

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge
G. Thomas Cooper, Circuit Court Judge

Case No. 2016-CP-26-3317

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JUN 05 2017

SC Court of Appeals

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.

RESPONDENT'S MEMORANDUM OF LAW IN RESPONSE TO REQUEST FOR
AUTHORITY ADDRESSING APPEALABILITY

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS:

I. INTRODUCTION

Respondent, Fresenius Vascular Care Myrtle Beach MSO, LLC (the “Respondent”), submits this Memorandum in response to the Court’s request for authority addressing the appealability of four Orders from the Circuit Court for the Fifteenth Judicial Circuit: two compelling arbitration and two denying motions to reconsider. A court order compelling arbitration is not immediately appealable pursuant to S.C. Code Ann. § 15-48-200(a). Therefore, Appellants’ consolidated appeal should be dismissed.

II. PROCEDURAL HISTORY

Dominick Ronga and Mid Atlantic Vascular, LLC (the “Co-Respondents”) filed a Motion to Compel Arbitration of the claims filed by Plaintiffs against Co-Respondents in this action, which Circuit Court Judge Benjamin Culbertson granted by Order dated November 9, 2016 (the “First Arbitration Order”). Appellants then filed a Motion to Reconsider the First Arbitration Order, which Judge Culbertson denied by Order dated January 9, 2017.

On December 9, 2016, Respondent filed its own Motion to Compel Arbitration, on the same grounds as previously argued by Co-Respondents, which Circuit Court Judge G. Thomas Cooper granted by Order dated April 6, 2017 (the “Second Arbitration Order”). Appellants filed a Motion to Reconsider the Second Arbitration Order, which Judge Cooper denied by Order dated May 3, 2017.

Appellants filed separate Notices of Appeal from the First Arbitration Order and related Order Denying Appellants’ Motion to Reconsider, and the Second Arbitration Order and related Order Denying Appellants’ Motion to Reconsider. This Court consolidated the two appeals on

May 23, 2017 and, *sua sponte*, directed the parties to file memoranda addressing the appealability of the First Arbitration Order and Second Arbitration Order (collectively, the “Arbitration Orders”).

II. ARGUMENT

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); *see also* Heffner v. Destiny, Inc., 321 S.C. 536, 537-39, 471 S.E.2d 135, 136 (1995) (dismissing as improper an appeal from a state court order compelling arbitration), *partial overruling on other grounds recognized by Toler’s Cove, supra*, 355 S.C. at 611 n. 3, 586 S.E.2d at 584 n. 3. More broadly, the Toler’s Cove Court recognized that “all orders relating to arbitration not mentioned in S.C. Code Ann. § 15-48-200(a) (Supp. 2002) are **not** immediately appealable.” Id. at 610, 584 (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 the Uniform Arbitration Act.” Because a court order granting a motion to compel arbitration is not among the orders subject to immediate appeal listed in S.C. Code Ann. § 15-48-200(a), Appellants’ Notices of Appeal are improper, and their consolidated appeal should be dismissed.

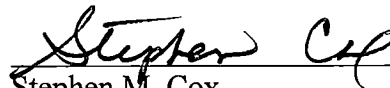
Additionally, pursuant to S.C. Code Ann. § 14-3-330, only final judgments and interlocutory orders “involving the merits” are immediately appealable. The Arbitration Orders are not final judgments because the court must take further acts relating to the binding arbitration before the parties rights are determined. *See* Mid-State Distributions, Inc. v. Century Imps., Inc., 310

S.C. 330, 335, 426 S.E.2d 777, 780 (1993) (stating that an order is interlocutory if some further act must be done by the court prior to the determination of the rights of the parties). Additionally, the Arbitration Orders are not interlocutory orders “involving the merits” because they do not “finally determine some substantial matter forming the whole or a part of some cause of action or defense,” but merely compel binding arbitration. Id. at 334, 780 (quoting Jefferson v. Gene’s Used Cars, Inc., 295 S.C. 317, 318, 368 S.E.2d 456, 456 (1988)). Because the Arbitration Orders are neither final judgments nor interlocutory appeals involving the merits, they are not immediately appealable.

III. CONCLUSION

For the reasons set forth above, this Court should dismiss Appellant’s consolidated appeal.

This 22 day of June, 2017



Stephen M. Cox
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PROOF OF SERVICE

I hereby certify that the foregoing **RESPONDENT'S MEMORANDUM OF LAW IN RESPONSE TO REQUEST FOR AUTHORITY ADDRESSING APPEALABILITY** has been served upon the counsel for the Appellants and counsel for Respondents to this action via U.S. Mail in an envelope addressed as follows:

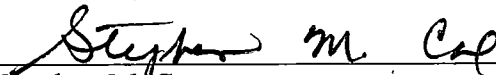
Thomas C. Brittain, Esq.
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This the 2d day of June, 2017.



Stephen M. Cox

ROBINSON
BRADSHAW

June 2, 2017

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803.325.2910 : Direct Phone
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The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Paul Sasser, M.D., et al. v. Dominick Ronga, et al.
Appeal from Horry County Case No. 2016-CP-26-3317

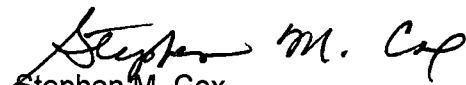
Dear Ms. Kitchings:

Enclosed for filing please find the original and one copy of Respondent's [*Fresenius Vascular Care Myrtle Beach MSO, LLC*] Memorandum of Law in Response to Request for Authority Addressing Appealability. Please file the original and return a time-stamped copy to my office in the enclosed envelope.

By copy of this correspondence, I am serving a copy of the same upon counsel of record.

Very truly yours,

ROBINSON, BRADSHAW & HINSON, P.A.


Stephen M. Cox

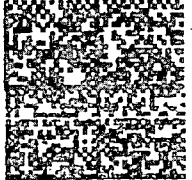
SMC/wkh
Enclosures

cc: Thomas Brittain (w/encl.)
A. Mattison Bogan (w/encl.)
Robert Calamari (w/encl.)

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