

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndra Gist Benjamin, Fifth Circuit Judge

Appellate Case No. 2018-001536

Palmetto Wildlife Extractors, LLC,
And Patrick Charping,

Respondents,

v.

Justin Ludy and First Community Corporation d/b/a,
First Community Bank,

Appellants,

Of whom Justin Ludy is the Appellant.

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APPELLANT'S MEMORANDUM APPEALABLE ORDER

This memorandum is being provided as per request of the Court in its letter dated August 24, 2018, which stated, "A preliminary review of the order(s) challenged on appeal indicates it might not be immediately appealable. ... Accordingly, it is requested that the parties serve and file memoranda addressing the issue of appealability within ten (10) days of the date of this letter."

APPELLANT'S RESPONSE

Both the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1 *et seq.*, and the S.C. Uniform Arbitration Act, S.C. Code Ann. § 15-48-10 *et seq.*, provide that an order denying arbitration is immediately appealable. *See e.g.*, 9 U.S.C. § 16(a)(1)(B) and (C) (providing "[a]n appeal

may be taken from (1) an order ... (B) denying a petition under section 4 of this title [9 USCS § 4] to order arbitration to proceed, (C) denying an application under section 206 [9 U.S.C. § 206] of this title to compel arbitration.”); and S.C. Code Ann. § 15-48-200(a)(1) (providing similarly “[a]n appeal may be taken from (1) [a]n order denying an application to compel arbitration made under Section 15-48-20.”).

In this case, the order being appealed from did stay the case and compel two (2) of the five (5) pending claims to arbitration, however, it also denied the motion to compel claims (3), (4) and (5), respectively for “civil conspiracy; defamation; and appointment of receiver, accounting, and judicial dissolution.” Because the motion to compel arbitration on these three claims was denied, the order is immediately appealable under 9 U.S.C. 16 and § 16(a)(1)(C), and S.C. Code Ann. § 15-48-200(a)(1).

South Carolina case law has addressed this issue. In *Cape Romain Contrs., Inc. v. Wando E., LLC*, 405 S.C. 115, 120, 747 S.E.2d 461, 463-64 (2013), the South Carolina Supreme Court noted in its footnote 4:

We summarily reject Cape Romain’s contention that this matter is not immediately appealable. An order denying arbitration is immediately appealable. *Towles v. United HealthCare Corp.*, 338 S.C. 29, 34-35, 524 S.E.2d 839, 842 (Ct. Ap. 1999) (noting section 16 of the FAA explicitly provides for an appeal from an order denying a motion to compel arbitration and holding that “an order that favors litigation over arbitration—whether it refuses to stay the litigation in deference to arbitration; [or] refuses to compel arbitration . . . is immediately appealable, even if interlocutory.” (quoting *Stedor Enters., Ltd. v. Armtex, Inc.*, 947 F.2d 727, 730 (4th Cir. 1991))).

Id.

Similarly, the Court of Appeals in *Liberty Builders, Inc. v. Horton*, 336 S.C. 658, 660, 521 S.E.2d 749, 751 (Ct. App. 1999), has confirmed that orders denying arbitration are immediately appealable, stating in footnote 2 as follows: “An order refusing to stay an action pending arbitration or compel arbitration is immediately appealable. 9 U.S.C.A. §

16(a)(1)(A) & (C) (1999); S.C. Code Ann. § 15-48-200(1) & (2) (Supp. 1998).”

In *Landers v. FDIC*, 402 S.C. 100, 109, 739 S.E.2d 209, 213 (2013), the South Carolina Supreme Court reversed a trial court order splitting claims that would go into arbitration. *Id.* at 218 (stating, “In conclusion, we reverse the trial court with respect to each of Landers’ remaining four causes of action and hold that each is subject to arbitration.”). While *Landers* did not specifically address the issue of whether or not the order was immediately appealable, the *Landers* case was positioned almost identically to this case in that the order being appealed from compelled arbitration on some claims, namely the breach of contract claims, but not all claims, rejecting arbitration of the tort claims.

