nery County--Civil Action

Salman Corp., et al., Plaintiffs/Appellants	:	No. 16-25726 (Pa. C.P. Montg. County Apr. 24, 2017), *statement of errors complained of on appeal filed*, No. 1593 EDA 2017 (Pa. Super. Ct. June 29, 2017)
v.	:	
Corinne Broach, Defendant/Appellee	:	

Smyth, S.J. **Oct. 23, 2017**

OPINION

This appeal from dismissal of Plaintiffs/Appellants' action for declaratory judgment raises the issue of whether this Court was the proper forum to determine whether an arbitration commenced under the order and direction of the Philadelphia County Court of Common Pleas was properly conducted as a class action. This Court found it was not the proper forum, after considering Defendant/Appellee's preliminary objections raising, under Pa.R.C.P. 1026(a)(6), "pendency of a prior action [and] agreement for alternative dispute resolution."

The parties' legal contest began in the Philadelphia Court of Common Pleas with Defendant/Appellee Corinne Broach's class-action complaint claiming Plaintiff/Appellant Salman Corporation, as a provider of home-care services through its "Comfort Keepers" franchise, failed properly to pay her and its other employees overtime in accordance with Pennsylvania's Minimum Wage Act, 43 P.S. § 333.104, and the Pennsylvania Supreme Court's decision in *Bayada Nurses, Inc. v. Commonwealth*, 607 Pa. 527, 8 A.3d 866 (2010). Salman filed a petition in the Philadelphia action under Pennsylvania's Uniform Arbitration Act, 42 Pa.C.S. §§ 7303-7304, to compel arbitration, and the Philadelphia court, without opposition from Broach, granted Salman's petition, and ordered the matter to arbitration with the American Arbitration Association (AAA), *Broach v. Salman Corp.*, No. 150800508 (C.P. Phila. County

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Jan. 8, 2016), on the basis of Broach's execution at the time of her employment with Salman of its "Comfort Keepers Arbitration Policy" (Def.'s Prelim. Objs. Pls.' Declaratory J. Compl. Ex. B at Ex. A).

The Arbitration Policy required all disputes regarding employment to be submitted exclusively to binding arbitration under the Federal Arbitration Act, 9 U.S.C. § 1, which calls for proceedings instituted in court to be stayed pending arbitration under the terms of an agreement. 9 U.S.C. § 3; *accord* Pennsylvania Uniform Arbitration Act, 42 Pa.C.S. § 7304 ("An action or proceeding, allegedly involving an issue subject to arbitration, shall be stayed if a court order to proceed with arbitration has been made or an application for such an order has been made under this section. . . . If the application for an order to proceed with arbitration is made in such action or proceeding and is granted, the court order to proceed with arbitration shall include a stay of the action or proceeding."). Under these statutory provisions, the proceedings in the Philadelphia action stayed pending the ordered arbitration; the order of the Philadelphia court did not dismiss the action, and it remained open on that court's docket. *See also Schantz v. Dodgeland*, 830 A.2d 1265, 1266 (Pa. Super. Ct. 2003) ("Section 3 of the Federal Arbitration Act, like Section 7304 of the Pennsylvania Arbitration Act, requires a stay of the proceedings where an issue is referred to arbitration."); *Quilloin v. Tenet HealthSys. Phila., Inc.*, 673 F.3d 221, 227 (3d Cir. 2012) ("[A] stay, rather than a dismissal, is the required course of action when compelling arbitration.").

The Arbitration Policy did not explicitly state whether arbitration under the Policy could or could not proceed on a class-action basis. Salman represented in its petition to compel arbitration, however, that "Comfort Keepers presents [the Arbitration Policy] to all employees with the same or similar positions as [Broach]." (Def.'s Prelim. Objs. Ex. H para. 4.)

