[Cite as *Stantec Consulting Servs. v. Velotta Co.*, 2015-Ohio-2310.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF MEDINA	)	

STANTEC CONSULTING SERVICES, INC. Appellee v. THE VELOTTA COMPANY Appellant	C.A. Nos. 14CA0028-M 14CA0034-M APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF MEDINA, OHIO CASE Nos. 13CIV1390 13CIV1392

DECISION AND JOURNAL ENTRY

Dated: June 15, 2015

MOORE, Judge.

{¶1} Appellant, The Velotta Company, appeals orders that denied its motions to stay two underlying cases pending arbitration and denied its motions to dismiss the underlying cases under the doctrine of forum non conveniens. This Court affirms in part, but we do not have jurisdiction to consider Velotta's second assignment of error.

I.

{¶2} Velotta contracted with Stantec Consulting Services for design services related to several road construction projects in the State of Pennsylvania. Stantec ultimately sued Velotta for alleged failure to pay as agreed under two of these contracts. Velotta moved to dismiss under the doctrine of forum non conveniens and, in the alternative, for a stay of the litigation so that the claims could be arbitrated. The trial courts denied both motions, and Velotta appealed. This

Court consolidated Velotta's appeals because they raise identical issues for consideration. We have rearranged the two assignments of error for ease of discussion.

II.

ASSIGNMENT OF ERROR II

THE TRIAL COURTS ERRED IN FAILING TO DISMISS THE CASE BASED ON THE DOCTRINE OF FORUM NON CONVENIENS.

{¶3} Velotta's second assignment of error is that the trial courts erred by denying its motions to dismiss the underlying cases so that they could be litigated in a more convenient forum. We do not have jurisdiction to consider this argument.

{¶4} This Court has jurisdiction to review judgments, decrees, and final orders. *See* R.C. 2505.03. We are obligated to raise questions related to our jurisdiction sua sponte. *Whitaker–Merrell Co. v. Geupel Constr. Co., Inc.*, 29 Ohio St.2d 184, 186 (1972). Under R.C. 2505.02(B)(1)[1], which is applicable in this case, "[a]n order that affects a substantial right in an action that in effect determines the action and prevents a judgment[]" is final and appealable. An order that denies a motion to dismiss under the doctrine of forum non conveniens is not final and appealable under R.C. 2505.02(B)(1) for at least two reasons. Even if we were to assume without deciding that a substantial right is at issue, any such right is not affected for purposes of R.C. 2505.02(B)(1) because there is an effective remedy by means of an appeal from final judgment. *See State ex rel. Lyons v. Zaleski*, 75 Ohio St.3d 623, 624-625 (1996). In addition, such an order does not "determine[] the action and prevent[] a judgment" because the denial of a motion to dismiss for forum non conveniens does not "dispose of the merits of the cause or some separate and distinct branch thereof [leaving] nothing for the determination of the court." *VIL*

[1] The provisions of R.C. 2505.02(B)(2)-(7) do not apply in this case.

Laser Sys., L.L.C. v. Shiloh Industries., Inc., 119 Ohio St.3d 354, 2008-Ohio-3920, ¶ 8, citing *Miller v. First Internatl. Fid. & Trust Bldg., Ltd.*, 113 Ohio St.3d 474, 2007-Ohio-2457, ¶ 6.

{¶5} In each of the cases underlying these appeals, Velotta moved to dismiss the case under the doctrine of forum non conveniens or, in the alternative, to stay the case pending arbitration. The trial courts denied both motions in their entirety. Because an order denying a motion to dismiss under the doctrine of forum non conveniens is not a final appealable order, our jurisdiction in these appeals is limited to considering whether the trial courts erred by denying the motions to stay pending arbitration. *See generally* R.C. 2711.02(C)/(D). We do not have jurisdiction to consider Velotta's second assignment of error and, to that extent only, the appeals are dismissed in part.

ASSIGNMENT OF ERROR I

THE TRIAL COURTS ERRED AS A MATTER OF LAW BY FAILING TO MANDATE ARBITRATION IN THE ACTION BELOW.

{¶6} Velotta's first assignment of error is that the trial court erred by denying its motion to stay pending arbitration. Specifically, Velotta has argued that the trial court incorrectly interpreted the language of the arbitration clause, leading to its conclusion that the contract between Velotta and Stantec did not mandate arbitration. This Court disagrees.

