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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-637

No. COA21-183

Filed 16 November 2021

Alamance County, No. 19CVS1742

CHADBOURN T. SHARPE, Plaintiff,

v.

FCFS NC, INC., FAMOUS PAWN, INC., and FIRSTCASH, INC. f/k/a First Cash Financial Services, Inc., Defendants.

Appeal by defendants from order entered 25 September 2020 by Judge Andrew H. Hanford in Alamance County Superior Court. Heard in the Court of Appeals 10 August 2021.

Ramseur Maultsby LLP, by Patti W. Ramseur, for defendants-appellants.

Pinto, Coates, Kyre & Bowers, PLLC, by Richard L. Pinto and Lenneka H. Feliciano, for plaintiff-appellee.

GORE, Judge.

I. Factual and Procedural Background

¶ 1 In June of 2015, the parties entered into two Asset Purchase Agreements ("APAs"). Under the terms of those APAs, defendants agreed to purchase twenty-four pawn stores in North Carolina and one store in Virginia from plaintiff for about 25 million dollars. The APAs include several restrictions on plaintiff including a

covenant not to compete. Both APAs contain arbitration provisions and state they are governed by Texas law.

¶ 2 On 12 June 2019, Defendant FirstCash initiated an arbitration proceeding against plaintiff before the American Arbitration Association ("AAA"). Defendant FirstCash asserted claims for breach of contract, common law fraud, fraud by nondisclosure, and negligent misrepresentation. The allegations concern one of the pawn stores sold under the first APA located in Alamance County, North Carolina, and a competing pawn store located approximately one-half mile away.

¶ 3 Plaintiff moved the AAA to dismiss for improper service and lack of jurisdiction, seeking *inter alia*, to have the arbitration moved to North Carolina. On 7 August 2019, the AAA considered and rejected plaintiff's objection to the locale.

¶ 4 On 13 August 2019, plaintiff brought suit against defendants in Alamance County Superior Court seeking to stay arbitration pending before the AAA in Texas and declaratory judgment that: 1) the arbitration clauses at issue are unenforceable; 2) the covenants not to compete at issue are unenforceable; 3) plaintiff is not bound by the arbitration or noncompete clauses; 4) Alamance County Superior Court has jurisdiction to determine the merits of the parties' dispute; and 5) venue is proper in North Carolina. This matter was removed to federal court and then remanded on 16 July 2020.

¶ 5 On 17 August 2020, defendants moved to dismiss or stay the proceedings in state court pending completion of arbitration before the AAA in Texas. On 21 September 2020, the Honorable Andrew H. Hanford, Superior Court Judge presiding, heard arguments on both parties' motions. In an order filed 25 September 2020, the trial court granted plaintiff's motion to stay arbitration and denied defendants' motion to dismiss or stay. On 16 October 2020, defendants timely filed and served notice of appeal.

II. Jurisdiction

¶ 6 Defendants' appeal from the trial court's order is interlocutory. "An interlocutory order is one made during the pendency of an action, which does not dispose of the case, but leaves it for further action by the trial court in order to settle and determine the entire controversy." *Veazey v. Durham*, 231 N.C. 357, 362, 57 S.E.2d 377, 381 (1950) (citation omitted). Generally, only final judgments may be appealed to our appellate courts, and "an interlocutory order . . . is not immediately appealable." *Earl v. CGR Dev. Corp.*, 242 N.C. App. 20, 22, 773 S.E.2d 551, 553 (2015). However, this Court is permitted to review an interlocutory order "if the appellant shows the order affects a substantial right, which will be lost if it is not reviewed prior to the issuance of a final judgment." *Id.* (citations omitted).

¶ 7 "It is well established that the right to arbitrate a claim is a substantial right which may be lost if review is delayed, and an order denying arbitration is therefore

immediately appealable." *Epic Games, Inc. v. Murphy-Johnson*, 247 N.C. App. 54, 60, 785 S.E.2d 137, 141 (2016) (quotation marks and citation omitted). Plaintiff argues that the trial court's order did not permanently enjoin the arbitration action from proceeding, and therefore does not affect a substantial right. However, an order denying defendants' motions to dismiss and stay this action, thereby preventing this dispute from proceeding to arbitration, is immediately appealable. *See Martin v. Vance*, 133 N.C. App. 116, 514 S.E.2d 306 (1999). Therefore, this Court has jurisdiction.