Furthermore, the rules of the AAA, to which Salman had requested and its Arbitration Policy required that Broach's dispute be referred, provide, "Upon appointment, the arbitrator shall determine as a threshold matter, in a reasoned, partial final award on the construction of the arbitration clause, whether the applicable arbitration clause permits the arbitration to proceed on behalf of or against a class (the 'Clause Construction Award')." (Def.'s Br. Supp. Prelim. Objs. Dismiss Pls.' Declaratory J. Compl. 10 & Ex. S at No. 3 (Supplementary Rules for Class Arbitrations); *see also* Def.'s Br. Supp. Prelim. Objs. Ex. S at No. 1(a) ("These Supplementary Rules for Class Arbitrations ('Supplementary Rules') shall apply to any dispute arising out of an agreement that provides for arbitration pursuant to any of the rules of the American Arbitration Association ('AAA') where a party submits a dispute to arbitration on behalf of or against a class or purported class, and shall supplement any other applicable AAA rules. These Supplementary Rules shall also apply whenever a court refers a matter pleaded as a class action to the AAA for administration, or when a party to a pending AAA arbitration asserts new claims on behalf of or against a class.").) (Under the AAA's rules, a partial final "Clause Construction Award" does not include a determination, "under Supplementary Rule 4, of whether a class arbitration will actually be certified, and on what terms . . . . Any arguments as to which members of the alleged class would participate and be bound by the outcome of class arbitration would be considered at that later juncture." (Def.'s Prelim. Objs. Ex. CC at 2 n.2.).)

In accordance with the Arbitration Policy and the Philadelphia court's order, Broach filed her claim with the AAA as a demand for arbitration on January 22, 2016. In her description of the nature of the claim filed as part of the demand, Broach specifically identified it as a class action and sought class-wide relief on behalf of all Pennsylvania employees of Comfort Keepers

franchises (Def.'s Prelim. Objs. Ex. B paras. 2, 5-6) and her counsel signed the demand as class counsel. Broach also added as a party to the claim in arbitration, as her joint employer at Salman's Comfort Keepers franchise, Plaintiff/Appellant CK Franchising, Incorporated, apparently the franchisor of Pennsylvania Comfort Keepers franchises (as well as CK's parent company, Sodexo, which has since been dismissed from the arbitration by agreement), asserting, among other things, that CK had drafted and dictated the Comfort Keepers Arbitration Policy (Def.'s Prelim. Objs. paras. 28-31 & Ex. B para. 4).

The matter proceeded in due course before the AAA. The parties engaged in a conference call with a AAA administrator in March 2016 and agreed, among other things, per a AAA memorandum of the call, that the arbitration would likely be held in Philadelphia, that a single arbitrator would be appointed for the matter, and that the time for the employers to file an answer to the claim would be extended from March to April 11, 2016. (Def.'s Prelim. Objs. paras. 33, 35-37 & Ex. L.) The parties also discussed during the call the AAA's Supplementary Rules for Class Arbitrations. (*See* Def.'s Prelim. Objs. para. 34 & Ex. L.)

On May 19, 2016, the AAA appointed Edith Dinneen to serve as arbitrator. (Def.'s Prelim. Objs. para. 39.) The parties participated in a case-management conference call with Arbitrator Dinneen on June 20, 2016, discussing among other things the possibility of stipulating to whether the Arbitration Policy provided for class arbitration. (Def.'s Prelim. Objs. paras. 40-41 & Ex. O.) In a case-management order arising out of the conference, Arbitrator Dinneen stated that if the parties could not agree on the class-arbitration issue by the time of the next scheduled conference on July 12, 2016, they should confer on a schedule for briefing the "clause-construction" issue under Rule 3 of the AAA's Supplementary Rules for Class Arbitrations.

(Def.'s Prelim. Objs. Ex. O at 2.) After the July 12 conference, Arbitrator Dinneen entered a second case-management order setting a deadline of August 31, 2016, for the parties to conduct discovery on the creation and distribution of the Arbitration Policy. (Def.'s Prelim. Objs. paras. 44-45.) As a result of this discovery, Salman acknowledged that the Arbitration Policy signed by Broach and any others used by Salman were obtained from CK Franchising, that CK's representatives had been involved in all communications and contacts about the Policy, and that the Policy was available to Salman and other CK franchisees through CK's web portal. (Def.'s Prelim. Objs. para. 48.)

