

SUPREME COURT OF SOUTH CAROLINA

Palmetto Construction Group, LLC v. Restoration Specialists, LLC

Palmetto Construction Group · No. Appellate Case No. 2019-002052 · Decided March 10, 2021

SUMMARY

The South Carolina Supreme Court held that an order refusing to set aside an entry of default is not immediately appealable, even when it prevents the defaulting party from seeking to compel arbitration. The court affirmed the Court of Appeals' dismissal of the interlocutory appeal but modified its decision by holding that the Court of Appeals should not have addressed whether the defendants waived their contractual arbitration rights. Those issues could be raised after entry of final judgment.

CASE DETAILS

COURT	Supreme Court of South Carolina
WRITING FOR THE COURT	Justice Few; Chief Justice Beatty; Justice Kittredge; Justice Hearn; Justice James
JURISDICTION	South Carolina
DECIDED	March 10, 2021
DOCKET	Appellate Case No. 2019-002052
DISPOSITION	affirmed
PROCEDURAL POSTURE	The defendants petitioned for a writ of certiorari after the court of appeals dismissed their appeal from an order refusing to set aside an entry of default. They argued the order was immediately appealable because it effectively prevented them from compelling arbitration.
STANDARD OF REVIEW	The opinion applies the legal rules governing immediate appealability of orders refusing to set aside an entry of default and reviews the court of appeals' disposition on certiorari. No separately stated standard of review appears.
PRECEDENTIAL VALUE	Published opinion; precedential South Carolina Supreme Court decision.
PARTIES	Restoration Specialists, LLC, Reuben Mark Ward, Lynnette Pennington Ward v. Palmetto Construction Group, LLC

TOPICS

appellate procedure

default

arbitration

final judgment rule

waiver

PRACTICE AREAS

civil procedure

appellate procedure

arbitration

construction law

commercial litigation

QUESTIONS PRESENTED

1. Whether an order refusing to set aside an entry of default is immediately appealable when the order effectively prevents the defaulting party from seeking to compel arbitration.
2. Whether South Carolina or federal policy favoring arbitration changes the ordinary rule governing immediate appealability of an order denying relief from an entry of default.
3. Whether the court of appeals properly addressed whether the defendants waived their contractual right to arbitration before final judgment.

HOLDINGS

1. An order refusing to set aside an entry of default is not immediately appealable, even when it effectively prevents the defaulting party from seeking to compel arbitration.
2. There is no federal or state public policy 'favoring' arbitration in a manner that elevates arbitration above otherwise applicable procedural rules or other contractual provisions.
3. Challenges to the denial of relief from default, including issues of good cause, excusable neglect, and possible waiver of arbitration, may be raised after final judgment rather than through an immediate appeal from the order denying relief from default.

KEY QUOTATIONS

“There is, however, no public policy—federal or state—“favoring” arbitration.”

“Rather, these statements must be read in the context in which the Courts made them: overruling a longstanding, policy-based rule that arbitration agreements are unenforceable.”

“In a case like this, the circuit court should proceed to a determination of damages and the entry of judgment under Rule 55(b).”

FACTUAL BACKGROUND

Palmetto Construction Group brought a contract action against Restoration Specialists, its managing member Reuben Mark Ward, and Lynnette Pennington Ward to collect a construction debt. The contract contained an arbitration provision. The defendants did not answer, resulting in an entry of default, and later sought to set it aside while also seeking a stay and an order compelling arbitration.

PROCEDURAL HISTORY

Palmetto Construction Group sued the defendants for payment under a construction contract containing an arbitration provision. The defendants failed to answer, the circuit court entered default under Rule 55(a), SCRCP,

and referred the matter to the master in equity under Rule 53(b), SCRPC. The master denied the defendants' motion to set aside the entry of default. The court of appeals dismissed the appeal as involving a nonimmediately appealable order. The Supreme Court affirmed that result as modified, concluding the court of appeals should not have decided the separate arbitration-waiver issue.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The circuit court should proceed to determine damages and enter judgment under Rule 55(b), SCRPC. After final judgment, the aggrieved party may appeal the determination that there was not good cause to set aside the entry of default and may raise applicable Rule 60 issues, including excusable neglect.

CASES CITED

- Palmetto Constr. Grp., LLC v. Restoration Specialists, LLC, 428 S.C. 261, 266, 834 S.E.2d 204, 206 (Ct. App. 2019)
- Cape Romain Contractors, Inc. v. Wando E., LLC, 405 S.C. 115, 121 n.4, 747 S.E.2d 461, 464 n.4 (2013)
- Towles v. United HealthCare Corp., 338 S.C. 29, 34-35, 524 S.E.2d 839, 842-43 (Ct. App. 1999)
- Thynes v. Lloyd, 294 S.C. 152, 153-54, 363 S.E.2d 122, 122-23 (Ct. App. 1987)
- Johnson ex rel. Jefferson v. Gene's Used Cars, Inc., 295 S.C. 317, 317, 368 S.E.2d 456, 456 (1988)
- Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24 (1983)
- Zabinski v. Bright Acres Assocs., 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001)
- Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213, 219-20 (1985)
- Trident Technical College v. Lucas & Stubbs, Ltd., 286 S.C. 98, 103-04, 333 S.E.2d 781, 784-85 (1985)
- Harwell v. Home Mut. Fire Ins. Co., 228 S.C. 594, 599, 91 S.E.2d 273, 275 (1956)
- Bollmann v. Bollmann, 6 S.C. 29, 42-43 (1875)
- Episcopal Housing Corp. v. Federal Insurance Co., 269 S.C. 631, 636, 239 S.E.2d 647, 649 (1977)
- Childs v. Allstate Ins. Co., 237 S.C. 455, 460, 117 S.E.2d 867, 869-70 (1961)
- Jones v. Enoree Power Co., 92 S.C. 263, 267, 75 S.E. 452, 454 (1912)
- Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior University, 489 U.S. 468, 476 (1989)
- ITC Commercial Funding, LLC v. Crerar, 393 S.C. 487, 494-95, 713 S.E.2d 335, 338-39 (Ct. App. 2011)