

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Hon. Deadra L. Jefferson, Circuit Court Judge

RECEIVED

Jul 30 2020

Case No. 2016-CP-10-2955

SC Court of Appeals

Appellate Case No. 2020-000875

TCC of Charleston, Inc.Plaintiff/Respondent

v.

Concord and Cumberland, LLC, Concord & Cumberland HPR, Leo Hall, Diane Hall, Bea H. Smith, Margaret C. Pope, William D. Foster, Jr., Gene G. Foster, Mattison J. MacGillivray, Teresa MacGillivray, Pamela L. Vaughn, Nelia A. Patricio, Trustee of the Nelia A. Patricio Revocable Trust Agreement, Stuart D. Reeves, Edward T. Strom, Barbara K. Henderson, James R. Clarke, Paul A. Brim, Robert K. Seidl, Jennifer M. Seidl, Robert Kenneth Seidl, II, M. Bert Storey, Thomas R. Mather, 304 Concord & Cumberland, LLC, Marion M. Simpson, f/k/a/ Marion Moore McDonald Simpson, Kathy Gardner, Gregory J. Gardner, Freeman Waterfront Properties, LLC, Jo-Ann Cooper, Betty Y. Segal, Robert M. Levin, Bonita K. Levin, Donald D. Leonard, Beby L. Beatty, Mattellen, LLC, and Thomas R. Debnam, Trustee of the Trust Agreement of Thomas, R. Debnam.....Defendants

Of Which Concord & Cumberland HPR is theAppellant

MOTION TO DISMISS APPEAL

EPTING & RANNIK, LLC
Jaan G. Rannik
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Charleston, South Carolina 29401
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ATTORNEY FOR RESPONDENT

I. STATEMENT OF THE ISSUE

Respondent TCC of Charleston, Inc. (“TCC”) moves to dismiss this appeal filed by the Concord & Cumberland HPR (Horizontal Property Regime; hereinafter, “the HPR”), as the subject orders are not immediately appealable.

II. PROCEDURAL BACKGROUND

In 2014, the HPR contracted with TCC to repair construction defects at Concord & Cumberland. The contract contained an arbitration provision. After beginning the work, TCC and the HPR discovered that the extent of the defects was substantially greater than the parties originally thought and accordingly increased the contract’s scope.

When TCC was not paid, it filed a mechanics’ lien and suit in June 2016. The matter was stayed in favor of arbitration by order of January 2017. The arbitration took place in January 2019, and the panel unanimously awarded TCC over \$2mm.

The HPR moved to vacate the arbitration award, which the Circuit Court refused to do January 30, 2020. The HPR moved for reconsideration, which was likewise denied on May 1, 2020. The HPR attempts to appeal these orders, and TCC now moves to dismiss the appeal as improper.

III. ARGUMENT

Appellant appeals from (i) an order denying Appellant’s motion to vacate an arbitration award and (ii) an order denying Appellant’s motion to reconsider. Appellant’s brief contains no jurisdictional statement asserting a basis for the appealability of the subject orders; the orders in question do not qualify for immediate appeal.

A. Not an Appealable Interlocutory Order

The South Carolina Uniform Arbitration Act (S.C. Code § 15-48-10 *et seq.*) provides that the following arbitration orders are immediately appealable:

- (1) An order denying an application to compel arbitration made under S.C. Code Ann. § 15-48-20 (1978);
- (2) An order granting an application to stay arbitration made under S.C. Code Ann. § 15-48-20(b) (1978);
- (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 § 15-48-200(a).

As noted by the South Carolina Supreme Court, “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.” *Heffner v. Destiny, Inc.*, 321 S.C. 536, 537, 471 S.E.2d 135, 136 (1995) (citing *Pennsylvania Nat. Mut. Cas. Ins. Co. v. Parker*, 282 S.C. 546, 320 S.E.2d 458 (Ct. App. 1984)).

Orders denying a motion to vacate or modify an award, like the subject orders, are not among the enumerated arbitration orders that may be immediately appealed. In general, interlocutory orders regarding arbitration are immediately appealable only if they are hostile to arbitration. *Green Tree Fin. Corp.-Al. v. Randolph*, 531 U.S. 79, 86, 121 S. Ct. 513, 519 (2000) (noting the appealability under the federal act of “orders hostile to arbitration, whether the orders are final or interlocutory”). Judge Jefferson’s order is not hostile to arbitration, as it declined to vacate or modify the unanimous arbitration award.

B. Not a Judgment or Final Order

As of the date of this motion, still pending in the trial court is the HPR's motion for summary judgment relating to one of Respondent's causes of action and Respondent's motion to amend the complaint to assert further causes of action against the HPR. HPR's counsel noted that its summary judgment motion was unrelated to the appeal, **Exh. A** (5/5/20 email), acknowledging that matters remained in the trial court; *i.e.*, there is no final order. *See* Rule 54(a), S.C.R.C.P. (defining judgment as "any decree or order which dismisses the action as to any party or finally determines the rights of any party"). TCC has moved to confirm the arbitration award and asked that that relief be stayed until the trial court has fully adjudicated the disputes between the parties. Full relief as to TCC's claims against the HPR has not yet been awarded. This appeal is for no other reason than to interfere with the trial court's granting of this relief.