Arbitrator Dinneen held a third case-management conference with the parties on September 19, 2016, and issued an order that, among other things, found that the parties acknowledged that those currently involved in this litigation had produced no information to show they were not proper parties to the arbitration, stated "[t]he case is now moving into the clause construction phase (AAA Supplementary Rule 3 for Class Arbitrations)" (Def.'s Prelim. Objs. Ex. T at 2), and closed with,

> By September 23, 2016, the parties will have conferred and notified me as to whether they are stipulating to the clause construction issue (or any aspect thereof). If there is no comprehensive agreement and briefing will be necessary, it will proceed as follows: Claimant's Opening Brief on October 3, Respondents' Opposition(s) on October 17, and Claimant's Reply on October 19.

(Def.'s Prelim. Objs. Ex. T at 2.) Salman requested extensions of these deadlines due to a recent change in Salman's counsel, and on or about September 28 Arbitrator Dinneen granted the request, with the caveat that no further extensions would be granted for that reason alone. (Def.'s Prelim. Objs. para. 56 & Ex. V.)

On October 20, 2016, ten days after Broach had filed her opening brief on "clause

construction" as directed by the arbitrator (Def.'s Prelim. Objs. para. 57 & Ex. C) arguing for class arbitration based partly on decisions by the same arbitrator permitting class arbitration under agreements with language similar to that of the Arbitration Policy (Def.'s Prelim. Objs. paras. 62-63 & Ex. C), Salman's new counsel sent the arbitrator and the parties an email advising for the first time that Salman and CK Franchising were now taking the position that only a court, not the arbitrator, could decide the "clause construction" issue (that is, whether the Arbitration Policy allowed the arbitration to proceed as a class arbitration), that they intended to file a court action for a declaratory judgment on the issue, and that they were seeking a stay of the arbitration pending the outcome of such an action (Def.'s Prelim. Objs. paras. 57-58 & Ex. W). Salman and CK portrayed their request for a stay of arbitration as "consistent with the spirit and intent of AAA's Supplementary Rules for Class Arbitration" (Def.'s Prelim. Objs. Ex. W), citing AAA's Supplementary Rules for Class Arbitrations No. 3:

> The arbitrator shall stay all proceedings *following the issuance of the Clause Construction Award* for a period of at least 30 days to permit any party to move a court of competent jurisdiction to confirm or to vacate the Clause Construction Award. . . . If any party informs the arbitrator *within the period provided* that it has sought judicial review, the arbitrator *may* stay further proceedings, or some part of them, until the arbitrator is informed of the ruling of the court.

(Def.'s Prelim. Objs. Ex. S at No. 3 (emphasis added).) That same day, Broach sent the arbitrator a response opposing the request for stay, asserting that to grant a stay based on Salman's email would be inappropriate in light of the procedural history of the case since its inception. (Def.'s Prelim. Objs. para. 59 & Ex. X.)

On October 27, 2016, the arbitrator denied the request for a stay after "an opportunity to check my entire file, including handwritten notes of various conference calls" (Def.'s Prelim. Objs. Ex. Y), indicating she would issue an explanatory opinion if requested, and ordered Salman

and CK to submit their brief on "clause construction" by the extended deadline of October 28 they had requested earlier. (Def.'s Prelim. Objs. para. 60 & Ex. Y.) Later the morning of October 27, Broach's counsel advised the arbitrator by email that a court proceeding had already been commenced (this action, filed October 25, 2016) and asked that she provide the explanatory opinion she had mentioned, for the benefit of the assigned judge and the judicial record. (Def.'s Prelim. Objs. Ex. Z.) On October 28, Salman and CK Franchising filed separate "clause construction" briefs with the arbitrator, arguing that the Court should decide whether class arbitration was permitted, and that the parties' agreement did not permit class arbitration. (Def.'s Prelim. Objs. paras. 64-66 & Exs. D-E.)

On November 2, 2016, in accordance with Arbitrator Dinneen's directives, Broach filed a brief in reply to Salman's and CK Franchising's "clause construction" briefs, arguing that Arbitrator Dinneen should decide if class arbitration was permitted and that the Arbitration Policy did permit class arbitration. (Def.'s Prelim. Objs. para. 67 & Ex. F.) Broach's reply pointed out that Salman had waited for nine months after commencement of the arbitration, which Salman had requested the Philadelphia Court of Common Pleas to compel in Broach's action instituted as a class action, before objecting to the arbitrator's deciding "clause construction," and that Salman had never suggested to the Philadelphia court, as was now being suggested to the Montgomery County Court of Common Pleas, that only a court, not the arbitrator, could decide the issue. (Def.'s Prelim. Objs. Ex. F at 1-3.) Broach's reply compared the case to others in which Arbitrator Dinneen had rendered a "Clause Construction Award" finding the agreement at issue allowed class arbitration, including one brought by a Doreen Savaria on behalf of herself and a class against their employer:

