May 26, 2017

The Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
P.O. Box 11629
Columbia SC 29211

RECEIVED
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SC Court of Appeals

RE: Paul Sasser, M.D. et al. v. Dominick Ronga et al.
Appellate Case No. 2017-000254
NMRS File No. 48790.01500

Dear Ms. Kitchings:

Enclosed please find the original and seven copies of Respondents' Mid Atlantic Vascular, LLC and Dominick Ronga, Memorandum Addressing Appealability and Request for Dismissal in regard to the above-referenced matter. We would ask that you file the original and return a clocked-in copy to us via our courier.

By copy of this letter to counsel of record, we are serving them with a copy.

Very truly yours,



A. Mattison Bogan

AMB:lpw
Enclosures

cc: Thomas C. Brittain, Esquire
Mary Madison Brittain Langway, Esquire
Stephen M. Cox, Esquire