{¶7} Ohio's public policy strongly favors arbitration, as expressed in the Ohio Arbitration Act codified in R.C. Chapter 2711. *Taylor v. Ernst & Young, L.L.P.*, 130 Ohio St.3d 411, 2011-Ohio-5262, ¶ 18. Under R.C. 2711.02(B), a court may stay an action pending arbitration upon application of any party when the court is "satisfied that the issue involved in the action is referable to arbitration under an agreement in writing for arbitration[.]" In making this determination, courts must be mindful that because arbitration is a matter of contract, it is only appropriate when parties have agreed to submit their disputes to arbitration. *Academy of*

Medicine of Cincinnati v. Aetna Health, Inc., 108 Ohio St.3d 185, 2006-Ohio-657, ¶ 11. "An arbitration clause in a contract is generally viewed as an expression that the parties agree to arbitrate disagreements within the scope of the arbitration clause, and, with limited exceptions, an arbitration clause is to be upheld just as any other provision in a contract should be respected." *Id*. at ¶ 16, quoting *Williams v. Aetna Fin. Co*., 83 Ohio St.3d 464, 471 (1998).

{¶8} "In construing any written instrument, the primary and paramount objective is to ascertain the intent of the parties." *Aultman Hosp. Assn. v. Community Mut. Ins. Co.*, 46 Ohio St.3d 51, 53 (1989). If a contract can be given a definite legal meaning, its terms are unambiguous, and courts must look solely to the contract language to determine the intentions of the parties. *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849, ¶ 11-12. Because this issue is one of contract interpretation, our review is de novo. *Villas Di Tuscany Condominium Assn., Inc. v. Villas Di Tuscany*, 7th Dist. Mahoning No. 12 MA 165, 2014-Ohio-776, ¶ 9.

{¶9} The arbitration clauses at issue in this case provide:

> DISPUTE RESOLUTION: If requested in writing by either the CLIENT or STANTEC, the CLIENT and STANTEC shall attempt to resolve any dispute between them arising out of or in connection with this AGREEMENT by entering into structured non-binding negotiations with the assistance of a mediator on a without-prejudice basis. The mediator shall be appointed by agreement of the parties. If a dispute cannot be settled within a period of thirty (30) calendar days with the mediator, if mutually agreed, the dispute shall be referred to arbitration pursuant to laws of the jurisdiction in which the majority of the SERVICES are performed or elsewhere by mutual agreement.

The plain language of the clause is clear and reasonably susceptible to only one meaning: arbitration is mandatory only if the referral to arbitration is "mutually agreed" by the parties after mediation has failed. The sentence at issue presents two conditional clauses introduced by the word "if." Both conditional clauses relate to the same main clause: "the dispute shall be referred

to arbitration* * *." In other words, both clauses establish conditions that must be met in order for arbitration to occur. This reading is not only grammatically sound, but logical. Only one party must request mediation of disputes. In contrast, as the clause "if mutually agreed" makes plain, both parties must agree to arbitration after mediation has failed.

{¶10} Velotta has argued that the real meaning of this language is that the parties must mutually agree that a dispute has not been resolved within the thirty day window for mediation, but this interpretation of the language strains credibility. There is no reason, logically or grammatically, that the parties must mutually agree that a dispute has not settled. It either has, or it hasn't. On the other hand, the dispute resolution clause as a whole warrants the distinction between one party electing to pursue mediation while the agreement of both parties is necessary to refer the matter to arbitration, which is binding. *See generally Schaefer v. Allstate Ins. Co.*, 63 Ohio St.3d 708, 711 (1992) (observing that, for purposes of R.C. Chapter 2711, "[f]or a dispute resolution procedure to be classified as 'arbitration,' the decision rendered must be final, binding and without any qualification or condition as to the finality of an award whether or not agreed to by the parties").

{¶11} The dispute resolution clause at issue in this case is clear and reasonably susceptible to only one meaning: both parties must agree that disputes should be referred to arbitration. Stantec did not agree to arbitrate the disputes at issue, and consequently, the trial courts did not err by denying Velotta's motions to stay pending arbitration under R.C. 2711.02. Velotta's first assignment of error is overruled.

III.

{¶12} To the extent that Velotta has attempted to appeal from orders that are not final and appealable, we do not have jurisdiction to address the second assignment of error, and these

appeals are dismissed in part. Velotta's first assignment of error is overruled and, in that respect, the judgments of the trial courts are affirmed.

Appeals dismissed in part
and judgments affirmed in part.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Medina, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

CARLA MOORE
FOR THE COURT

HENSAL, P. J.
WHITMORE, J.
CONCUR.

APPEARANCES:

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