> In [the Savaria award] (cited in Claimant's opening brief), this Arbitrator rejected an employer['s] attempt to argue that the court had exclusive authority to decide clause construction because the employer did not raise the issue until after the clause[-]construction briefing schedule had been established. This Arbitrator observed that [Savaria's] employer had "proceeded without any jurisdictional objection to the fact that, under Supplementary Rule 3, the arbitrator's first task would be to decide clause construction" and that, for several months, the employer "continued on track toward having the arbitrator decide clause construction, with no attempted reservation of any purported right to raise a jurisdictional objection."
>
> Here, Respondents have been even more dilatory than [Savaria's] employer. Respondents in this case did not seek to prevent an arbitral clause[-] construction ruling until *after* successfully moving to compel arbitration, *after* agreeing to a clause[-]construction briefing schedule, *after* requesting and obtaining an extension of the clause[-]construction briefing schedule, and *after* reviewing Claimant's opening clause[-]construction brief. As in [the Savaria case], it is too late for Respondents to prevent the Arbitrator from deciding clause construction.

(Def.'s Prelim. Objs. Ex. F at 3 (citation omitted) (quoting Def.'s Prelim. Objs. Ex. CC at 7).) Broach's reply portrayed Salman's and CK's resort to this Court for a ruling on the "clause-construction" issue, after having foregone seeking such a ruling from the Philadelphia court, and after reviewing Broach's opening brief presenting the prior decisions of Arbitrator Dinneen unfavorable to Salman and CK on the issue, as "just forum shopping. Their skilled lawyers reviewed this Arbitrator['s] [a]wards . . . and decided it would be better to have a [j]udge – actually, make that a *non*-Philadelphia [j]udge – decide clause construction." (Def.'s Prelim. Objs. Ex. F at 3.) Broach's reply also relied on Arbitrator Dinneen's "clause-construction" awards in prior cases to argue, substantively, that nothing in the Arbitration Policy prevented her arbitration from proceeding as a class action, highlighting the provisions "only the arbitrator, and not a judge nor a jury, will decide this dispute" (Arbitration Policy 1, *quoted in* Def.'s Prelim. Objs. Ex. F at 4), and "[a]ny arbitration conducted pursuant to this agreement shall be in

accordance with the then-current employment arbitration rules and procedures of the American Arbitration Association ("AAA") except to the extent such rules set forth herein [sic]" (Arbitration Policy 2, *quoted in* Def.'s Prelim. Objs. Ex. F at 4). (The AAA's rules provide, as we have seen, for the arbitrator to decide preliminarily, in a "clause-construction" determination, whether the arbitration can proceed on a class basis. (Def.'s Prelim. Objs. Ex. S at No. 3 (Supplementary Rules for Class Arbitrations).)) Broach's reply contended that a clause-construction determination by the arbitrator adverse to Salman and CK would enable them to go to court, not prevent them from doing so, by virtue of AAA's Supplementary Rules for Class Arbitrations No. 3: "The arbitrator shall stay all proceedings following the issuance of the Clause Construction Award for a period of at least 30 days to permit any party to move a court of competent jurisdiction to confirm or to vacate the Clause Construction Award." (Def.'s Prelim. Objs. Ex. S at No. 3, *quoted in* Def.'s Prelim. Objs. Ex. F at 4.)

Meanwhile, in what Broach's replying brief before the arbitrator characterized as their "October surprise" (Def.'s Prelim. Objs. Ex. F at 3), Salman and CK Franchising had done as they had threatened, instituting this action against Broach, not in the Philadelphia Court of Common Pleas that had ordered the arbitration, but in this Court, for a declaratory judgment that the arbitrator lacked jurisdiction to determine the arbitrability of the matter as a class action, an injunction against Broach's action proceeding as a class arbitration in any forum, and a stay of the ongoing arbitration. Broach immediately accepted service of the declaratory-judgment complaint, and on November 15, 2016, filed timely preliminary objections to it and a supporting brief raising, under the dual prongs of Pa.R.C.P. 1028(a)(6), "pendency of a prior action or agreement for alternative dispute resolution." Salman and CK filed a joint response to the

preliminary objections, and two separate responding briefs.