III. Discussion

A. Standard of Review

¶ 8 When reviewing an arbitration agreement, this Court employs a two-prong standard of review to determine "(1) whether the parties had a valid agreement to arbitrate, and also (2) whether the specific dispute falls within the substantive scope of that agreement." *Earl*, 242 N.C. App. at 22-23, 773 S.E.2d at 554 (2015) (quotation marks and citation omitted). "In considering the first prong, the trial court's findings regarding the existence of an arbitration agreement are conclusive on appeal where supported by competent evidence, even where the evidence might have supported findings to the contrary." *Id.* (*purgandum*). "[W]hether a particular dispute is subject to arbitration is a conclusion of law, reviewable *de novo* by the appellate court." *Epic Games, Inc.*, 247 N.C. App. at 61, 785 S.E.2d at 142 (citation omitted).

B. Valid Agreement to Arbitrate

¶ 9 "[B]efore a dispute can be ordered resolved through arbitration, there must be a valid agreement to arbitrate." *Sloan Fin. Grp., Inc. v. Beckett*, 159 N.C. App. 470, 478, 583 S.E.2d 325, 330 (2003) (citing *United Steelworkers v. Warrior & G. Nav. Co.*, 363 U.S. 574, 4 L. Ed. 2d 1409 (1960); *LSB Fin. Servs., Inc. v. Harrison*, 144 N.C. App. 542, 548 S.E.2d 574 (2001)). "The question of whether a dispute is subject to arbitration is an issue for judicial determination." *Id.* (citing *AT&T Techs. v. Communs. Workers of Am.*, 475 U.S. 643, 89 L. Ed. 2d 648 (1986)). In the case *sub judice*, the trial court's order states in pertinent part:

> The Court upon reviewing the record, Plaintiff's and Defendants' briefs in support of their Motions, and their supplemental briefs in response to the Court's requests, as well as hearing oral arguments from counsel for Plaintiff and counsel for Defendants during the hearing, and after considering the applicable law, in its discretion, the Court finds sufficient grounds to grant Plaintiff's Motion to Stay Arbitration and deny Defendant's Motions, which ruling was announced at the conclusion of the hearing.
>
> WHEREFORE, it is ORDERED, ADJUDGED and DECREED that Plaintiff's Motion to Stay Arbitration is hereby GRANTED and Defendants' Motion to Dismiss and Defendants' Motion to Stay this action are hereby DENIED, and the parties to this action are hereby ORDERED to conduct no substantive activities (including all discovery) in the aforementioned arbitration until further Order or Judgment of this Court.

¶ 10 This order does not contain any findings of fact necessary to facilitate meaningful review. In *Earl v. CGR Dev. Corp.*, this Court held that when "[t]he trial

court's order fails to state whether the parties were bound by an arbitration agreement or whether this matter fell within the scope of that agreement[,] [w]e are unable to determine any basis for the trial court's ruling." 242 N.C. App. at 24, 773 S.E.2d at 555. Here, as in *Earl*, the trial court does not state with any particularity its basis for granting plaintiff's motion to stay arbitration and denying defendants' motion to dismiss and motion to stay this action in state court. Accordingly, we are compelled "to remand for entry of an order, which shows the required two-step analysis and includes findings and conclusions necessary to resolve [d]efendants' motion." *Id.* (citation omitted).

IV. Conclusion

¶ 11 For the foregoing reasons, the trial court's order granting plaintiff's motion to stay arbitration and denying defendants' motion to dismiss and motion to stay is reversed. This matter is remanded for requisite findings of fact and conclusions of law not inconsistent with this opinion.

REVERSED AND REMANDED.

Judges DIETZ and COLLINS concur.

Report per Rule 30(e).