

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-303

DECEMBER TERM, 2002

	}	APPEALED FROM:
	}	
Daniel C. and Jeanne E. Brown	}	Windham Superior Court
	}	
v.	}	
	}	DOCKET NO. 40-1-02 Wmcv
Citation Mobile Homes, Inc. et al.	}	
	}	Trial Judge: Richard W. Norton
	}	
	}	

In the above-entitled cause, the Clerk will enter:

Plaintiffs purchased a mobile home from defendant which they claim was poorly constructed. They appeal from the Windham Superior Court's order granting defendant's motion to compel arbitration, claiming that the court should have granted their request to present evidence supporting their opposition to defendant's motion. We conclude that the order compelling arbitration is not appealable as of right, and, therefore, dismiss the appeal for lack of jurisdiction.

In January 2002, plaintiffs sued defendant for damages alleging that they had entered an agreement with defendant for the purchase of a mobile home and " for the services of its construction and improvements related thereto." The complaint alleged, among other things, that defendant " furnished plaintiffs with a mobile home which did not comport with" the parties' agreement. They also alleged that defendant failed to perform the services they contracted for in a " reasonable workmanship like manner." Specifically, plaintiffs claimed the living room picture window bows outward and allows the cold and the elements into the home; defendant placed a stairway in the wrong location; and defendant did not properly secure the vinyl flooring. On April 9, 2002, defendant moved to compel arbitration according to the terms of two written contracts on which plaintiffs' signatures appear. Plaintiffs opposed the motion, and the parties filed competing memoranda of law with the trial court. Both sides requested an evidentiary hearing, and included with their memoranda various documents they each claimed supported their respective positions. Plaintiffs asserted that they were not suing on the written contracts, which included the arbitration provisions, but were claiming damages pursuant to a separate enforceable oral contract for defendant's construction services. On June 19, 2002, the trial court granted defendant's motion to compel without conducting an evidentiary hearing. Plaintiffs filed a notice of appeal on July 11, 2002.

Plaintiffs seek reversal of the trial court's order, insisting that they were entitled to a hearing on their contention that no enforceable arbitration agreement with defendant exists. Defendant counters that this Court lacks jurisdiction over plaintiffs' appeal because an order compelling arbitration is not appealable under the Vermont Arbitration Act, 12 V.S.A. § § 5651-5681. We agree with defendant that we do not have jurisdiction over this appeal.

We must interpret statutes in a manner that is consistent with the Legislature's intent, and we look to the statute's plain language to do so. See Grenafège v. Dep't of Employment Sec., 134 Vt. 288, 290 (1976) (Court is bound by legislative intent as expressed in the statute's language). In the context of the Arbitration Act, the Legislature has authorized appeals from orders (1) denying a motion to compel arbitration, (2) granting a request to stay arbitration, (3) confirming or denying confirmation of an arbitration award, (4) correcting or modifying an award, and (5) vacating an award without mandating a rehearing. 12 V.S.A. § 5681(a). The statute also permits appeals from a judgment. Id. § 5681(a)(6).

The Legislature did not include orders compelling arbitration in its list of appealable orders. The fact that orders compelling arbitration are not listed among those orders from which an appeal may be taken suggests that the Legislature did not intend to permit appeals like the present one. See Klittner v. Steiner, 158 Vt. 654, 655 (1992) (mem.) (inclusion of one thing is exclusion of another); Grenafegé, 134 Vt. at 290 (employing the maxim of "expressio unius est exclusio alterius"). That conclusion is consistent with the intent of the Act to provide an efficient means to resolve disputes. Springfield Teachers Ass'n v. Springfield Sch. Dirs., 167 Vt. 180, 183 (1997). It is also consistent with decisions in other states facing the same issue. See, e.g., National Educ. Ass'n-Topeka v. Unified Sch. Dist. No. 501, 925 P.2d 835, 843 (Kan. 1996) (no right of immediate appeal from decision compelling arbitration exists); Elm Creek Villas Homeowners Ass'n, Inc. v. Beldon Roofing & Remodeling Co., 940 S.W.2d 150, 153-54 (Tex. Ct. App. 1996) (no statute permits appeals from orders compelling arbitration; appellate court therefore lacks jurisdiction over appeal).

Plaintiffs may raise their objections to the arbitrators' jurisdiction in the arbitration proceeding, and may seek appellate review of the decision following the arbitrators' award. See 12 V.S.A. § 5677(a)(5) (court may vacate arbitration award where court finds "that there was no arbitration agreement and the party did not participate in the arbitration hearing without raising the objection"); Joder Bldg. Corp. v. Lewis, 153 Vt. 115, 119-21 (1989) (discussing the meaning of § 5677(a)(5)); National Educ. Ass'n-Topeka, 925 P.2d at 843 (parties must first submit to arbitration before order compelling arbitration is final and appealable); Elm Creek Villas, 940 S.W.2d at 153 (orders compelling arbitration are subject to judicial review after arbitration is completed and court enters final judgment).

Although the Arbitration Act does not authorize appeals from orders compelling arbitration, plaintiffs argue that the court's order was final and appealable because it disposed of the entire case, thus ending the parties' litigation in the Windham Superior Court. That argument is meritless. As defendant points out, the Act provides that a civil action is stayed if a motion to compel arbitration has been made. 12 V.S.A. § 5674(e). In addition, § 5671 grants the court jurisdiction to issue various orders during the pendency of the arbitration proceeding, such as orders to enforce the arbitrators' subpoena, to appoint arbitrators, to stay the proceeding, and to direct the arbitrators to proceed with a hearing. Id. § 5671 (3), (4), and (5). In sum, until there is a final judgment flowing from the arbitration proceeding, the order compelling arbitration is not appealable. See In re Burlington Bagel Bakery, Inc., 150 Vt. 20, 21 (1988) (a final and appealable order is one that ends litigation on merits, or conclusively determines rights of parties, leaving nothing for court to do but execute judgment).

The appeal is dismissed for lack of jurisdiction.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice