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Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-000970-MR

WILLIAM TID GRIFFIN; HARTLEY BLAHA; RONALD BOWMAN, JR.; STEVEN STENGELL; JEFF VARNER; CHAD ESTES; AND ALLIED ENERGY — APPELLANTS

APPEAL FROM JEFFERSON CIRCUIT COURT
v. HONORABLE CHARLES L. CUNNINGHAM, JR., JUDGE
ACTION NO. 09-CI-003347

R. DEAN LINDEN, PH.D. — APPELLEE

AND NO. 2009-CA-001917-MR

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WILLIAM TID GRIFFIN; JEFF VARNER; HARTLEY BLAHA; RONALD BOWMAN, JR.; STEVEN STENGELL; JAMES E. SHANE;

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CLAYTON, NICKELL AND THOMPSON, JUDGES.

THOMPSON, JUDGE: In this consolidated appeal, the parties appeal an order of the Jefferson Circuit Court that granted in part and denied in part a motion to compel arbitration and stay proceedings pursuant to the Kentucky Uniform Arbitration Act (KUAA), KRS Chapter 417. The issues presented are whether KRS 417.050 violates the separation of powers doctrine by permitting an interlocutory appeal and whether the scope of the arbitration agreement is sufficiently broad to cover the claims presented.[1]

The dispute is between members of a limited liability company, Gryphon Environmental, LLC, a company engaged in the designing and development of waste treatment products for municipal systems. William Tid Griffin, Hartley Blaha, Ronald Bowman, Jr., Steven Stengell, Jeff Varner, Chad Estes, Allied Energy, and James E. Shane (the members), collectively own 51 percent of the membership interests in Gryphon, and R. Dean Linden, Ph.D. owns approximately 47.2 percent.

[1] Pursuant to KRS 418.075, Linden notified the Attorney General of his challenge to KRS 417.050, but the Attorney General has declined to intervene.

Linden filed the present action in January 2009 against the members, alleging claims for mutual or unilateral mistake, fraud in the inducement, fraud, defamation, abuse of process, declaratory judgment, breach of fiduciary duty, Blue Sky violations, and requesting an accounting and an injunction. He averred the following facts to support his claims.

Linden served as manager of Gryphon. In late 2008, Linden and Griffin had disputes regarding Gryphon's management and operation. After realizing that Gryphon needed additional capital, Linden arranged for outside parties to invest, but Griffin refused to acquiesce in the arrangement. Linden alleges that Griffin's refusal was for the purpose of facilitating the members' plan to "freeze out" Linden and, therefore, was a breach of his fiduciary duties. He further alleges that the members held secret meetings and met with the corporation's counsel to discuss their freeze out plan and to propose an amended operating agreement and private placement memorandum for Gryphon. An amended operating agreement was eventually signed by the members in late 2008, which Linden alleges contains false and fraudulent statements of fact.

Linden further alleges that, in late 2008 or early 2009, the members falsely accused him of stealing from Gryphon and that Griffin filed criminal charges against him for the purpose of inducing Linden to limit his managerial role in Gryphon or to cause the remaining members to believe Linden had engaged in criminal activity.

An arbitration clause contained in the amended and restated operating agreement is the subject of this appeal. It provides:

> If any dispute shall arise between the Interest Holders as to their rights or liabilities under this agreement, the dispute shall be exclusively determined, and the dispute shall be settled, by arbitration in accordance with the commercial rules of the American Arbitration Association.

The clause further describes the number of arbitrators, the method for their selection, the finality of the arbitrator's decision and the allocation of costs. It concludes in bold print capital letters:

> **EACH OF THE INTEREST HOLDERS HEREBY ACKNOWLEDGES THAT THIS PROVISION CONSTITUTES A WAIVER OF THEIR RIGHT TO COMMENCE A LAWSUIT IN ANY JURISDICTION WITH RESPECT TO THE MATTERS WHICH ARE REQUIRED TO BE SETTLED BY ARBITRATION AS PROVIDED IN THIS SECTION 21.7.**

There is no dispute that Linden signed the amended and restated operating agreement.

After Linden filed his complaint, the members moved to compel arbitration under the operating agreement and KRS 417.060. Following a hearing, the trial court issued a written order wherein it found that all business-related claims were subject to arbitration. However, the trial court found that the abuse of process and defamation claims were unrelated to the operating agreement and, therefore, not subject to arbitration. The trial court further held that it retained jurisdiction to address motions for equitable relief but cautioned Linden that an injunction may be

impractical or inappropriate. Nevertheless, Linden subsequently filed a motion for a temporary injunction.