In their briefs, both sides relied largely on decisions not, strictly speaking, binding on this Court, to support their respective positions that the arbitrator could, or could not, determine whether the arbitration could proceed on a class basis. Broach cited, for example, the arbitrator's prior decisions determining the "clause construction" issue (which themselves comprehensively reviewed federal case law on the subject) (Def.'s Prelim. Objs. Exs. K, CC) while Plaintiffs relied on cases such as *Opalinski v. Robert Half International Inc.*, 761 F.3d 326, 329 (3d Cir. 2014) ("[T]he availability of classwide arbitration is a substantive 'question of arbitrability' to be decided by a court absent clear agreement otherwise."), *see also id.* at 332 ("[W]hether an agreement provides for classwide arbitration is a 'question of arbitrability' to be decided by the [federal] District Court."); *but see, e.g., S. Commc'ns Servs., Inc. v. Thomas*, 720 F.3d 1352, 1359 n.6 (11th Cir. 2013) ("Like the Supreme Court, we also have not decided whether the availability of class arbitration is a question of arbitrability." (citing *Oxford Health Plans LLC v. Sutter,* 569 U.S. 564 (2013)), *quoted in Opalinski*, 761 F.3d at 335, and *Chesapeake Appalachia, LLC v. Scout Petroleum, LLC*, 809 F.3d 746, 765–66 (3d Cir.) ("[T]he Sixth Circuit [in *Reed Elsevier, Inc. ex rel. LexisNexis Div. v. Crockett*, 734 F.3d 594, 599–600 (6th Cir. 2013),] held that an agreement referring to the AAA rules did not meet the 'clear and unmistakable' standard. Admittedly, the *Reed Elsevier* court did not provide a detailed analysis in support of its holding. But, given our examination of both the language of the Leases and the nature and contents of the various AAA rules, we see no reason to reach a different conclusion in this case—and create a circuit split." (citation omitted) (footnote omitted)), *cert. denied,* 137 S. Ct. 40 (2016). *See generally NASDAQ OMX PHLX, Inc. v. PennMont Sec.*, 52 A.3d 296, 303 (Pa. Super. Ct. 2012)

("Our law clearly states that, absent a United States Supreme Court pronouncement, the decisions of federal courts are not binding on Pennsylvania state courts, even when a federal question is involved.").

However, resolving the abstruse question that has divided some federal courts, whether the availability of class arbitration is a question of "arbitrability" that the courts must decide or one that the arbitrator may decide according to the rules of the forum the parties have chosen to arbitrate their disputes, was not the central concern of this Court in resolving the preliminary objections to this action for declaratory judgment. Rather, the preliminary objections framed the issues, under the Pennsylvania Rules of Civil Procedure, of "pendency of a prior action or agreement for alternative dispute resolution." Thus they focused the Court's attention squarely on the parties' pending prior action in the Philadelphia Court of Common Pleas, in which the issues of arbitrability had already been or could have been raised, and the parties' proceeding in arbitration before the AAA, as Salman had sought to compel in the Philadelphia litigation and the court had ordered, subject to the rules of the AAA, which explicitly required the arbitrator to decide class arbitrability preliminarily in a "Clause Construction Award" immediately appealable to "a court of competent jurisdiction." (Def.'s Prelim. Objs. Ex. S at No. 3.) In so considering the prior pending action and proceeding in arbitration, the Court also had to consider whether Plaintiffs had, by their conduct or omissions in those proceedings, waived any contest to the arbitrator's deciding the question of class arbitrability, or manifested their consent to or acquiescence in the arbitrator's deciding the issue. *Cf. Sutter,* 133 S.Ct. 2064, 2068 n.2 ("[T]his Court has not yet decided whether the availability of class arbitration is a question of arbitrability. But this case gives us no opportunity to do so because Oxford agreed that the

arbitrator should determine whether its contract with Sutter authorized class procedures.").

