

IN THE COURT OF COMMON PLEAS

CASE NO. 2017CP3203640

Irma Lina Lauer

Ricky Lavert Elam, et al.

RECEIVED

PLAINTIFF(S)

DEFENDANT(S)

JAN 02 2018

Submitted by: Judge	SC Court of Appeals	Attorney for : <input type="checkbox"/> Plaintiff	<input type="checkbox"/> Defendant
		or	
		<input type="checkbox"/> Self-Represented Litigant	

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: The defendants' motion to dismiss is denied. Please see page 2.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	2050 Judge Code	Nov. 30, 2017 Date
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For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 2017 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 2017 to attorneys of record or to parties (when appearing pro se) as follows:

Robert L. Brown, Esq.

ATTORNEY(S) FOR THE PLAINTIFF(S)

John W. Carrigg, Jr., Esq.

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: Michael C. Watkins

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCF.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

The defense moves to dismiss this case for failure to file a timely appeal from a decision of the arbitration panel under the statutory provisions related to Arbitration of Property Damage Liability Claims (§38-77-710, et seq.). The arbitration panel heard the case on August 31, 2017, and announced its decision orally that day. The form required to be completed under §38-77-760 was signed by the arbitrators and filed with the Clerk of Court. A copy of the decision was received by plaintiff's counsel on September 14, 2017.

S.C. Code §38-77-770 reads, as follows:

If any party is dissatisfied with the decision of the arbitrators . . . he may appeal within twenty days of the decision to the court in which the claim is filed by service upon the other parties of a notice of appeal. Every notice of appeal shall include a statement under oath that the appeal is taken in good faith and not merely for the purpose of delay. The trial on appeal must be a trial de novo.

This is a rather unique procedure in that either party can reject the arbitrators' decision. The "appeal" in this instance requires no review by a court. The court recognizes, however, the need for a determining date as to when the decision of the arbitrators becomes final on the property damage claim.

On October 4, 2017, the plaintiff filed her notice of appeal, with her Complaint, including both the property damage claim that was submitted to the arbitrators and her claim for personal injury. The defendants' position is that the notice was required to be filed within 20 days of the date that the decision was announced (which would have required filing by September 20). It is asserted that the deadline for appeal is a jurisdictional matter and that the failure to comply with the time limit divests this court of jurisdiction over the property damage claim. The defendants also assert that the plaintiff has added additional issues in the appeal, which the defense maintains to be improper. As to that second issue, if the notice was timely, the plaintiff is free to add additional issues because the trial would be a de novo trial.

The plaintiff's position is that she filed the required document within 20 days of the date that he received the decision. Her argument is that there are different start dates for filing notices of appeal in South Carolina, and she believes that the general one is that the appeal must be filed within a time-limit that starts upon receipt of the written decision. She acknowledges that there are some situations where an appellant must file within a period from the decision being announced in court or from learning that a ruling had been made.

The plaintiff cites §38-77-760, which she reads as providing guidance on the interpretation of the word "decision" in this statutory scheme. It reads, in part:

SECTION 38-77-760. Decision of arbitrators.

After receiving the evidence, the arbitrators . . . shall enter the decision on the back of the original claim and file it with the clerk of court, who shall enter it as a judgment on the records of his office. The arbitrator first appointed shall, on the day the decision is filed with the clerk of court, serve a copy of the decision signed by each arbitrator on each party to the arbitration, either personally or by registered mail, or as provided by agreement.

The plaintiff also cites statutes in Title 18. S.C. Code §18-7-20 deals with appeals to the circuit court from lower courts. She specifically made reference to the following:

SECTION 18-7-10. Appeals from inferior courts; supersedeas.

When a judgment is rendered by any . . . inferior court or jurisdiction . . . , the appeal shall be to the circuit court of the county wherein the judgment was rendered . . . [.]

SECTION 18-7-20. When and how appeal shall be taken.

