[Cite as *Redmond v. Big Sandy Furniture, Inc.*, 2009-Ohio-6824.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
LAWRENCE COUNTY

Miranda Redmond, Plaintiff-Appellee/ Cross-Appellant, v. Big Sandy Furniture, Inc., et al. Defendants-Appellants/ Cross-Appellees.	:	Case No. 09CA13 DECISION AND JUDGMENT ENTRY File-stamped date: 12-21-09

APPEARANCES:

Michael W. Hawkins and David A. Nenni, Dinsmore & Shohl, L.L.P., Cincinnati, Ohio; John Wolfe, Wolfe & Bentley, Ironton, Ohio; and R. Alan Lemons, Miller, Searl & Fitch, L.P.A., Portsmouth, Ohio, for Defendant-Appellant/Cross-Appellee Big Sandy Furniture, Inc.

Michael A. Frye, Frye Law Offices, Russell, Kentucky; and Randall L. Lambert, Lambert, McWhorter & Bowling, Ironton, Ohio, for Plaintiff-Appellee/Cross-Appellant.

Kline, P.J.:

{¶1} Big Sandy Furniture, Inc., (hereinafter "Big Sandy") appeals the judgment of the Lawrence County Court of Common Pleas. The trial court found an arbitration agreement between Big Sandy and Miranda Redmond (hereinafter "Redmond") to be unenforceable. On appeal, Big Sandy contends that the trial court erred in failing to compel arbitration. Big Sandy argues that, because of "new evidence," the arbitration agreement complies with this court's decision in

Redmond v. Big Sandy Furniture, Inc., Lawrence App. No. 08CA12, 2008-Ohio-6084. We disagree. Big Sandy may not introduce parol evidence to vary, alter, or modify the clear and unambiguous language of the arbitration agreement. Therefore, based on the clear language of the arbitration agreement, we find the agreement to be unenforceable. Accordingly, as to Big Sandy's appeal, we affirm the judgment of the trial court.

{¶2} On cross-appeal, Redmond contends that the trial court erred by overruling her Motion for Sanctions. Essentially, Redmond argues that, because of the law-of-the-case doctrine, Big Sandy's Motion to Stay and Compel Arbitration was frivolous. For this reason, Redmond argues that sanctions are appropriate. However, we do not believe that the order denying Redmond's Motion for Sanctions is a final appealable order. Accordingly, we dismiss Redmond's cross-appeal for lack of jurisdiction.

I.

{¶3} This matter is before this court for the third time. See *Redmond v. Big Sandy Furniture, Inc.*, Lawrence App. Nos. 06CA15 & 06CA19, 2007-Ohio-1024 (dismissing appeal for lack of a final appealable order) (hereinafter "*Big Sandy I*"); *Redmond v. Big Sandy Furniture, Inc.*, Lawrence App. No. 08CA12, 2008-Ohio-6084 (finding arbitration agreement to be unenforceable) (hereinafter "*Big Sandy II*"). Because *Big Sandy I* and *Big Sandy II* recount many of the facts of this case, we will not repeat those facts here. Instead, we will only discuss the facts pertinent to this particular appeal.

{¶4} In *Big Sandy II*, we found Big Sandy's Dispute Resolution Plan (hereinafter the "Plan") to be unenforceable. We wrote: "Big Sandy rests much of its argument on the recent case of *Gilbert v. Big Sandy Furniture, Inc.* (S.D.Ohio, Sept. 6, 2007), No. 2:07-CV-87. The *Gilbert* court was asked to review a dispute resolution plan and arbitration agreement that appears quite similar to the one at issue here. Id. The *Gilbert* court rejected the plaintiff's claim that the agreement was illusory because Big Sandy could modify or terminate the agreement at any time. Id. However, we distinguish this case from *Gilbert.* In *Gilbert,* the 'Notice of Discontinuation' was made part of the record. The *Gilbert* court rested its entire analysis on that document.

{¶5} Here, that document is not in the record, and we cannot consider it. Second, we express greater reservation than did the *Gilbert* court in drawing essential terms of the agreement from a document not made part of the original contract. Although the *Gilbert* court found that the 'Notice of Discontinuation' placed certain limitations on Big Sandy's actions, we observe there is nothing in the agreement to prevent them from unilaterally modifying the terms of this document." *Big Sandy II* at ¶15-16.