Before Broach's preliminary objections even became ripe for submission to the Court under local rule, Montg. Co., Pa., R.C.P. 1028(c)(3) (providing for referral of preliminary objections to a judge for disposition forty-five days after their filing), she had supplemented the record in this Court by filing a copy of Arbitrator Dinneen's thoughtful and cogent nine-page opinion denying Salman and CK's request for a stay of arbitration pending disposition of their action in this Court. As Broach summarized the decision,

> The Arbitrator denied Salman/CK's request for a stay of the arbitration proceedings for multiple reasons. First, the Arbitrator found that when Salman moved to compel arbitration of Ms. Broach's previously filed Philadelphia Court of Common Pleas class[-]action lawsuit, it moved to compel the entire putative class action. Secondly, the Arbitrator held that pursuant to the AAA's Employment Arbitration Rules, Salman/CK failed to make a timely objection to the Arbitrator's jurisdiction regarding clause construction. Thirdly, the Arbitrator held that Salman/CK agreed to the jurisdiction of the Arbitrator to determine clause construction as demonstrated by their conduct throughout the course of the arbitration proceedings.

(Def.'s Praecipe Supplemental Information Concerning Def.'s Prelim. Objs.2 (citations omitted) (footnote omitted).) The arbitrator's opinion itself, after painstakingly reviewing the history of the case, concluded,

> The case has been actively progressing in arbitration for months, and there was not even a hint of any objection to the fact that the parties would be putting the clause construction issue before the Arbitrator in accordance with Supplementary Rule 3. Briefing for an expected arbitral determination of clause construction was mentioned in all three conference calls and in all three Case Management Orders. It was not until ten days after Claimant, adhering to the agreed-upon schedule, filed her opening brief on clause construction (and two business days before Respondents' opposing briefs were to be filed) that Respondents sought the stay and said anything to challenge arbitral jurisdiction over the issue. That is both too late and too inconsistent with the prior history of the case to be condoned.

* * * *

> Granting of a stay is discretionary, and I find that one is not warranted under these circumstances. Respondents had multiple opportunities to raise their objection and repeatedly failed to do so. The record of the case allows for only one logical conclusion: the parties did agree by their actions (if not *also* by the language of their contract incorporating Employment Rules 4 and 6) that the Arbitrator would decide clause construction. Respondents have advanced no reasonable explanation for their conduct causing these anomalous circumstances, and they are the ones who are creating whatever inefficiency and additional expense they now say they want to avoid. The request for a stay at this time is denied.

(Def.'s Praecipe Supplemental Information Concerning Def.'s Prelim. Objs. Ex. A at 8-9 (footnotes omitted).)

Thereafter, on April 14, 2017, Broach filed a second praecipe to add supplemental information to the record pertinent to the issues her preliminary objections raised of "pendency of a prior action or agreement for alternative dispute resolution," this time incorporating a second opinion of the arbitrator, dated April 8, 2017, embodying her partial final award on "clause construction," and concluding, in a thorough and studied twenty-two-page analysis reviewing much of the same case law cited to this Court in Broach's preliminary objections and Salman/CK's responses, as well as additional authority, that the parties' agreement allowed for class arbitration. The arbitrator concluded,

> [A]s set forth above . . . my own review and interpretation of the actual language used [in the parties' agreement] is that the omission of the specific word "class" should not be a reason to rebut the other permissible (and more persuasive and compelling) factors leading to my conclusion that this Agreement does authorize class arbitration.

(Def.'s Second Praecipe Supplemental Information Concerning Def.'s Prelim. Objs. Ex. A at 20.) The arbitrator's opinion and partial final award ruled,

> The Agreement is hereby construed as allowing Claimant to include the assertion of class claims in this arbitration. In accordance with Rule 3 of AAA's Supplementary Rules for Class Arbitrations, I retain jurisdiction and order that all

> proceedings herein be stayed for a period of 30 days from the date of this Partial Final Award so that any party may seek to have this decision confirmed or vacated in a court of competent jurisdiction. Lifting of the stay and resumption of the proceedings will be as specified in Supplementary Rule 3.

(Def.'s Second Praecipe Supplemental Information Concerning Def.'s Prelim. Objs. Ex. A at 22 (footnote omitted).)