Additionally, requiring parties to litigate related disputes in different forums is inefficient and contrary to the intent of the state and federal law favoring arbitration. *See e.g., General Equipment & Supply Co., Inc. v. Keller Rigging & Const., SC, Inc.*, 344 S.C. 553, 555, 544 S.E.2d 643, 645 (Ct. App. 2001) (stating, “Furthermore, it is the policy of this state to favor arbitration of disputes.”). Still further, while this gets to the merits of the arbitrability of the respective claims, the parties here agreed in their Operating Agreement as quoted in the original motion to compel arbitration, filed June 6, 2017, that, “[a]ny dispute as to whether a controversy or claim is subject to arbitration shall be submitted as part of the arbitration proceeding.” *Id.*

CONCLUSION

For at least the reasons that both applicable state and federal statutes and interpretative case law provide for an immediate appeal of this order denying the motion to compel arbitration of Respondent Charging’s claims (3) through (5) for “[3] civil conspiracy; [4] defamation; and [5] appointment of receiver, accounting, and judicial dissolution,”

Appellant respectfully requests that this appeal move forward, and that the Court re-set the briefing deadlines as soon as reasonably possible.

s/ Wesley D. Few/ 

Wesley D. Few, LLC

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Greenville, South Carolina
September 4, 2018

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ATTORNEYS FOR FIRST COMMUNITY BANK

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea Gist Benjamin, Fifth Circuit Judge

Appellate Case No.: 2018-001536

Palmetto Wildlife Extractors, LLC,
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Justin Ludy and First Community Corporation d/b/a,
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Appellants,

Of whom Justin Ludy is the Appellant.

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PROOF OF SERVICE

I certify that I have served a copy of the Appellant Justin Ludy's Memorandum addressing the issue of appealability on counsel for the Respondents, James M. Griffin and Margaret Fox, addressed at Griffin & Davis, LLC, P.O. Box 999, Columbia, South Carolina 29202 and Jody A. Bedenbaugh and John T. Moore, Nelson Mullins Riley & Scarborough, LLP, P.O. Box 11070, Columbia, South Carolina 29211, by depositing a copy in the United States Mail, postage prepaid, on September 4, 2018.



Wesley D. Few

September 4, 2018
Greenville, South Carolina

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September 4, 2018

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Via U.S. Mail

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals – Clerk of Court
Post Office Box 11629
Columbia, South Carolina 29211

RE: Palmetto Wildlife Extractors, LLC and Patrick Charping, Respondents v. Justin Ludy and First Community Corporation d/b/a, First Community Bank, Appellants,
Of whom Justin Ludy is the Appellant
Appellate Case No.: 2018-001536
Civil Action No.: 2017-CP-40-02822
Our File No.: 00226-001

Dear Madame Clerk:

Enclosed for filing are an original and one copy of Appellant Justin Ludy's Memorandum on the Issue of Appealability in the above-referenced case, Proof of Service of such on the Respondents and Richland County Court of Common Pleas. Please return a file stamped copy for our files in the return-addressed envelope also enclosed.

With warm regards, I remain

Sincerely Yours,



Wesley D. Few

WDF/cgy

Enclosures

CC: James R. Griffin, Esq. (*Via U.S. Mail*)
Margaret N. Fox, Esq. (*Via U.S. Mail*)
Jody Bedenbaugh, Esq. (*Via U.S. Mail*)
Justin Ludy (*Via email only*)

WESLEY D. FEW, LLC

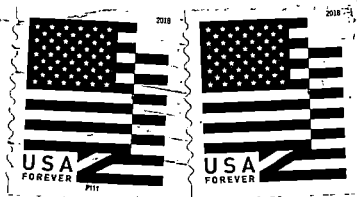
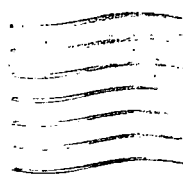
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