{¶6} Accordingly, we found the Plan to be unenforceable and remanded this case to the trial court for further proceedings consistent with *Big Sandy II*.

{¶7} On remand, Big Sandy once again filed a Motion to Stay and Compel Arbitration. This time, however, Big Sandy introduced the aforementioned Notice of Discontinuation, which provides: "Per Article 7.5 of the above Company's

Dispute Resolution Plan, all employees are hereby notified that the referenced Plan is discontinued effective 30 days after the above date.

{¶8} The discontinuation of the plan shall not affect any claim, as defined in Article 1.3, if the facts giving rise to the claim occurred prior to the discontinuation date.

{¶9} The discontinuation of this plan shall not relieve the Company of any of its obligations to proceed to arbitration if requested to do so.

{¶10} Employees, at their sole discretion, upon written notification to the Company within 15 days of the discontinuation date, shall have the right to reject mandatory arbitration for any claims and pursue all legal remedies available as if this policy had never been implemented. This includes any existing claims.

{¶11} This Notice of Discontinuation shall be subject to the jurisdiction of said courts, automatically amended to comply with any applicable State Supreme Court, US Appellate Court or US Supreme Court decisions concerning the termination of dispute resolution plans."

{¶12} Big Sandy also introduced two affidavits from Kelly Dykes, the president of Dispute Solutions, Inc. (hereinafter "DSI"). DSI is the third-party administrator of Big Sandy's Dispute Resolution Plan. In the first affidavit, Dykes stated the following: "* * * 4. Exhibit 1 to this Affidavit is the 'Notice of Discontinuation' form that is referenced in Paragraph 7.6 of the Plan. The 'Notice of Discontinuation' erroneously cites to Article 7.5 of the Plan. It is intended to cite to Article 7.6 of the Plan.

{¶13} 5. The 'Notice of Discontinuation' requires Big Sandy Furniture, Inc. to provide employees with 30 days notice of any discontinuation of the Plan. The Notice of Discontinuation is DSI's form, and Big Sandy Furniture, Inc. has no control over it or ability to amend or modify it.

{¶14} 6. After the 'Notice of Discontinuation' is submitted and notice is given to employees subject to the Plan, the Plan still requires that Big Sandy Furniture Inc. comply with the Plan concerning claims that arise out of facts occurring prior to the discontinuation of the Plan.

{¶15} 7. The 'Notice of Discontinuation' does not allow Big Sandy Furniture, Inc. to avoid its obligation to proceed to arbitration if requested to do so.

{¶16} 8. The 'Notice of Discontinuation' applies prospectively, rather than retroactively.

{¶17} 9. Pursuant to Paragraph 7.1 of the Plan, if Big Sandy Furniture, Inc. desires to amend the Plan, it must create a document describing any such amendment and their prospective effective date for those affected by any such amendment. DSI requires all Plan amendments to operate prospectively.

{¶18} 10. The intention of Paragraph 7.1 is that notice be provided to those affected by any such amendment made pursuant to Paragraph 7.1." Affidavit of Kelly Dykes, filed February 20, 2009.

{¶19} In the second affidavit, Dykes stated the following: "* * * 4. The Notice of Discontinuation * * * was created in its present form on or about March and/or April of 2003.

{¶20} 5. The Notice of Discontinuation, in its present form, became applicable to Big Sandy Furniture, Inc.'s Dispute Resolution Plan ("Plan") in March of 2004 when that Plan was adopted by Big Sandy Furniture, Inc. and implemented in its present form.

{¶21} 6. The Notice of Discontinuation is referenced in the Plan.

{¶22} 7. According to Exhibit E, attached to Big Sandy Furniture, Inc.'s Motion to Stay and Compel Arbitration, filed on February 25, 2009, Miranda Redmond signed the Big Sandy Furniture, Inc. Dispute Resolution Plan Employee Acknowledgement form on or about March 19, 2004, after Big Sandy Furniture, Inc. adopted the present form of the Plan with its Notice of Discontinuation." Affidavit of Kelly Dykes, filed April 8, 2009

{¶23} Based on the Notice of Discontinuation and the Dykes affidavits, Big Sandy this time argued that the Plan is enforceable because the Plan conforms to our decision in *Big Sandy II*. Redmond responded that Big Sandy's Motion to Stay and Compel Arbitration had no merit because of the law-of-the-case doctrine. For that reason, Redmond also requested sanctions pursuant to Civ.R. 11.