As Broach summarized the meaning of the arbitrator's rulings for Salman/CK's action in this Court,

> Thus, as evidenced by the supplemental authority submitted to this Court, it has already been determined in a pending prior action that: (i) the parties agreed that the Arbitrator should decide whether Salman/CK's Arbitration Agreement authorizes class arbitration, and; (ii) . . . the Arbitration Agreement authorizes class arbitration . . . .
>
> As a result, Salman/CK's Declaratory Judgment Complaint should be dismissed with prejudice as all of the relief which Salman/CK seeks in this action has already been adjudicated.

(Def.'s Second Praecipe Supplemental Information Concerning Def.'s Prelim. Objs. 2 (citation omitted) (footnote omitted).)

On April 21, 2017, in an order entered April 24, 2017, this Court adopted Broach's proposed order submitted with her preliminary objections, sustained the preliminary objections, and dismissed with prejudice Salman/CK's action seeking a declaratory judgment. On May 22, 2017, Salman and CK filed a notice of appeal of the Court's order to the Superior Court of Pennsylvania. (Appellants did not prove service of the notice of appeal on the court reporter or the district court administrator as Pa.R.A.P. 906(a)(3)-(4) requires, and did not attach to the notice of appeal a statement in lieu of transcript under Pa.R.A.P. 904(c), albeit there was no record of proceedings in this Court to be transcribed.)

On June 8, 2017, in an order entered June 9, this Court ordered Appellants to file and

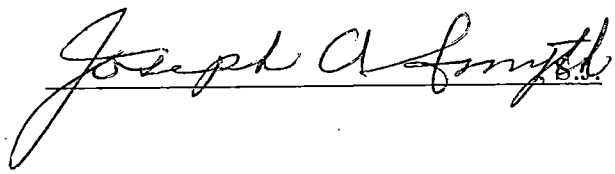
serve upon the undersigned Judge, within twenty-one days after entry of the order, a concise statement of the errors complained of on appeal, pursuant to Pa.R.A.P. 1925(b)(1)-(2). On June 29, Appellants filed their Pa.R.A.P. 1925(b)(1) statement, asserting that "the Court committed an error of law, and/or misapplied the law to the evidence, and/or abused its discretion when it rejected the arguments presented by Appellants within their Responses/Oppositions to Defendant Corinne Broach's Preliminary Objections, sustained such Preliminary Objections, and dismissed Plaintiffs' Declaratory Judgment Complaint with prejudice." (Pls.' Concise Statement Errors Complained Appeal para. 2.) The statement "reserve[d] the right to more specifically outline the complained-of errors in their appeal when this Honorable Court outlines the reasons supporting its issuance of the Appealed Order." (Pls.' Concise Statement Errors Complained Appeal para. 3 (citing Pa.R.A.P. 1925(b)(4) & note).)

In accordance with Pa.R.A.P. 1925(a)(1), this Court now respectfully advises the Honorable Superior Court that the reasons for our order sustaining Defendant/Appellee's preliminary objections to Plaintiffs/Appellants' declaratory-judgment complaint and dismissing it with prejudice appear throughout this opinion, and in the pleadings and papers filed of record in this Court by the parties, including the opinions filed by Arbitrator Dinneen in the arbitration underlying this suit and refiled in this action by Defendant/Appellee, which the Court hereby incorporates by reference in this opinion.

Specifically, and in addition, the thinking animating this Court's ruling was that if Plaintiffs had issues with or objections to the way the arbitrator was conducting the arbitration Plaintiffs had sought and been granted in the Philadelphia Court of Common Pleas, or whether it could proceed as a class action (as it had in the Philadelphia court), they should have gone back

to that court, in which the case was still open and stayed pending the arbitration, to ask that court to clarify whether class arbitration was intended or permitted or whether the arbitrator could decide that issue. To come into an entirely new forum, this Court, asking it to decide what the Philadelphia court's ruling referring the matter to arbitration intended and in effect to overrule decisions rendered by the arbitrator empowered by the Philadelphia court to decide this case smacked of forum-shopping and overreaching in the face of decisions by the arbitrator that did not, preliminarily, appear to Plaintiffs/Appellants to be going their way. We respectfully suggest the Honorable Superior Court should affirm our decision sustaining preliminary objections and dismissing this action in declaratory judgment.

BY THE COURT:



cc: Anthony F. Andrisano, Jr., Esquire
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