Pursuant to KRS 417.220(1)(a), the members filed a notice of appeal from the trial court's order denying part of its arbitration request and then filed a motion seeking that the trial court vacate its order setting a hearing on Linden's motion for temporary injunction because a notice of appeal had been filed from the trial court's arbitration order. The trial court granted the motion stating that "the Court has sent some of the claims in this case to arbitration and the claims it did not send to arbitration have now been appealed. There is nothing left here in Jefferson Circuit Court."

Linden filed a petition for a *writ of mandamus* in this Court requesting that the trial court be directed to exercise jurisdiction over his motion for a temporary injunction. This Court denied the petition and Linden appealed to the Kentucky Supreme Court.

In an unpublished memorandum opinion, *Linden v. Cunningham*, 2010 WL 5258474 (Linden I), the Supreme Court affirmed. Relying on *City of Devondale v. Stallings,* 795 S.W.2d 954, 957 (Ky. 1990), the Court held that the filing of a notice of appeal by Griffin divested the trial court of jurisdiction to rule on Linden's motion for a temporary injunction. However, there was fractionalization among the Court with Justice Noble concurring in result only and Justices Scott, Cunningham and Venters dissenting. Justice Scott's dissenting opinion explained the potential quagmire created by the decision as follows:

> The problem created by applying the "general rule" to interlocutory appeals is it deprives the trial courts of their necessary case management authority. Thus, under the majority's approach, once an interlocutory appeal is filed, the trial court no longer has the ability to manage its cases and proceed in a fashion it determines suitable for the parties-while the appellate courts resolve tangentially related issues.
>
> Finally, I recognize that most trial judges will stay all appropriate proceedings rather than attempting to try the remaining parts of the case while other connected issues are on appeal. However, in the rare scenario where a judge decides to plow ahead anyway-disregarding the conventional wisdom of waiting until the appellate issues are resolved-our rules have other means in place by which the parties can seek appropriate relief from the appellate courts to halt these exceedingly rare situations (i.e., a writ of mandamus or prohibition under CR 76.36 or for intermediate relief under CR 76.33). Thus, our rules provide an adequate means with which to preserve order without creating "chaos" in the court that still has other necessary matters to attend to. And why else would we have these rules of relief if an appeal of an interlocutory order totally disposed of a trial court's jurisdiction?
>
> Thus, while the trial court here acted prudently during the pendency of the appeal when it refused to adjudicate the cases not ordered to arbitration, the majority's statement reflecting its loss of jurisdiction goes too far and establishes a dangerous and chaotic precedent.

Having provided the factual and procedural background, we turn to the issues presented. The initial issue is whether KRS 417.220(1)(a) is unconstitutional.

WHETHER KRS 417.220(1)(a) IS UNCONSTITUTIONAL

KRS 417.220(1)(a) provides in part that "[a]n appeal may be taken from: [a]n order denying an application to compel arbitration made under KRS 417.060 . . . ." Linden argues that because the statute permits an appeal from an interlocutory order, the General Assembly has interfered with the Supreme Court's authority to "prescribe . . . rules of practice and procedure for the Court of Justice" as proscribed in Section 116 of the Kentucky Constitution.

The separation of powers doctrine emanates from Sections 27 and 28 of the Kentucky Constitution. Section 27 provides that:

> The powers of the government of the Commonwealth of Kentucky shall be divided into three distinct departments, and each of them be confined to a separate body of magistracy, to wit: Those which are legislative, to one; those which are executive, to another; and those which are judicial, to another.

Section 28 states:

> No person or collection of persons, being of one of those departments, shall exercise any power properly belonging to either of the others, except in the instances hereinafter expressly directed or permitted.

When read in conjunction, the two constitutional provisions preserve the concept of three distinct departments of government and the fundamental principle that the legislature cannot invade the province of the judiciary. *American Beauty Homes Corp. v. Louisville and Jefferson County Planning and Zoning Commission*, 379 S.W.2d 450, 453-454 (Ky. 1964). Thus, the Court's rule making power, which includes our rules of civil procedure, is "firmly rooted within the Constitution." *Smothers v. Lewis*, 672 S.W.2d 62, 64 (Ky. 1984).