{¶24} The trial court overruled both Big Sandy's Motion to Stay and Compel Arbitration and Redmond's Motion for Sanctions. In discussing sanctions, the trial court found "that there were reasonable grounds for the relief requested in [Big Sandy's Motion to Stay and Compel Arbitration] and the standard of proof necessary under Ohio Civil Rule 11 to establish sanctions has not been met by [Redmond]." Judgment Entry at 2.

{¶25} Big Sandy appeals, asserting the following two assignments of error: I. "The Trial Court erred when it failed to compel arbitration." And, II. "The Trial Court erred because the new facts presented by Big Sandy, in conjunction with its Motion to Stay and Compel Arbitration, show that the Arbitration Agreement at issue in this case should be enforced as a valid Arbitration Agreement commensurate with the strong public policy in favor of arbitration agreements." Redmond has cross-appealed, asserting the following three assignments of error: I. "The Trial Court erred when it overruled Cross-Appellant's request for sanctions under to [sic] Ohio Civil Rule 11." II. "The Trial Court erred as a matter of law when it failed to determine that counsel for the Cross-Appellee lacked a reasonable basis to support it[1] to the best of his or her knowledge, information, and belief, and was filed for the purposes of delay." And, III. "The Trial Court erred as a matter of law when it failed to determine that the counsel for the Cross-Appellees acted willfully in violation of Ohio Civil Rule 11."

II.

{¶26} Before addressing the merits of Big Sandy's appeal, we note the following procedural issue. In its appellate brief, Big Sandy has failed to separately argue each of its assignments of error as required by App.R. 16(A)(7). Instead, Big Sandy has presented just one argument in support of both assignments of error. Under App.R. 12(A)(2), we may choose to disregard any assignment of error that an appellant fails to separately argue. Therefore, we could exercise our discretionary authority to (1) summarily overrule both of Big

[1] Presumably, the "it" refers to Big Sandy's Motion to Stay and Compel Arbitration.

Sandy's assignments of error and (2) affirm the decision of the trial court as to Big Sandy's appeal. See *Newman v. Enriquez*, 171 Ohio App.3d 117, 2007-Ohio-1934, at ¶18; *Mtge. Electronic Registrations Sys. v. Mullins*, 161 Ohio App.3d 12, 2005-Ohio-2303, at ¶22, citing *Park v. Ambrose* (1993), 85 Ohio App.3d 179; *State v. Caldwell* (1992), 79 Ohio App.3d 667, 677, fn. 3. However, in the interest of justice, we choose to address Big Sandy's assignments of error. Further, we believe that both of Big Sandy's assignments of error contend essentially the same thing; that is, the trial court erred in failing to compel arbitration. Therefore, for ease of analysis, we will review Big Sandy's two assignments of error together.

{¶27} In response to Big Sandy's appeal, Redmond contends that our decision in *Big Sandy II* is the law of the case. And as such, Redmond argues that the law-of-the-case doctrine prevents this court from reconsidering the enforceability of the arbitration agreement. Big Sandy contends that the law-of-the-case doctrine does not apply because this appeal involves a different evidentiary record (the Notice of Discontinuation and the Dykes affidavits).

{¶28} The Supreme Court of Ohio discussed the law-of-the-case doctrine in *Nolan v. Nolan* (1984), 11 Ohio St.3d 1. "Briefly, the doctrine provides that the decision of a reviewing court in a case remains the law of that case on the legal questions involved for all subsequent proceedings in the case at both the trial and reviewing levels. * * * The doctrine is considered to be a rule of practice rather than a binding rule of substantive law and will not be applied so as to achieve unjust results. * * * However, the rule is necessary to ensure consistency

of results in a case, to avoid endless litigation by settling the issues, and to preserve the structure of superior and inferior courts as designed by the Ohio Constitution." Id. at 3. Accordingly, "where at a rehearing following remand a trial court is confronted with substantially the same facts and issues as were involved in the prior appeal, the court is bound to adhere to the appellate court's determination of the applicable law." Id.; see, also, *Hubbard ex rel. Creed v. Sauline*, 74 Ohio St.3d 402, 404-05, 1996-Ohio-174. In contrast, "when subsequent proceedings involve different legal issues or *different* evidentiary records, the doctrine does not apply." *Johnson v. Morris* (1995), 108 Ohio App.3d 343, 349 (emphasis added), citing *Stemen v. Shibley* (1982), 11 Ohio App.3d 263, 266. However, "the doctrine of law of the case precludes a litigant from attempting to rely on arguments at a retrial which were fully pursued, or available to be pursued, in a first appeal. New arguments are subject to issue preclusion, and are barred." *Hubbard* at 404-05

{¶29} Here, we need not determine whether our decision in *Big Sandy II* is the law of the case because, even with Big Sandy's "new evidence," we find the Plan to be unenforceable.

