[Cite as *Chase Home Fin. v. McDowell*, 2010-Ohio-633.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

CHASE HOME FINANCE, LLC, et al.	C. A. No. 24889
Appellants	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
WINFRED MCDOWELL, et al.	COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO
Appellees	CASE No. CV 2008-03-2318

DECISION AND JOURNAL ENTRY

Dated: February 24, 2010

BELFANCE, Judge.

{¶1} Appellant, Homeplus Finance Corporation, appeals the order of the Summit County Court of Common Pleas that denied its motion to compel arbitration. For the reasons set forth below, we reverse and remand.

I.

{¶2} On March 18, 2008, Chase Home Financial ("Chase") filed a foreclosure action with respect to the home located at 525 Fernwood Drive, Akron, Ohio. The home was owned by Winfred and Betty McDowell (collectively "McDowell").[1] Chase filed its action against several defendants, including McDowell and Homeplus Finance Corporation ("Homeplus"). In its claim, Chase asserted that Homeplus also held a mortgage on 525 Fernwood. On April 17, 2008, Homeplus filed an answer to Chase's complaint confirming that it did hold a mortgage on the

[1] Betty McDowell passed away during the pendency of this litigation.

property. Specifically, McDowell engaged Dependable Builders, Inc. ("Dependable") to perform certain home improvement projects on 525 Fernwood. Payment for the projects was secured by a mortgage in favor of Dependable. Dependable subsequently assigned its rights with respect to the mortgage to Homeplus. On August 13, 2008, McDowell filed an answer that included a cross-claim against Homeplus and a third-party complaint against Dependable.

{¶3} On October 8, 2008, Homeplus filed a motion to compel arbitration and stay the trial court proceedings with respect to McDowell's cross-claim. Homeplus maintained that the retail installment contract originally executed between Dependable and McDowell provided that all claims related to the contract were to be resolved through binding arbitration, and therefore, Homeplus as assignee was entitled to arbitration of McDowell's claim. Neither McDowell nor any other party to the foreclosure litigation filed a brief in response to, or opposition to, Homeplus's motion to compel arbitration and stay the proceedings.

{¶4} On July 14, 2009, without a hearing, the trial court issued a brief order denying Homeplus's motion. Homeplus filed a notice of appeal of the order on July 30, 2009.

{¶5} On July 31, 2009, the trial court granted summary judgment in favor of Chase on its claim for foreclosure. In its order, the court specifically found that the cross-claim against Homeplus by McDowell remained pending and ordered Homeplus to file an answer no later than fourteen days from the date of entry of the order granting summary judgment.

II.

{¶6} As its sole assignment of error, Homeplus argues that the trial court erred in denying its motion to compel arbitration and stay the litigation. Homeplus contends that arbitration was proper pursuant to its contract with McDowell and pursuant to R.C. 2711.02 and 2711.03.

{¶7} "An order granting or denying a stay of trial pending arbitration issued under R.C. 2711.02(B) is a final, appealable order under R.C. 2711.02(C), even without satisfying the requirements of Civ.R. 54(B)." *Mynes v. Brooks*, 124 Ohio St.3d 13, 2009-Ohio-5946, at ¶1.

{¶8} Homeplus became the assignee of a retail installment contract executed between Dependable and McDowell. The contract included a one-page document entitled, "ARBITRATION AGREEMENT." The arbitration agreement provides that "any and all disputes, claims or controversies * * * arising under or relating to the retail installment contract and any related documents * * * shall be subject to binding arbitration[.]" This arbitration agreement was signed by Winfred and Betty McDowell on the same date as the contract itself.

{¶9} "'The Ohio Arbitration Act allows for either direct enforcement of [arbitration] agreements through an order to compel arbitration under R.C. 2711.03, or indirect enforcement through an order staying proceedings under R.C. 2711.02.'" *Maestle v. Best Buy Co.*, 100 Ohio St.3d 330, 2003-Ohio-6465, at ¶14, quoting *Brumm v. McDonald & Co. Securities, Inc.* (1992), 78 Ohio App.3d 96, 100. R.C. 2711.02(B) states that "a court [*shall*] stay trial of an action 'on application of one of the parties' if (1) the action is brought upon any issue referable to arbitration under a written agreement for arbitration, and (2) the court is satisfied the issue is referable to arbitration under the written agreement." (Citation omitted and emphasis added.) *Dynamark Sec. Centers, Inc. v. Charles*, 9th Dist. No. 21254, 2003-Ohio-2156, at ¶11. If a party moves to compel arbitration pursuant to R.C. 2711.03(A), "[t]he court *shall hear the parties*, and, upon being satisfied that the making of the agreement for arbitration or the failure to comply with the agreement is not in issue, the court *shall* make an order directing the parties to proceed to arbitration in accordance with the agreement." (Emphasis added.) By its terms, R.C. 2711.03 requires a hearing on the motion to compel. *Boggs Custom Homes, Inc. v. Rehor*, 9th Dist. No.

22211, 2005-Ohio-1129, at ¶¶16-17. Conversely, the Supreme Court of Ohio has held that a hearing is not required with regard to a request for stay pursuant to R.C. 2711.02. *Maestle* at ¶¶18-19.

{¶10} In the instant matter, Homeplus filed a joint motion to compel arbitration and stay the litigation. There is no evidence in the record that the trial court held a hearing with respect to the motion to compel arbitration. Thus, we are not able to review the merits of the appeal and must remand for the trial court to conduct a hearing as required by R.C. 2711.03. *Krakora v. Superior Energy Systems*, 9th Dist. No. 08CA009423, 2009-Ohio-401, at ¶5.

III.

{¶11} The judgment of the Summit County Court of Common Pleas is reversed and the matter is remanded for proceedings consistent with this decision.

Judgment reversed,
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.

EVE V. BELFANCE
FOR THE COURT

WHITMORE, J.
DICKINSON, P. J.
CONCUR

APPEARANCES:

RICHARD D. SCHILLING, and JEREMY R. MASON, Attorneys at Law, for Appellant.

MICHAEL J. KAPLAN, Attorney at Law, for Appellee.

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