

DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

Lewsadder v. Estate of Lewsadder

757 So. 2d 1221 (Fla. 4th DCA 2000) · Decided April 12, 2000

SUMMARY

The Florida Fourth District Court of Appeal considers whether claimants satisfied Florida Statutes section 733.705(4) by pursuing a pending California action, or by initiating arbitration, after the personal representative objected to their estate claims. The court held that the pending California action did not satisfy the independent-action requirement because the personal representative was never substituted as a defendant. It held that Drake Capital’s timely arbitration demand did satisfy the requirement because the indemnification agreement mandated arbitration, and remanded for consideration of an extension of time for the other claimants.

CASE DETAILS

COURT	District Court of Appeal of Florida, Fourth District
WRITING FOR THE COURT	William C. Owen, Jr., Senior Judge; Gunther, J.; Gross, J.
JURISDICTION	Florida
DECIDED	April 12, 2000
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The personal representative appealed the probate court's denial of a petition to strike three creditor claims for failure to bring timely independent actions after objections were served under section 733.705(4), Florida Statutes.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Personal Representative of the Estate of Charles William Lewsadder v. Martha Martinez, Leland Spencer, Drake Capital

TOPICS

- probate procedure
- creditor claims
- arbitration
- statutory interpretation
- probate

PRACTICE AREAS

- Probate
- Estate administration
- Civil procedure
- Arbitration
- Statutory interpretation

QUESTIONS PRESENTED

1. Whether a pending California action to confirm an arbitration award satisfies section 733.705(4)'s independent-action requirement when the decedent's personal representative was never substituted as a defendant.
2. Whether a timely filed demand for arbitration satisfies section 733.705(4)'s independent-action requirement when the claim arises from an agreement mandating arbitration.

HOLDINGS

1. A pending action filed against a decedent does not satisfy section 733.705(4)'s independent-action requirement unless the personal representative is properly substituted as a defendant or voluntarily substitutes into the action.
2. When a claim arises from an agreement requiring arbitration, a timely filed application for arbitration is an independent action within the meaning of section 733.705(4).

KEY QUOTATIONS

"We hold that where a claim against an estate is one arising out of an agreement that provides for mandatory arbitration as the means by which disputes thereunder must be resolved, a timely filed application for arbitration of the claim is an "independent action" within the meaning of section 733.705(4)." (757 So. 2d at 1224)

"The former, though certainly encompassing the latter, is a broader term." (757 So. 2d at 1224)

FACTUAL BACKGROUND

In June 1997, NASD issued a \$479,800 arbitration award in favor of Martha Martinez and Leland Spencer against Charles William Lewsadder and Drake Capital. After Lewsadder died, his estate was opened in Florida, and Martinez and Spencer filed estate claims while pursuing a California action to confirm the award. The personal representative objected to their claims, but neither claimant substituted the personal representative into the California proceeding. Drake Capital's claim arose from an indemnification agreement requiring arbitration, and Drake timely filed an arbitration demand after its claim was objected to.

PROCEDURAL HISTORY

Martinez and Spencer filed claims based on a California arbitration award, and Drake Capital filed a claim based on an indemnification agreement. After the personal representative objected to all three claims, Martinez and Spencer did not substitute the personal representative in their pending California confirmation proceeding, while Drake timely filed a demand for arbitration. The probate court denied the petition to strike, ruling that the California proceeding and Drake's arbitration demand satisfied the independent-action requirement. The appellate court reversed as to Martinez and Spencer, affirmed as to Drake, and remanded for consideration of an extension of time.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The probate court may, in its discretion, consider Martinez's and Spencer's motion for an extension of time to bring an independent action, taking evidence and hearing arguments as appropriate. Unless the court finds good cause and grants an extension, it must enter an order striking their claims. The denial of the motion to strike Drake Capital's claim was affirmed.

CASES CITED

- In re Brown's Estate, 421 So. 2d 752, 753 (Fla. 4th DCA 1982)
- Cloer v. Shawver, 177 So. 2d 691, 694 (Fla. 1st DCA 1965)
- Shessel v. Estate of Calhoun, 573 So. 2d 962, 962 (Fla. 3d DCA 1991)
- In re Estate of Brown, 421 So. 2d 752, 753 (Fla. 4th DCA 1982)
- Miele v. Prudential-Bache Securities, Inc., 656 So. 2d 470, 472-73 (Fla. 1995)

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