{¶30} "When interpreting the meaning of an arbitration agreement, our review is de novo." *Big Sandy II* at ¶10. See, also, *Taylor Bldg. Corp. of Am. v. Benfield*, 117 Ohio St.3d 352, 2008-Ohio-938, at ¶2; *Westminster Fin. Cos., Inc. v. Briarcliff Capital Corp.*, 156 Ohio App.3d 266, 2004-Ohio-782, at ¶10; *Boggs v. Columbus Steel Castings Co.*, Franklin App. No. 04AP-1239, 2005-Ohio-4783, at ¶5-6.

{¶31} In *Big Sandy II*, we found that "[t]he Plan confers almost unfettered authority upon Big Sandy to modify or terminate the Plan. Many courts have held that agreements that give only one party the authority to change or terminate the arbitration clause are unenforceable. * * * [S]ection 7.1 gives Big Sandy the right to modify the Plan at any time. * * * Section 7.6 permits Big Sandy to terminate the Plan by 'completing a Notice of Discontinuation.'" *Big Sandy II* at ¶13-14 (citations omitted). Here, Big Sandy's new evidence does not change our analysis from *Big Sandy II*, especially because "'[c]ourts may not admit parol evidence to vary, alter, or modify the terms of a clear and unambiguous written agreement.'" *Boyle v. City of Portsmouth*, Scioto App. No. 99CA2669, 2001-Ohio-2517, quoting *Medley v. City of Portsmouth* (Dec. 23, 1996), Scioto App. No. 96CA2426. See, also, *Kelly v. Med. Life Ins. Co.* (1987), 31 Ohio St.3d 130, 132. In our view, Section 7.1 of the Plan is clear and unambiguous. It provides: "The Company can amend this Plan. An amendment can be made by a resolution or consent of the Board of Directors, or by written document signed by the Plan Director [DSI]. The amendment will describe the change(s) and its effective date."

{¶32} Big Sandy bases much of its argument on the Notice of Discontinuation, which we could not consider in *Big Sandy II*. In *Gilbert*, the court "found that the 'Notice of Discontinuation' placed certain limitations on Big Sandy's actions[.]" *Big Sandy II* at ¶16. Because of the Dykes affidavits, Big Sandy claims that "it has no control over nor does Big Sandy have any ability to amend or modify this 'Notice of Discontinuation.'" Brief of Appellant/Cross-

Appellee Big Sandy Furniture, Inc. at 11. For this reason, Big Sandy urges us to follow the decision in *Gilbert*. However, the limitations that Big Sandy and Dykes describe do not exist anywhere in the Plan (or, for that matter, in the Notice of Discontinuation itself). Again, we note that "'Notice of Discontinuation' is neither a legal term of art, nor is it defined by the Plan." *Big Sandy II* at ¶14. Moreover, the language of Section 7.1 is clear and unambiguous, and the Dykes affidavits cannot vary, alter, or modify the clear terms of the Plan. In our view, nothing in the Plan prevents Big Sandy from: (1) amending or modifying the Notice of Discontinuation; (2) amending Section 7.6 of the Plan; or (3) eliminating Section 7.6 of the Plan. See *Big Sandy II* at ¶16 (observing that "there is nothing in the agreement to prevent [Big Sandy] from unilaterally modifying the terms of [the Notice of Discontinuation]").

{¶33} Big Sandy contends that its new evidence addresses the following language in *Big Sandy II*: "[w]e agree with the courts that have found that permitting an employer to unilaterally amend *or* terminate an arbitration agreement without notice renders the agreement illusory." Id. at ¶14 (emphasis added). Because of the Dykes affidavits, Big Sandy claims that "DSI cannot, will not, and would not allow Big Sandy to terminate or make any modifications to the Arbitration Agreement absent notification to affected employees in a written document." Brief of Appellant/Cross-Appellee Big Sandy Furniture, Inc. at 11. Apparently, Big Sandy asks this court to rely on Dykes's interpretation of Section 7.1. Dykes stated that the "intention of Paragraph 7.1 is that notice be provided to those affected by any such amendment made pursuant to Paragraph 7.1."

