

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

CHAD HANDY,

Appellant,

v.

Case No. 5D21-137

COUNTERTOPS TO GO, LLC D/B/A
VOLUSIA GRANITE AND MARBLE,

Appellee.

_____ /

Opinion filed September 17, 2021

Nonfinal Appeal from the County Court
for Volusia County,
Dawn P. Fields, Judge.

Joseph M. Horrox, of Joe Horrox,
P.A., Daytona Beach, for Appellant.

Juliette Koves and Ruben Laboy, Jr., of de
Beaubien, Simmons, Knight, Mantzaris &
Neal, LLP, Orlando, for Appellee.

NARDELLA, J.

Chad Handy (“Handy”) timely appeals the trial court’s order dismissing
his case against Countertops To Go, LLC, and ordering arbitration. We

reverse the trial court's order dismissing, rather than staying, Handy's lawsuit pending arbitration. We otherwise affirm.

Handy filed a lawsuit in small claims court against Countertops to Go, LLC, over both the quality of granite slabs selected by Handy and the proposed method of installing the slabs in Handy's kitchen. According to Handy, in reliance upon an associate's promise to inspect the slabs and his belief that installation would meet "residential standards", he made a pre-payment to Countertops to Go, LLC, and signed a contract for installation. That contract contained a mandatory arbitration clause.

Countertops To Go, LLC, responded by filing a Motion for Summary Disposition under Florida Small Claims Rules 7.110(b) and 7.135 arguing that all counts should be dismissed because the dispute must be settled by arbitration. After a hearing, the trial court entered an order granting the Motion for Summary Disposition, ordering the parties to arbitrate, dismissing each count and expressly stating that it was rejecting "[Handy's] argument that the case must be stayed pending arbitration."

In rejecting Handy's argument for a stay pending arbitration, the trial court erred. Pursuant to section 682.03, Florida Statutes (2020), the imposition of a stay, not an order of dismissal, is the appropriate disposition when a matter is sent to arbitration. The statute states that "[i]f the court

orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration.” § 682.03(7), Fla. Stat. (2020). Our Court has previously recognized, under facts similar to the instant case, that the appropriate disposition is a stay of the proceedings and not a dismissal of the case. See *Timber Pines Plaza, LLC v. Zabrzyski*, 211 So. 3d 1147, 2017 (Fla. 5th DCA 2017) (reversing the trial court’s order denying a motion to compel arbitration and remanding with instructions to send the matter to arbitration and to stay the litigation, citing to section 682.03(7)); *Fouche v. Pilot Catastrophe Servs., Inc.*, 217 So. 3d 225, 226 (Fla. 5th DCA 2017) (reversing the trial court’s order which dismissed the case after finding the claim should be settled in arbitration and remanding with instructions to vacate the dismissal language and to impose a stay of the lawsuit pending arbitration).

Accordingly, we reverse the trial court’s order dismissing each count and remand with instructions to vacate the dismissal language and to impose a stay of the lawsuit. As to all other issues raised on appeal, we affirm.¹

¹ Despite this Court’s request to supplement the record, Handy did not provide this Court with a transcript of the hearing on Countertop’s To Go, LLC’s, Motion for Summary Disposition, a written response to the Motion for Summary Disposition, or a motion for rehearing after the trial court issued its order dismissing Handy’s claims. Based upon the record before us, we cannot tell what other arguments were made below or even whether the trial court failed to determine a valid written arbitration agreement existed.

Affirmed, in part; Reversed, in part; and Remanded with instructions.

COHEN and WOZNIAK, JJ., concur.

Therefore, we must affirm. See *Black Point Assets, Inc. v. Fed. Nat'l Mortg. Ass'n* ("Fannie Mae"), 220 So. 3d 566, 568–69 (Fla. 5th DCA 2017) (explaining that although the court could determine whether summary judgment was proper without a transcript of the hearing, the appellant failed to demonstrate that the issue was preserved for appeal because the issue was not presented to the trial court through motion or other paper); *Cornerstone 417, LLC v. Cornerstone Condo. Ass'n*, 300 So. 3d 1262, 1264 n.1 (Fla. 5th DCA 2020) (same).