Accordingly, claims remain pending in the circuit court, and the subject orders are not appealable final orders.

IV. CONCLUSION

The orders are not among the enumerated orders listed in S.C. Code § 15-48-200(a) (*supra*); nor are the orders final, as matters remain pending before the trial court, and no judgment will be entered until TCC has been granted full relief. Accordingly, the subject orders are not immediately appealable, and this appeal must be dismissed.

[signature on following page]

This 30th day of July, 2020
Charleston, SC

Respectfully submitted,

EPTING & RANNIK, LLC

/s/ Jaan G. Rannik_____

Jaan G. Rannik

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ATTORNEY FOR TCC OF CHARLESTON, INC.

EXHIBIT A

Angela Gross

From: Ford, Cordes <Cordes.Ford@wbd-us.com>
Sent: Tuesday, May 5, 2020 4:49 PM
To: jmccoyle@sccourts.org; jmccoysc@sccourts.org
Cc: LChapman@charlestoncounty.org; jdaigle@ycrlaw.com; ebuckley@ycrlaw.com; Andrew K. Epting; Jaan Rannik; Grimball, Henry; Walden, Andrew
Subject: Charleston County Case No.: 2016-CP-10-02955 - Pending Motion for Summary Judgment
Attachments: Motion for Summary Judgment.PDF; Ex. A to MSJ.PDF; Ex. B to MSJ.PDF; Ex. C to MSJ.PDF; Operation of the Trial Courts During the Coronavirus Emergency.pdf

Charleston County Case No.: 2016-CP-10-02955

Dear Judge McCoy and Ms. Maull,

I hope you both are well and staying safe. On behalf of Concord and Cumberland HPR, I am writing to request a hearing on a pending motion for summary judgment that was filed on December 6, 2019. Specifically, we filed the attached motion and exhibits, captioned **Defendant Concord & Cumberland HPR's Motion for Summary Judgment as to Plaintiff's Foreclosure of Mechanic's Lien Cause of Action**. This motion has been pending during resolution of the HPR's Motion to Vacate an Arbitration Award and subsequent Motion for Reconsideration of Judge Jefferson's initial Order, the latter of which Judge Jefferson decided by Order without hearing on May 1.

Our Notice of Appeal on the Arbitration issue heard by Judge Jefferson is due on June 1, 2020. The issue being presented in the Motion for Summary Judgment is important to this case but is unrelated to the appealable issue. As such, we would greatly appreciate the opportunity to have this motion heard as soon as possible and before our June 1, 2020 Notice of Appeal deadline for purposes of efficiency - my understanding is that the Notice of Appeal will automatically stay the entire case, and we would have to take additional costly and timely steps to file a motion to lift the stay in order to have our motion for summary judgment heard.

With that brief background, we would like to request a hearing (either in person or remotely) on this motion pursuant to Paragraph (c)(3) of the South Carolina Supreme Court's Order regarding Operation of the Trial Courts During the Coronavirus Emergency (As Amended April 22, 2020), also attached hereto for your convenience.

Please let us know if you need any additional information in order to consider conducting a remote hearing.

Very respectfully yours,

Cordes Ford

Cordes Ford

Partner
Womble Bond Dickinson (US) LLP

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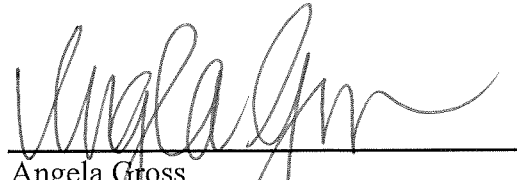
Of Which Concord & Cumberland HPR is theAppellant

PROOF OF SERVICE

I certify that I have served the Motion to Dismiss Appeal on opposing counsel via e-mail, on July 30, 2020, addressed to Appellant’s attorney of record, **Cordes Ford, Esq., at Cordes.Ford@wbd-us.com**. A copy of the e-email is attached to this Proof of Service as Exhibit A.

[Signature of following page]

By

A handwritten signature in cursive script, appearing to read "Angela Gross", written over a horizontal line.

Angela Gross

Legal Assistant to

Jaan G. Rannik, Esq.

46A State Street, Charleston, SC 29401

Phone: 843-377-1871; Fax: 843-377-1310

Angela Gross

From: Angela Gross
Sent: Thursday, July 30, 2020 3:35 PM
To: Ford, Cordes; Jaan Rannik; Buckley, Edward D. (Ed)
Cc: Walden, Andrew; Andrew K. Epting; Daigle, Jason; Grimball, Henry
Subject: TCC of Charleston v. Concord and Cumberland / Appeal No. 20-000875
Attachments: 2020 07 30 - EXH A - Ford email dated May 5, 2020 (TCC v. Concord - App No. 20-00875).pdf; 2020 07 30 - Motion to Dismiss Appeal (TCC v. Concord - App No. 20-00875).pdf

Counselors:

Attached for service please find Respondent's Motion to Dismiss Appeal in the above-matter which will be filed with the SC Court of Appeals through the AIS e filing system this afternoon.

Angela

Angela Gross
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