However, we reject Dykes's interpretation and, instead, choose to rely on the unambiguous language of the Plan and our finding in *Big Sandy II*. As we found in our prior decision, nothing in the Plan requires Big Sandy to notify its employees of any amendments to the Plan. *Big Sandy II* at ¶14 ("There is no requirement that employees such as Redmond actually receive notice of modifications or the termination of the Plan.") Therefore, even if we agreed with Big Sandy's arguments about the limitations supposedly imposed by the Notice of Discontinuation, the Plan still permits Big Sandy to unilaterally *amend* the arbitration agreement without notice. As such, we find the Plan to be illusory and unenforceable pursuant to our decision in *Big Sandy II*.

{¶34} Therefore, for the foregoing reasons and for the reasons stated in *Big Sandy II*, we find that the arbitration agreement is unenforceable. As such, we need not determine whether our decision in *Big Sandy II* is the law of the case.

{¶35} Accordingly, we overrule both of Big Sandy's assignments of error.

III.

{¶36} In her cross-appeal, Redmond contends that the trial court erred by overruling her Motion for Sanctions.

{¶37} Before we may consider the merits of Redmond's cross-appeal, we must address a jurisdictional issue. "Ohio law provides that appellate courts have jurisdiction to review the final orders or judgments of inferior courts in their district." *Caplinger v. Raines*, Ross App. No. 02CA2683, 2003-Ohio-2586, at ¶2, citing Section 3(B)(2), Article IV, Ohio Constitution; R.C. 2505.02. "If an order is not final and appealable, then we have no jurisdiction to review the matter." See

Saunders v. Grim, Vinton App. Nos. 08CA668 & 08CA669, 2009-Ohio-1900, at ¶5. "In the event that this jurisdictional issue is not raised by the parties involved with the appeal, then the appellate court must raise it sua sponte." *Caplinger* at ¶2, citing *Chef Italiano Corp. v. Kent State Univ.* (1989), 44 Ohio St.3d 86, syllabus; *Whitaker-Merrell v. Geupel Co.* (1972), 29 Ohio St.2d 184, 186.

{¶38} Having raised this issue sua sponte, we must determine whether the order denying Redmond's Motion for Sanctions is a final appealable order. Initially, we note that Redmond may not challenge this order as an interlocutory order that has merged into a final judgment. By statute, the order denying Big Sandy's Motion to Stay and Compel Arbitration is a final order. See R.C. 2711.02(C); *Big Sandy I* at ¶14. And "[w]hen a final judgment is issued, all interlocutory orders are merged into the final judgment." *Handel v. White*, Summit App. No. 21716, 2004-Ohio-1588, at ¶8. "[T]hus, an appeal from a final judgment allows an appellant to challenge both the final judgment and any interlocutory orders merged with it." *Beatley v. Knisley*, Franklin App. No. 08AP-696, 2009-Ohio-2229, at ¶9, citing *Grover v. Bartsch*, 170 Ohio App.3d 188, 2006-Ohio-6115, at ¶9. However, App.R. 3(C)(1), which governs cross-appeals, provides: "A person who intends to defend a judgment or order against an appeal taken by an appellant and who also seeks to change the judgment or order or, *in the event the judgment or order may be reversed or modified*, an interlocutory ruling merged into the judgment or order, shall file a notice of cross appeal within the time allowed by App.R. 4." (Emphasis added.) Here, we have not reversed or modified the order denying Big Sandy's Motion to Stay and Compel

Arbitration. Therefore, if we were to consider the order denying Redmond's Motion for Sanctions to be an interlocutory order, Redmond's cross-appeal would be moot pursuant to the plain language of App.R. 3(C)(1). See, e.g., *Mosley v. Personal Serv. Ins.*, Pike App. No. 08CA779, 2009-Ohio-419, at ¶1; *Mitchell v. Internatl. Flavors & Fragrances, Inc.*, 179 Ohio App.3d 365, 2008-Ohio-3697, at ¶32.

