

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

PLUM CREEK MARKETING,
INC. ("PCM"), PLUM CREEK
TIMBER COMPANY, INC.
("PCT"), PLUM CREEK
TIMBERLANDS, L.P., ("PC
TIMBERLANDS"), THOMAS
REED ("REED"), JON
RASHLEIGH ("RASHLEIGH")
AND BEN DOW ("DOW"),

Appellants,

v.

WILLISTON TIMBER
COMPANY, INC., WILLISTON
TRUCKING COMPANY, LC,
PINEEARTH FORESTRY, INC.
AND DERBY GOLD PINE
SHAVINGS COMPANY,

Appellees.

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

CASE NO. 1D13-3920

Opinion filed October 11, 2013.

An appeal from an order of the Circuit Court for Levy County.
Ysleta W. McDonald, Judge.

Christopher J. Greene and Joseph D. Pickles, of Purcell, Flanagan, Hay & Greene,
P.A., Jacksonville, for Appellants.

Mike Piscitelli, of Vezina, Lawrence & Piscitelli, Fort Lauderdale, for Appellees.

PER CURIAM.

Upon consideration of appellants' response to the Court's order of August 29, 2013, the Court has determined that the order on appeal is not within the scope of Florida Rule of Appellate Procedure 9.130(a)(3)(C)(iv). See Westwood One, Inc. v. Flight Express, Inc., 940 So. 2d 1241, 1243 (Fla. 5th DCA 2006) (holding that order striking motion to compel arbitration on procedural grounds was not an appealable order). Accordingly, the appeal is dismissed.

ROBERTS and SWANSON, JJ., CONCUR; MAKAR, J., Concur with written opinion.

MAKAR, J., Concurs with written opinion.

Because dismissal of their initial motion to compel arbitration was denied without prejudice on procedural grounds, appellants may choose to file a supplemental motion to compel arbitration with the necessary contracts (which they say in their initial brief has already been done); if that motion is denied on other than procedural grounds, appellants would be afforded appellate review of the order denying review. The language from Wegner v. Schillinger, 921 So. 2d 854, 855 (Fla. 4th DCA 2006), that “Florida law does not authorize multiple motions to compel arbitration” is directed to situations where a litigant fails to promptly pursue appellate relief of the denial of an initial motion to compel arbitration on the merits and later makes additional attempts to institute efforts to compel arbitration. See Freedom Life Ins. Co. of America v. Wallant, 953 So. 2d 16, 18 (Fla. 4th DCA 2007). Because appellants seek only to have their initial request to compel arbitration heard on the merits for the first time, I concur in dismissal.