The appellant, within thirty days after written notice of judgment has been given him or his attorney by the magistrate, recorder, or judge of the municipal court, except when the judgment is announced at the trial in the presence of the appellant or his attorney then no written notice is necessary, shall serve a notice of appeal, stating the grounds upon which the appeal is founded. If the judgment is rendered upon process not personally served and the defendant did not appear, he has thirty days after personal notice of the judgment to serve the notice of appeal provided for in this section.

SECTION 18-1-100. Amendment to cure failure to perfect appeal.

When a party shall give, in good faith, notice of appeal from a judgment or order and shall omit, through mistake, to do any other act necessary to perfect the appeal or to stay proceedings the court may permit an amendment on such terms as may be just.

The parties concede that the arbitrators announced their decision on a 2-to-1 vote on the date of the arbitration. They agree that no written copy of the decision was given to the attorneys or the parties on that date. The attorneys did not specifically address the language in §38-77-760 requiring the arbitrator first appointed as the one required to serve a copy of the arbitration "on the day the decision is filed" either personally or by registered mail or in any manner upon which the parties agreed. There was no indication of an agreement as to how to serve the written decision. That language can certainly be read as contemplating actual service of written notice on the date the decision is filed. Here, the court's assumption is that the Clerk of Court sent copies to the attorneys, which the plaintiff's attorney did not receive until September 14.

It is the plaintiff's contention that the General Assembly would be mindful of the provisions regarding when the time to appeal starts in various instances, and if it intended to have a triggering date beginning when a decision is announced by the tribunal, it would have included language akin to §18-7-20. That would give notice to people involved in these arbitration proceedings that the 20-day limitation starts upon hearing the decision.

No case has been found from an appellate court in this state that addresses this precise issue.

CONCLUSION

The court finds that the notice of appeal was timely. In construing various statutes and rules, the court is mindful that the specific controls over the general. The legislature chose to title §38-77-760 as "Decision of arbitrators." It did not include any language similar to §18-7-20, which plainly states that the triggering date occurs when written notice of judgment is received, and provides the exception to that when it states that, "when the judgment is announced at the trial in the presence of the appellant or his attorney then no written notice is necessary . . . [.]". It did include language about personal service of the written decision, with specificity as to how the written document is to be completed, filed, and served.

The court recognizes that the time for filing appeals in civil cases, in many instances, begins when party has notice of entry of the decision. However, Rule 74, SCRCF, states the procedures on appeal to the circuit court. It reads:

RULE 74**PROCEDURE ON APPEAL TO THE CIRCUIT COURT**

Except for the time for filing the notice of appeal, the procedure on appeal to the circuit court from the judgment of an inferior court or decision of an administrative agency or tribunal shall be

in accordance with the statutes providing such appeals. Notice of appeal to the circuit court must be served on all parties within thirty (30) days **after receipt of written notice** of the judgment, order or decision appealed from. In all such appeals the notice of intention to appeal shall be filed with the clerk of the court to which the appeal is taken and with the inferior court or administrative agency or tribunal within the time provided by the statute, or by this rule when no time is fixed by statute, for service of the notice of intention to appeal. The proceedings in the circuit court shall be in accordance with these rules, and priority shall be given to the hearing and disposition of such appeals in accordance with law. [Emphasis added.]

The controlling statute here, §38-77-770, does not expressly provide whether the time for appeal begins upon knowing that a decision has been made or upon receipt of the decision. In light of the conflicting provisions related to when the time for filing an appeal starts, the unique nature of these "appeals" from the arbitration panel, and the lack of a clear statement in the statute, the court finds that the notice of appeal in this case was filed in a timely manner.



Lexington Common Pleas

Case Caption: Irma Lina Lauer VS Rickey Lavert Elam , defendant, et al

Case Number: 2017CP3203640

Type: Order/Dismissal

Circuit Judge (Code #2050)

s/ William P. Keesley

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