

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA05-1315

NORTH CAROLINA COURT OF APPEALS

Filed: 6 June 2006

MARIA FIEDLER,  
Plaintiff

v.

Wake County  
No. 04 CVD 6214

BLUE SKY SERVICES, INC.,  
Defendant

Appeal by plaintiff from order entered 7 January 2005 by Judge Robert R. Rader in Wake County District Court. Heard in the Court of Appeals 8 May 2006.

*Adams, Portnoy & Berggren, PLLC, by Douglas E. Portnoy, for plaintiff-appellant.*

*Harris Flanagan & Hilton, P.A., by Nelson G. Harris, for defendant-appellee.*

HUNTER, Judge.

On 7 January 2005, the district court ordered Maria Fiedler ("plaintiff") to proceed with arbitration of her claims against Blue Sky Services, Inc. ("defendant"). Following the entry of an arbitrator's award on 11 July 2005, plaintiff gave notice of appeal from the district court's order of 7 January 2005. Because there is no basis for seeking review of the district court's order in this manner, the appeal is dismissed.

Between 12 June 2003 and 8 September 2003, plaintiff signed several "contract proposals" and related documents for defendant to perform certain improvements to her home. By 17 July 2003, plaintiff had paid a total of \$8,230.08 to defendant pursuant to those agreements. Within three days of signing the last contract proposal on 8 September 2003, plaintiff gave written notice of cancellation to defendant and sought the return of the money which she had paid to defendant. Defendant filed a claim of lien on 22 October 2003 and a restated claim of lien in the amount of \$8,230.08 on 1 December 2003.

In a complaint filed on 6 May 2004, plaintiff sought to recover her payments from defendant and for the amount of those payments to be trebled for unfair and deceptive trade practices. On 19 May 2004, defendant filed both a motion to dismiss the complaint pursuant to N.C.R. Civ. P. 12(b)(6) and an application to compel arbitration pursuant to section twelve of the last contract proposal signed on 8 September 2003. Following a hearing on 7 January 2005, the trial court found that the parties' disputes must be submitted to arbitration "pursuant to the terms of Section 12 of the 'Contract Proposal[.]'" After ordering the parties to proceed to arbitration, the trial court stayed the matter pending the completion of arbitration.

On 11 July 2005, the arbitrator ordered defendant to return \$1,175.00 of plaintiff's payments and ordered plaintiff to reimburse defendant for expenses associated with the arbitration.

Plaintiff then gave notice of appeal to this Court from the district court's order of 7 January 2005.

Although plaintiff attempts to argue the trial court erred in granting defendant's motion to compel arbitration, the threshold issue is whether the matter is properly before this Court. Pursuant to the Uniform Arbitration Act:

An appeal may be taken from:

- (1) An order denying an application to compel arbitration made under G.S. 1-567.3;
- (2) An order granting an application to stay arbitration made under G.S. 1-567.3(b);
- (3) An order confirming or denying confirmation of an award;
- (4) An order modifying or correcting an award;
- (5) An order vacating an award without directing a rehearing; or
- (6) A judgment or decree entered pursuant to the provisions of this Article.

N.C. Gen. Stat. § 1-567.18(a) (repealed effective 1 January 2004). The statute does not provide for an appeal from an order granting an application to compel arbitration. See *The Bluffs v. Wysocki*, 68 N.C. App. 284, 285, 314 S.E.2d 291, 293 (1984).

Within ninety days of delivery of a copy of an arbitration award, a party may apply for the trial court to confirm, vacate, modify, or correct an arbitration award. See N.C. Gen. Stat. §§ 1-567.12, 1-567.13 and 1-567.14 (repealed effective 1 January 2004). "Upon the granting of an order confirming, modifying or correcting an award, judgment or decree shall be entered in conformity" with

such an order. N.C. Gen. Stat. § 1-567.15 (repealed effective 1 January 2004). A party would then have an appeal of right to this Court from the trial court's judgment or decree pursuant to N.C. Gen. Stat. § 1-567.18(a)(3)-(6). See *The Bluffs*, 68 N.C. App. at 285, 314 S.E.2d at 293. This Court is without jurisdiction because plaintiff's appeal is premature, and the appeal is therefore dismissed.

Dismissed.

Judges WYNN and McGEE concur.

Report per Rule 30(e).