

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J. C. Nicholson, Resident Circuit Judge

RECEIVED
FEB 20 2018
SC Court of Appeals

APPELLATE CASE NO. 2018-000141

Gerald W. Campbell, Jr., individually and in a representative capacity for
all others similarly situated..... Appellant

vs.

Baker Motor Company of Charleston..... Respondent

APPELLANT’S MEMORANDUM ON APPEALABILITY

The South Carolina Court of Appeals has requested the parties file a Memorandum addressing the issue of appealability of the Lower Court’s Order Granting Defendant’s Motion to Stay and Compel Arbitration, in these two consolidated cases. Under some circumstances, the appealability of these Orders would be governed by the South Carolina Uniform Arbitration Act. In the present cases, however, the SCUAA does not apply. The alleged arbitration agreements between the parties calls for the rules of the American Arbitration Association to apply and that the claims will be governed by the Federal Arbitration Act at 9 USC §1 et. seq. There is no mention in the alleged arbitration agreements of any South Carolina laws and no mention of the South Carolina Uniform Arbitration Act.

The Uniform Arbitration Act states that the Act shall not apply to “Any agreement or provision to arbitrate in which it is stipulated that this chapter shall not apply or to any arbitration or award thereunder...” S.C. Code §15-48-10(b)(1). The alleged arbitration agreements stipulate that the rules of the American Arbitration Association shall apply in conjunction with the Federal Arbitration Act. Therefore, the arbitration appeals rules found at S.C. Code §15-48-200 do not apply to these cases.

These cases are appealable under S.C. Code §14-3-330(3) which states an appeal may be taken from “A final Order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment...” There are two substantial rights affected in this appeal, the first being the right to a jury trial and the second being the right to a class action which has been held to be a non-waivable right under the Dealers Act. When the Plaintiff filed these actions, he demanded a jury trial. He has consistently contested the existence and enforceability of the alleged arbitration agreements. The Appellant Courts of South Carolina have consistently held that denial of the mode of trial to which a party is entitled is immediately appealable. Salmonsens v. CGD, Inc., 377 S.C. 442, 661 S.E.2d 81 (2008); Flagstar Corp. v. Royal Surplus Lines, 241 S.C. 68, 533 S.E.2d 331 (2000); Hagood v. Somerville, 362 S.C. 191, 607 S.E.2d 707 (2005); Creed v. Stokes, 285 S.C. 542, 331 S.E. 2d 351 (1985).

The case of Heffner v. Destiny, Inc., 321 S.C. 536, 471 S.E.2d 135 (S.C. 1995), is distinguishable. In that case, the Supreme Court did not address the applicability of the South Carolina Uniform Arbitration Act. The Court cited the appeals rules under the South Carolina Uniform Arbitration Act. Therefore, presumably the arbitration agreement in that case met the requirements of the South Carolina Uniform Arbitration Act and triggered its application.

In the present appeal, there is no allegation that the South Carolina Uniform Arbitration Act applies at all. There is also no allegation that any of the requirements of the South Carolina Uniform Arbitration Act have been met. Therefore, the appeals section of that Act is not applicable.

Additionally, the present appeal involves a substantial right to bring a class action under the Dealers Act. The Heffner case did not involve the Dealers Act or a class action. Therefore, since the South Carolina Uniform Arbitration Act does not apply, §15-48-200 on appeals does not apply and the appealability of this action rests solely on S.C. Code §14-3-330(3).

In Herron v. Century BMW, 387, S.C. 525, 693 S.E.2d 394 (2010) (Herron I) the South Carolina Supreme Court stated that, “The legislature has made clear that the public policy of this state is to provide consumers with a non-waivable right to bring class action suits for violations of the Dealers Act and that any contract prohibiting a class action suit violates our state’s public policy and is void and unenforceable.” This strong language of the Supreme Court certainly indicates that the right to bring a class action under the Dealers Act is a substantial right.

The Lower Court Order found that this matter is controlled by the Federal Arbitration Act, which implicates Federal Law. The Fourth Circuit Court of Appeals has recently addressed the issue of class wide arbitrations in the case of Dell Webb Communities, Inc. v. Carlson 817 F.3d 867 (4th Circuit 2016). In Dell Webb, the Fourth Circuit changed its position with regard to who gets to decide whether an action may proceed as a class action in arbitration. The Court ruled that the availability of class arbitration is reserved for judicial determination and not the arbitrator. The fact that our Fourth Circuit has held that the issue of class arbitration is reserved for judicial determination is further support for the immediate appealability of this crucial issue. If this issue is not immediately appealable, the Plaintiff will be forced to try his case in arbitration then to obtain a

result and then to seek an appeal which would result in a new arbitration proceeding under an entirely different format.

CONCLUSION

For the foregoing reasons, the matter before the Court is immediately appealable.


KELAHER, CONNELL & CONNOR, P.C.

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February 16, 2018

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PROOF OF SERVICE

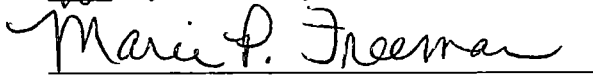
PERSONALLY appeared before me, Lynn C. Benton, who being duly sworn, deposes and
says that she is an employee of KELAHER, CONNELL & CONNOR, P.C., Attorneys at Law, and
that she has served the **APPELLANT'S MEMORANDUM ON APPEALABILITY** on the
Respondent, through its attorney of record, by depositing a copy of same in the United States Mail,
postage prepaid, to:

Bradford Neal Martin, Esquire
BRADFORD NEAL MARTIN & ASSOCIATES, PA
Post Office Box 10410
Greenville, SC 29603

Date of Mailing: February 16, 2018


Lynn C. Benton

SWORN to before me this
16th day of February, 2018


Notary Public for South Carolina
My Commission Expires: 6/11/24

KELAHER, CONNELL & CONNOR, P.C.

ATTORNEYS AT LAW

SUITE 209

THE COURTYARD

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SC Court of Appeals

Ms. Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

**Re: Gerald W. Campbell, Jr., individually and in a representative capacity for all others similarly situated v. Baker Motor Company of Charleston
Appellate Case No.: 2018-000141**

Dear Mr. Kitchings:

Pursuant to your letter of February 2, 2018, enclosed please find an original plus one (1) copy of **APPELLANT'S MEMORANDUM ON APPEALABILITY** along with Proof of Service. Please file the original and return a clocked copy in the envelope provided.

By copy of this letter, I hereby serve the Respondent, through their attorney of record, with **APPELLANT'S MEMORANDUM ON APPEALABILITY**.

With best wishes, I remain

Sincerely,


L. Sidney Connor, IV

LSCIV:lb
Enclosures

cc w/encl.: Bradford Neal Marin, Esquire

KELAHER, CONNELL & CONNOR, P.C.

ATTORNEYS AT LAW

P. O. DRAWER 14547

SURFIDE BEACH, SOUTH CAROLINA 29587



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