

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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FEB 22 2018

SC Court of Appeals

J.C. Nicholson, Circuit Court Judge

Circuit Court Case Nos.:2017-CP-10-02665 and 2017-CP-10-02666
South Carolina Court of Appeals Case No.: 2018 000141

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

v.

Baker Motor Company of CharlestonRespondent.

MEMORANDUM OF LAW

This action was commenced by the filing of two Complaints on May 25, 2017. Baker Motor Company filed Motions to Stay and Compel Arbitration in both cases on August 7, 2017. The Honorable Judge Nicholson heard arguments on the Motions on November 16, 2017 and by Orders filed January 10, 2018, the Circuit Court granted the Motions to Stay and Compel Arbitration.

The sole issue decided in the Order from which Appellant now appeals was whether to stay the actions and compel bilateral arbitration pursuant to his arbitration agreement with Baker Motors. South Carolina Code Ann. § 15-48-200 provides for immediate appeal of certain orders deciding issues involving arbitration agreements. The section provides that:

- (a) An appeal may be taken from:
 - (1) An order denying an application to compel arbitration made under § 15-48-20;
 - (2) An order granting an application to stay arbitration made under § 15-48-20(b);

- (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 this chapter.

S.C. Code Ann. § 15-48-200. The South Carolina Supreme Court has strictly interpreted the statute:

By application of the rule of statutory construction “*expressio unius est exclusio alterius*” (the mention of one is the exclusion of another), all other orders related to arbitration are not immediately appealable. *Pennsylvania Nat. Mut. Cas. Ins. Co. v. Parker*, 282 S.C. 546, 320 S.E.2d 458 (Ct. App. 1984). Therefore, the order in this case, which stays this action and compels arbitration, is not immediately appealable under § 15-48-200.

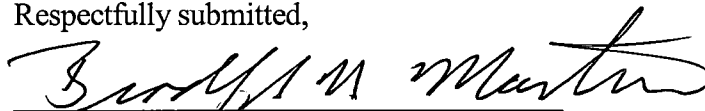
Heffner v. Destiny, Inc., 321 S.C. 536, 537-38, 471 S.E.2d 135, 136 (1995). The South Carolina Supreme Court expressly held that § 15-48-200, the specific statute dealing with appeals from arbitration orders, trumps the more general code section 14-3-330 regarding appeals. *See Heffler*, 321 S.C. at 536, 471 S.E.2d at 136. The Court reaffirmed its holding in *Toler’s Cove Homeowners Ass’n, Inc. v. Trident Const. Co., Inc.*, 355 S.C. 605, 586 S.E.2d 581 (2003) and *Carolina Care Plan, Inc. v. United HealthCare Servs., Inc.*, 361 S.C. 544, 558, 606 S.E.2d 752, 759 (2004).

The Court of Appeals has permitted a party opposing a motion to compel arbitration to immediately appeal an adverse ruling where the case was dismissed to arbitration. *Widener v. Fort Mill Ford*, 381 S.C. 522, 674 S.E.2d 172 (Ct.App. 2009). The Court of Appeals noted that the United States Supreme Court in addressing a similar issue found, “Had the District Court entered a stay instead of a dismissal in this case, that order would not be appealable.” *Green Tree Financial Corp.-Alabama v. Randolph*, 531 U.S. 79, 87 n.2 (2000). The court in *Widener* remanded the case for the trial court to vacate its dismissal of Widener’s claims and to enter an order staying his action pending the outcome of the arbitration proceedings. In the present case the lower court entered a stay and not a dismissal, therefore the matter is not immediately appealable.

CONCLUSION

The Orders Appellant seeks to appeal are not described in § 15-48-200, and are not subject to immediate appeal and the appeal should be dismissed.

Respectfully submitted,



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February 19, 2018

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Certificate of Service

I, Renique Robinson, legal assistant, at Bradford Neal Martin & Associates, PA, hereby certify that due and proper service of the document(s) affixed hereto and described below was made by depositing a true copy(ies) of same in the United States Mail at Greenville, South Carolina, in an envelope with adequate first-class postage duly affixed and return address clearly indicated thereon.


DOCUMENTS:

Respondent's Memorandum of Law

COUNSEL/PARTY SERVED:

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February 19, 2018


Renique Robinson

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February 19, 2018

The Hon. Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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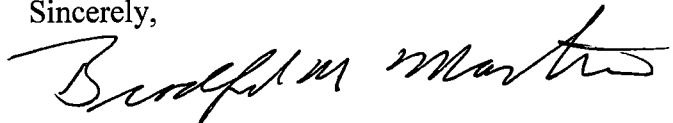
Re: *Gerald W. Campbell, Jr. individually and in a representative capacity for all others similarly situated v. Baker Motor Company of Charleston*
Appellate Case No. 2018-000141

Dear Ms. Kitchings:

Enclosed for filing is an original and six copies of Respondent's memorandum addressing the issue of appealability as requested by the Court and a Proof of Service in the above captioned matter. Please file the original with your Court and return a clocked copy to me in the enclosed envelope.

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact me.

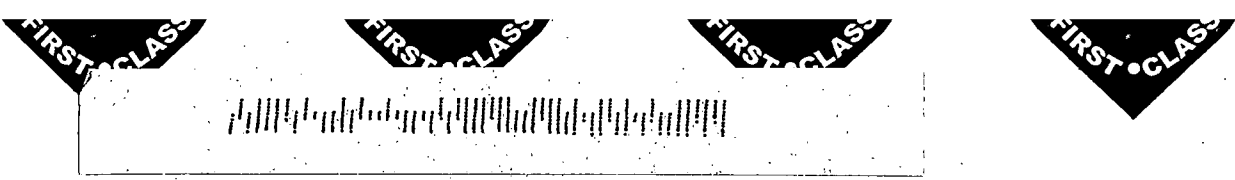
Sincerely,



Bradford N. Martin

BNM/pm
Enclosures

cc: Lawrence Sidney Connor, IV, Esq.



FIRST CLASS MAIL

<p>BRADFORD NEAL MARTIN & ASSOCIATES, PA 201 WEST MCBEE AVE., SUITE 302 P.O. BOX 10410 (29603) GREENVILLE, SC 29601</p>	
<p>TO:</p>	<p>Honorable Jenny Abbot Kitchings South Carolina Court of Appeals P.O. Box 11629 Columbia, SC 29211</p>
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