The fallacy in Linden's contention is that he ignores Section 250 of the Kentucky Constitution which vests the General Assembly with the power to "enact such laws as shall be necessary and proper to decide differences by arbitrators, the arbitrators to be appointed by the parties who may choose that summary mode of adjustment." By definition, arbitration is not a judicial function: Under our Constitution, it is a legislative matter.

On similar reasoning, this Court has previously rejected a constitutional challenge based on the separation of powers doctrine to the KUAA. In *Dutschke v. Jim Russell Realtors, Inc*., 281 S.W.3d 817, 824 (Ky.App. 2008), the Court stated:

> We first note that, as previously discussed, Section 250 of the Kentucky Constitution specifically vests the legislature with the power to enact necessary and proper laws to establish an arbitration system in Kentucky. It follows that it was not a violation of the separation of powers doctrine for the legislature to enact the KUAA.

The power of the legislature to enact the KUAA necessarily includes the power to provide the process for judicial review. Consistent with *Dutschke*, Linden's constitutional challenge is without merit. We now turn to the substantive issues presented by both appeals.

THE VALIDITY OF THE ARBITRATION CLAUSE

In 1984, Kentucky adopted the KUAA wherein it specifically validated arbitration agreements.[2] KRS 417.050 reads in part:

[2] As relevant to this appeal, the KUAA and the Federal Arbitration Act contain identical provisions so that federal law is deemed persuasive.

> A written agreement to submit any existing controversy to arbitration or a provision in written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law for the revocation of any contract.

Following the adoption of the Act and consistent with the General Assembly's directive, our Courts have consistently expressed that arbitration agreements are favored. *See e.g., Mortgage Electronic Registration Systems, Inc. v. Abner*, 260 S.W.3d 351, 353 (Ky.App. 2008). As stated in *Valley Const. Co., Inc. v. Perry Host Management Co. Inc.*, 796 S.W.2d 365, 368 (Ky.App. 1990):

> The burden of establishing the existence of an arbitration agreement that conforms to statutory requirements rests with the party seeking to enforce it, but once prima facie evidence thereof has been presented, the statutory presumption of its validity (KRS 417.050) accrues, and the burden of going forward with evidence to rebut the presumption then shifts to the party seeking to avoid the agreement, *Marciniak v. Amid,* 162 Mich.App. 71, 412 N.W.2d 248 (1987), and this is a heavy burden.

However, the Act recognizes that such agreements are subject to the general rules of contract. KRS 417.050 contains a savings clause that provides that arbitration may be avoided "upon such grounds as exist at law for the revocation of any contract." Linden argues that his allegations of fraud in the inducement and mutual and unilateral mistake are general rules of contract that invalidate an arbitration agreement.

We do not comment on the merits of Linden's claims and only address whether the issues of fraud in the inducement and mistake are to be decided by the court or the arbitrator.

In *Louisville Peterbilt, Inc. v. Cox*, 132 S.W.3d 850 (Ky. 2004), the Court interpreted the savings clause to apply "only when the allegation of fraud goes to the making of the arbitration clause itself rather than the underlying contract in general . . . ." *Id*. at 854. The Court explained that permitting a party to avoid arbitration by pleading fraudulent inducement in the underlying contract would "vitiate the primary benefit of arbitration, the expeditious and inexpensive resolution of disputes, and would effectively eviscerate the arbitration statute." *Id*. at 856, (quoting *Prima Paint Corporation v. Flood & Conklin Manufacturing Company,* 388 U.S. 395, 87 S.Ct. 1801, 18 L.Ed.2d 1270 (1967)). In *Consultants and Builders, Inc. v. Paducah Federal Credit Union*, 266 S.W.3d 837, 839-840 (Ky.App. 2008), the Court elaborated on *Louisville Peterbilt, Inc*. Quoting the United States Supreme Court, it stated:

> More recently, in *Buckeye Check Cashing, Inc. v. Cardegna,* 546 U.S. 440, 444, 126 S.Ct. 1204, 1208, 163 L.Ed.2d 1038 (2006), the United States Supreme Court addressed legal or equitable "[c]hallenges to the validity of arbitration agreements[,]" and divided such challenges into two categories:
>
> > One type challenges specifically the validity of the agreement to arbitrate. . . . The other challenges the contract as a whole, either on a ground that directly affects the entire agreement (*e.g.,* the agreement was fraudulently induced), or on the ground that

> > the illegality of one of the contract's provisions renders the whole contract invalid.
>
> The Court concluded that three propositions apply to the issue of whether a challenge to an arbitration provision should be resolved by a court or by an arbitrator:
>
> > First, as a matter of substantive federal arbitration law, an arbitration provision is severable from the remainder of the contract. Second, unless the challenge is to the arbitration clause itself, the issue of the contract's validity is considered by the arbitrator in the first instance. Third, this arbitration law applies in state as well as federal courts.
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> 546 U.S. at 445-46, 126 S.Ct. at 1209. *See also Southland Corp. v. Keating,* 465 U.S. 1, 104 S.Ct. 852, 79 L.Ed.2d 1 (1984); *Prima Paint Corp. v. Flood & Conklin Mfg. Co.,* 388 U.S. 395, 87 S.Ct. 1801, 18 L.Ed.2d 1270 (1967). So that no misunderstanding would result, the Supreme Court reaffirmed that "regardless of whether the challenge is brought in federal or state court, a challenge to the validity of the contract as a whole, and not specifically to the arbitration clause, must go to the arbitrator." 546 U.S. at 449, 126 S.Ct. at 1210.

Thus, although the court must decide whether the parties agreed to arbitrate, whether the underlying contract is invalid, whether because of fraud or mutual mistake, is to be decided by the arbitrator. *Valued Services of Kentucky, LLC v. Watkins*, 309 S.W.3d 256, 261 (Ky.App. 2009) (*disc. review denied*).

Linden attempts to avoid the arbitration agreement and submit the issues of fraud in the inducement and mutual mistake to the Court by an appellate rewrite of his complaint to frame the issue as an attack on the arbitration clause itself.

However, we agree with the trial court that the allegations in the complaint target the amended operating agreement in its entirety and not the specific arbitration clause.

In his complaint, Linden asserted that the "inclusion of materially different terms from the original operating agreement was the result of mutual mistake of the parties and/or the unilateral mistake of the Plaintiff Dr. Linden coupled with fraud of Defendant Tid Griffin and other Defendants." Although repeated averments are made in regard to the amended operating agreement, there is not even a mention of the arbitration clause in the context of fraud or mistake. Therefore, the validity of the amended operating agreement is properly subject to arbitration.

THE SCOPE OF THE ARBITRATION CLAUSE

The scope of an arbitration clause is an issue to be decided by the court; however, the decision is made in the context of the General Assembly's declaration that the issue be resolved in favor of arbitration. *Louisville Peterbilt, Inc.*, 132 S.W.3d at 855. Accordingly, we address whether Linden's claims are subject to arbitration or are to be resolved by judicial decision.

The court's concern when deciding the scope of arbitration agreements is to faithfully reflect the reasonable expectation of the parties. *Valued Services of Kentucky, LLC*, 309 S.W.3d at 262. The Sixth Circuit Court of Appeals has further elaborated:

> A proper method of analysis here is to ask if an action could be maintained without reference to the contract or relationship at issue. If it could, it is likely outside the scope of the arbitration agreement. Torts may often fall into this category, but merely casting a complaint in tort does not mean that the arbitration provision does not apply. Even real torts can be covered by arbitration clauses if the allegations underlying the claims 'touch matters' covered by the agreement. We are, however, aware of the Supreme Court's warning against forcing unwilling parties to arbitrate a matter they reasonably would have thought a judge, not an arbitrator, would decide.

Fazio v. Lehman Bros. Inc, 340 F.3d 386, 395 (6th Cir. 2003) (internal citations and quotations omitted).

The arbitration clause provides for the arbitration of all disputes "between the Interest Holders as to their rights or liabilities under this agreement. . . ." Linden's claims for fraud, declaratory judgment, breach of fiduciary duty, Blue Sky Law violations, and his demand for accountings fall squarely within the arbitration provision. Linden alleges that the members committed fraud, "for the purpose of divesting, among other purposes, of divesting Plaintiff of his ownership and governance rights in the LLC" a matter directly addressed in the amended operating agreement. Likewise, his requests for a determination of the ownership interests of the members and the validity of the corporate documents not only reference the amended operating agreement but render its interpretation inevitable. He alleges breach of fiduciary duties by the members, which are duties created by the amended operating agreement.

Similarly, the claimed violation of the Blue Sky Laws and demand for accounting necessarily require reference to the agreement.

Linden offers no evidence to suggest that the claims for fraud, declaratory judgment, breach of fiduciary duty, Blue Sky Law violations, and his demand for accountings are not within the arbitration provision. Absent affirmative evidence such as an affidavit, Linden cannot meet his burden of establishing that the claims are not subject to arbitration in view of the plain language of the arbitration clause. *Valley Const. Co., Inc.*, 796 S.W.2d at 368. Because these claims cannot be maintained without reference to the amended operating agreement, they are within the scope of the arbitration clause.

The issue remains whether the trial court properly denied arbitration of Linden's remaining claims. Kentucky courts have upheld arbitration provisions broadly drafted to encompass contract, tort, and statutory claims. *See e.g.*, *Louisville Peterbilt, Inc.*, 132 S.W.3d 850; *Kodak Min. Co. v. Carrs Fork Corp.*, 669 S.W.2d 917 (Ky. 1984). In this case, the trial court concluded that the language "as to rights or liabilities under this agreement" was a limitation on the claims to be arbitrated that precluded Linden's claims for defamation, abuse of process, and request for injunctive relief from arbitration.

An arbitration agreement should not be expanded merely to prevent piecemeal litigation for the sake of judicial efficiency. *Hill v. Hilliard,* 945 S.W.2d 948 (Ky.App. 1996). Thus, if the arbitration clause at issue is not sufficiently broad to include Linden's claims of defamation, abuse of process and for

injunctive relief, the trial court properly declined to compel arbitration of those claims.

In *Hill*, the Court analyzed an arbitration provision requiring that an employee "arbitrate any dispute, claim or controversy that may arise between [her] and [her] firm." *Id*. at 950. The Court concluded that the employee's claims for sexual harassment, retaliation, and violation of the equal pay law related to her employment relationship and were subject to arbitration. However, the employee's claims that a co-worker had raped, assaulted, and falsely imprisoned her while on a business trip were not within the ambit of the arbitration clause. The Court emphasized that the alleged offenses did not arise out of the employment as required by the arbitration clause. "The mere fact that these tort claims might not have arisen but for the fact that the two individuals were together as a result of an employer-sponsored trip cannot be determinative." *Id*. at 952.

The defamation and abuse of process claims asserted by Linden are not within the scope of the arbitration clause. They are the result of Griffin filing a criminal complaint and not from any act or omission that arose under the amended operating agreement. The initiation of a criminal complaint against a member of the LLC is far beyond the normal course of matters covered under the amended operating agreement and is not a matter that could have been reasonably expected to be governed by the agreement. Thus, we agree with the trial court's observation: "Griffin chose to go outside the customary confines of conversations, correspondence, and resolutions by involving the court and the threat of non-

financial consequences." The trial court properly refused to compel arbitration of Linden's defamation and abuse of process claims.

The final issue to be resolved is whether the trial court erred when it refused to compel arbitration of Linden's claim for injunctive relief. We conclude that the issue before this Court is distinct from the issue presented and decided by the Supreme Court in Linden I.

The question before the Supreme Court was whether the trial court was divested of subject matter jurisdiction because of the filing of a notice of appeal from the trial court's refusal to order arbitration of Linden's claims for defamation, abuse of process, and injunctive relief. The issue presented in this appeal is whether the trial court retained subject matter jurisdiction to issue an injunction pending arbitration. Specifically, Linden requested an injunction preventing the members from interfering with his managerial position, divesting him of any membership interest, and soliciting any investments in Gryphon. In essence, he seeks to maintain the status quo.

Thus, while we certainly adhere to our responsibility to comply with the law of the case as established by our Supreme Court, we do not interpret its opinion to resolve the issue before this Court.

The amended operating agreement states that any arbitration proceeding is to be governed by the rules of the American Arbitration Association, which provide for injunctive relief. Although these rules permit the arbitrator to grant injunctive relief, they also anticipate that relief may be sought in court.

American Arbitration Association Rules, Section 34. The issue is whether the court has subject matter jurisdiction to issue injunctive relief after it has referred all or some of the claims to arbitration.

We would be remiss if our discussion was not prefaced with the significance of a court's power to issue injunctions. It is a power vested in the judiciary and, as explained in *Smothers,* 672 S.W.2d at 64, is crucial to the effective administration of justice.

> [A] court, once having obtained jurisdiction of a cause of action, has, as an incidental to its constitutional grant of power, inherent power to do all things reasonably necessary to the administration of justice in the case before it. In the exercise of this power, a court, when necessary in order to protect or preserve the subject matter of the litigation, to protect its jurisdiction and to make its judgment effective, may grant or issue a temporary injunction in aid of or ancillary to the principal action.

We are not convinced that arbitration deprives the court of its inherent power to issue injunctions.

There are no reported Kentucky cases addressing whether a court retains its inherent judicial power to issue equitable relief in cases subject to arbitration. However, the majority of federal courts, including the Sixth Circuit, have held that in limited situations, a binding arbitration clause does not preclude a court from granting emergency injunctive relief. *See Drago v. Holiday Isle, L.L.C.*, 537 F.Supp.2d 1219 (S.D. Ala. 2007). We are persuaded by the decision in *Performance Unlimited, Inc. v. Quester Publishers, Inc.*, 52 F.3d 1373 (6th Cir.

1995), wherein the Court held that trial courts have subject matter jurisdiction to grant preliminary injunctive relief in disputes subject to arbitration.

> After a thorough review of the relevant case law, we adopt the reasoning of the First, Second, Third, Fourth, Seventh, and arguably the Ninth, Circuits and hold that in a dispute subject to mandatory arbitration under the Federal Arbitration Act, a district court has subject matter jurisdiction under § 3 of the Act to grant preliminary injunctive relief provided that the party seeking the relief satisfies the four criteria which are prerequisites to the grant of such relief. We further conclude that a grant of preliminary injunctive relief pending arbitration is particularly appropriate and furthers the Congressional purpose behind the Federal Arbitration Act, where the withholding of injunctive relief would render the process of arbitration meaningless or a hollow formality because an arbitral award, at the time it was rendered, could not return the parties substantially to the status quo ante.

Id. at 1380 (internal quotations and citations omitted). We conclude that the reasoning expressed in *Performance Unlimited, Inc*. is sound.

Although the purpose of arbitration is to expeditiously resolve the parties' disputes, the process remains time consuming and presents an opportunity for mischief. In contrast, judicial relief permits an evidentiary hearing in an expedited manner and a resulting injunction that can be enforced by the court in which it was issued. The trial court retains jurisdiction to preserve the status quo until an arbitration panel can be appointed and the panel reaches a decision. Further, it retains jurisdiction to enforce any decision reached by the arbitration panel. Permitting the court to retain jurisdiction to issue and enforce injunctions furthers the purpose of arbitration by providing an orderly and expedient remedy.

We are aware of the limitation placed on our holding by our Supreme Court's holding that the trial court is divested of jurisdiction upon the filing of an appeal from a denial of arbitration. Even so, the trial court is in the best position to conduct evidentiary hearings and provide immediate access to the judicial system. Not only would the evidentiary record provided by the trial court be informative on appeal prior to the formation and appointment of the arbitrator or arbitration panel, the trial court could provide injunctive relief to either party upon request. After the appointment of the arbitrator or arbitration panel, the trial court would be available to aid the arbitration panel in enforcement of any recommendations as to injunctive relief. In contrast, the arbitrator or the arbitration panel has no judicial powers such as contempt, or to order the freezing of accounts, or to maintain the status quo.

We anticipate that the Supreme Court will revisit this issue and will have access to the complete record. It will not be unnoticed that the appellant immediately filed a notice of appeal. Although perhaps not intended to be such, this case presents an opportunity for chaos as predicted by Justice Scott. A notice of appeal can be used as a trial tactic to cause delay and to allow appellants to maintain control of the corporation to the exclusion of the appellee. During the pendency of this appeal and the appeal of the *writ of mandamus*, the status quo has not been maintained and the record is silent as to whether an arbitration panel has been appointed or what steps or remedies are being pursued at this time. The legislature authorized arbitration to encourage expedient dispute resolution; yet,

the notice of appeal can be another weapon to cause delay. Under the circumstances, arbitration could likely be a hollow exercise.

We hold that the trial court has jurisdiction to provide injunctive relief and emergency relief until such time as a notice of appeal is filed. We do not comment on whether injunctive relief is proper. That is a decision for the trial court following an evidentiary hearing. However, based upon the law of the case, after a notice of appeal is filed, the trial court has no jurisdiction to provide injunctive emergency relief.

Based on the foregoing, the orders of the Jefferson Circuit Court are affirmed.

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