{¶39} Accordingly, we must determine whether we have jurisdiction to review Redmond's cross-appeal for any other reason. R.C. 2505.02(B) provides: "An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following * * *." Clearly, the order denying Redmond's Motion for Sanctions does not meet the requirements of R.C. 2505.02(B)(1), (3), or (5)-(7). Further, R.C. 2505.02(B)(2) does not apply here because the underlying action is not a special proceeding. See *Jetter v. Abbott* (Jul. 31, 2000), Montgomery App. No. 17888 (stating that "a sexual harassment claim is not solely created by statute, and certain aspects of this type of claim were also known in law or equity before 1853"). Thus, we must determine whether we may review the order denying Redmond's Motion for Sanctions as an order that denies a provisional remedy. See R.C. 2505.02(B)(4). A "'[p]rovisional remedy' means a proceeding ancillary to an action[.]" R.C. 2505.02(A)(3).

{¶40} "R.C. 2505.02(B)(4) provides that an order granting or denying a provisional remedy is a final order if both of the following apply:

{¶41} '(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

{¶42} [](b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.'" *In re A.J.S.*, 120 Ohio St.3d 185, 2008-Ohio-5307, at ¶15-17, quoting R.C. 2505.02(B)(4).

{¶43} R.C. 2505.02(B)(4) sets forth the following three-pronged test for determining whether a decision granting or denying a provisional remedy is a final order: "(1) the order must either grant or deny relief sought in a certain type of proceeding-a proceeding that the General Assembly calls a 'provisional remedy,' (2) the order must both determine the action with respect to the provisional remedy and prevent a judgment in favor of the appealing party with respect to the provisional remedy, and (3) the reviewing court must decide that the party appealing from the order would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action." *State v. Muncie*, 91 Ohio St.3d 440, 446, 2001-Ohio-93.

{¶44} Here, we agree that a "motion for sanctions under Rule 11 of the Ohio Rules of Civil Procedure creates a proceeding ancillary to and independent of the underlying case." *Dillon v. Big Tress, Inc.*, Summit App. No. 23831, 2008-Ohio-3264, at ¶10. See, also, *Monda v. Shore*, Portage App. No. 2008-P-0078, 2009-

Ohio-2088, at ¶18. Therefore, we find that the order denying Redmond's Motion for Sanctions meets the first prong of the provisional-remedy test.

{¶45} Nevertheless, we do not believe that the order denying Redmond's Motion for Sanctions meets the second prong. Specifically, the order does not prevent a judgment in favor of Redmond as to the issue of sanctions. We have remanded this case back to the trial court, and the trial court may decide to reconsider the issue of sanctions. See, e.g., *Doyle v. Scarberry*, Scioto App. No. 08CA3261, 2009-Ohio-4977, at ¶5 fn. 3. See, also, *Mahlerwein v. Mahlerwein*, 160 Ohio App.3d 564, 2005-Ohio-1835, at ¶20 ("Interlocutory orders are subject to change and may be reconsidered upon the court's own motion or that of a party."); *Sabo v. Hollister Water Assn.*, Athens App. No. 06CA8, 2007-Ohio-7178, at ¶17, citing *Vaccariello v. Smith & Nephew Richards, Inc.*, 94 Ohio St.3d 380, 386, 2002-Ohio-892. Thus, the trial court may still choose to impose sanctions on Big Sandy pursuant to Civ.R. 11. Furthermore, assuming that the trial court does not reconsider the issue of sanctions, we believe that an appeal following final judgment would afford Redmond a meaningful and effective remedy.

{¶46} Accordingly, we dismiss Redmond's cross-appeal for lack of jurisdiction.

IV.

{¶47} In conclusion, we overrule Big Sandy's two assignments of error and affirm the trial court's denial of Big Sandy's Motion to Stay and Compel Arbitration. We also dismiss Redmond's cross-appeal for lack of jurisdiction.

Accordingly, we remand this matter to the trial court for further proceedings consistent with this opinion.

JUDGMENT AFFIRMED AND CROSS-APPEAL DISMISSED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED AND CROSS-APPEAL BE DISMISSED and this CAUSE BE REMANDED to the trial court for further proceedings consistent with this opinion. Appellants-Cross Appellees shall pay the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Lawrence County Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

Abele, J. and McFarland, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
Roger L. Kline, Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.