

November 30, 2009



Cheryl Howell Oswalt
Attorney at Law
coswalt@sirote.com

In this week's SWALU, we present for your review a recent Alabama Supreme Court opinion that yet again offers support to parties seeking to compel arbitration.

Ex parte Directory Assistants, Inc., No. 1080852 (Ala. November 25, 2009) (Alabama Supreme Court reversed and remanded Alabama Civil Court of Appeals' dismissal of Defendant's appeal of trial courts' denial of Defendant's motion to dismiss where motion to dismiss was based on fact that claim was subject to arbitration.) Cooke, Cameron, Travis and Company, P.C. (CCT) sued Directory Assistants, Inc. (Directory Assistants), a Connecticut corporation, in Jefferson County Circuit Court seeking a judgment declaring void a contract between CCT and Directory Assistants. CCT's premise behind the suit was that the contract should be declared void because Directory Assistants was allegedly not qualified to do business in Alabama at the time the contract was executed. Directory Assistants made an appearance in the trial court for the limited purpose of moving the court to dismiss the action based on an arbitration clause in the contract, which provided that disputes between CCT and Directory Assistances would be resolved through arbitration. The trial court denied Directory Assistants' motion to dismiss, and Directory Assistants appealed the trial court's denial to the Alabama Supreme Court. After issuing a show cause order and receiving responses to said order regarding whether the trial court's order was appealable pursuant to Rule 4(d) of the Alabama Rules of Appellate Procedure, the Alabama Supreme Court transferred the appeal to the Alabama Court of Civil Appeals.

The Alabama Court of Civil Appeals dismissed the appeal with an order stating that because "the appeal is taken from an order of the trial court denying a motion to dismiss, rather than an order granting or denying a motion to compel arbitration" the order is an interlocutory order rather than a "final judgment or order that will support appellate review under section 12-22-2 of the Alabama Code or Rule 4(d) of the Alabama Rules of Appellate Procedure."

Directory Assistants petitioned the Alabama Supreme Court for a writ of certiorari. The Court granted the writ of certiorari, and reversed and remanded the Civil Court of Appeal's dismissal of Directory Assistants' appeal. The Alabama Supreme Court held that the trial court's denial of Directory Assistants' motion to dismiss was essentially a denial of a motion to compel arbitration because the grounds for the motion to dismiss were that claims raised in CCT's complaint were subject to mandatory arbitration in the contract between the parties. The Court of Civil Appeals erred by dismissing Directory Assistants' appeal, as Rule 4(d) provides that an order denying a motion to compel arbitration is appealable as a matter of right.



The Answer Is Sirote.

To subscribe to SWALU, simply e-mail the editor at mshevin@sirote.com and list your name, e-mail address, and company or organization. To change the e-mail address at which you wish to receive the update, e-mail the editor with that request. To be removed from this or any of our other e-mail distribution lists, please reply to this e-mail and indicate "unsubscribe" in the subject line. This message may be considered an advertisement or solicitation. For more information about Sirote & Permutt's statewide law offices and mediation centers, please visit us on the web at www.sirote.com.

This e-letter is a periodic publication of Sirote & Permutt, P.C. and should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general information only, and you are urged to consult an attorney concerning your own situation and any specific legal questions you may have.

The Alabama State Bar requires the following disclosure: No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers.