

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOSEPH L. CAPANO, II)
) No. 177, 2003
Plaintiff Below,)
Appellant,) Court Below: Chancery Court
) of the State of Delaware in and
v.) for New Castle County
)
STATE OF DELAWARE, *ex rel.*,) C.A. No. 19976
M. JANE BRADY, ATTORNEY)
GENERAL, STATE OF)
DELAWARE,)
)
Defendant Below,)
Appellee.)

Submitted: August 26, 2003
Decided: September 25, 2003

Before **HOLLAND, BERGER** and **STEELE**, Justices.

ORDER

This 25th day of September, 2003 upon consideration of the parties' briefs,
it appears to this Court that:

1. Appellant, Joseph Capano, filed a complaint against the State in the Court of Chancery seeking enforcement of an arbitration agreement allegedly entered into during a failed Superior Court mediation. The Assigned Vice Chancellor granted the State's Motion to Dismiss.

2. In 1999, the State filed a civil enforcement action in Superior Court against a number of entities and individuals, including Capano, alleging that the defendants violated various state consumer protection and deceptive trade laws. In the summer of 2001, all of the parties in the Capano enforcement proceeding agreed to attempt mediation. On September 18, 2001, the parties attended a mediation conference and appeared to reach an agreement. The mediator presumed counsel would prepare a stipulation. The parties dispute that an agreement ever existed and there is no written agreement signed by all parties. Capano presented a document that purported to be an agreement, although only Capano's counsel signed it.

3. On October 15, 2002, Capano filed a complaint under seal in the Court of Chancery seeking to compel arbitration under the Delaware Uniform Arbitration Act¹ and common law contract theory. The Vice Chancellor dismissed the action for several reasons. First, the Vice Chancellor held that the substance of the alleged agreement is covered by a confidentiality provision that cannot be disclosed in a judicial proceeding. Second, the Vice Chancellor concluded that the underlying matter is factually similar to *Wilmington Hospitality v. New Castle County*.² There, the trial judge held that mediation under Court of Chancery Rule 174 is best served by guaranteeing a confidential environment and enforcing an

¹ 10 Del. C. § 5701 *et seq.*

² 788 A.2d 536 (Del. Ch.), *interlocutory appeal ref'd*, 781 A.2d 697 (2001).

agreement to settle only when there is a writing that complies with subpart (g) of that rule.³ Finally, the Vice Chancellor applied this Court's decision in *MacDonald v. Hayman*,⁴ which held that an agreement to arbitrate originating out of litigation is outside the scope of the Delaware Uniform Arbitration Act.

4. The Vice Chancellor correctly decided this case. Courts should not enforce a mediation agreement absent a written document signed by the parties and the mediator. As the Vice Chancellor stated:

“ [the] candid disclosure that mediation seeks to encourage in an effort to resolve a legal dispute, would be chilled if this Court were to enforce partial agreements – agreements to resolve some of the dispute that have not reached a stage where a contract is actually signed. If such agreements were enforced, the chilling effect would discourage the type of candid discussions that are necessary in order for a mediation to work at all.”⁵

We Agree.

NOW, THEREFORE, IT IS ORDERED, that the judgment of the Court of Chancery is AFFIRMED.⁶

/s/ Myron T. Steele
Justice

³ (g) Mediation agreement. (1) If the parties involved in the mediation conference reach agreement with regard to the disputed issues, their agreement shall be reduced to writing and signed by the parties and the mediator. The agreement shall set for the terms of the resolution of the issues and the future responsibility of each party. The agreement will be binding on all parties to it and, upon filing by the mediator, will become part of the Court's record. If the parties choose to keep the terms of the agreement confidential, a Stipulation of Dismissal may be filed in the alternative.

⁴ 667 A.2d 1319 (Del. 1995).

⁵ *Capano v. State*, C.A. No. 19976 (State's Motion to Dismiss at 56-57).

⁶ This decision hereby renders moot Appellant's Motion to Stay dated August 14, 2003.