

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

MICHAEL G. GALLACHER	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
v.	:	
	:	
CITICARDS CBNA, CITIGROUP, INC.,	:	
AND CITIBANK, N.A.	:	
	:	
Appellant	:	No. 1117 MDA 2021

Appeal from the Order Dated July 22, 2021,
in the Court of Common Pleas of Lackawanna County,
Civil Division at No(s): 2021-00218.

BEFORE: PANELLA, P.J., KUNSELMAN, J., and KING, J.

JUDGMENT ORDER BY KUNSELMAN, J: **FILED: APRIL 6, 2022**

Citibank, N.A.; Citicards CBNA; and Citigroup, Inc. (“Citibank”) appeal from an order regarding a motion to compel arbitration in this dispute with Michael G. Gallacher, a Citibank credit-card holder. Mr. Gallacher challenges our jurisdiction, because the appealed-from order is interlocutory and non-appealable. **See** Gallacher’s Brief at 9-13. We agree and quash.

Because our decision rests on procedural grounds, we briefly state the underlying facts. In 2003, Mr. Gallacher and Citibank entered a credit-card agreement under South Dakota law. A decade later, Citibank sent Mr. Gallacher a new credit-card agreement that included a mandatory-arbitration provision. Citibank’s letter indicated Mr. Gallacher could opt out of arbitration by mailing a rejection to Citibank in Sioux Falls. Mr. Gallacher claimed that he mailed a rejection letter to the provided address; Citibank asserted it never received any such correspondence.

In the fall of 2018, a \$2,000 charge appeared on Mr. Gallacher's credit-card account, which he contested. Citibank refused to remove the charge. Mr. Gallacher sued Citibank in the Court of Common Pleas of Lackawanna County under various theories.

Citibank filed a responsive pleading in which it alleged in new matter that Gallacher's claims against Citibank are subject to a binding arbitration agreement. Gallacher denied that allegation in accordance with Pa.R.C.P. 1029(d).

The trial court explained the procedural dilemma that ensued:

Following the close of the pleadings, Citibank [moved] to compel individual arbitration . . . Instead of presenting a petition to compel arbitration in order to obtain a date and time for an evidentiary hearing, Citibank filed a Praecipe for Assignment seeking to have its motion scheduled "for oral argument," rather than an evidentiary hearing. (Docket Entry No. 7). Consequently, by notice dated June 7, 2021, the Deputy Court Administrator established deadlines for the filing of the parties' briefs and scheduled oral argument for July 22, 2021, at 9:00 AM. (Docket Entry No. 9).

Trial Court Opinion, 10/27/21, at 5.

At argument court, the parties offered conflicting affidavits to support their factual theories regarding whether they agreed to arbitration. The trial court found a genuine issue of material fact as to whether Mr. Gallacher had accepted or rejected the arbitration provision. Accordingly, the court entered an order denying the motion for arbitration without prejudice to bifurcate the issue of arbitrability and hold a hearing on the factual questions. **See** Trial Court Order, 7/22/21, at 2.

Citibank moved to bifurcate the issue of arbitrability, but it “never filed a Praeceptum for Assignment in compliance with Lacka Co. R.C.P. 211, so that the matter could be assigned to a judge, a briefing schedule established, and oral arguments scheduled.” Trial Court Opinion, 10/27/21, at 8. Three weeks later, Citibank filed this appeal.

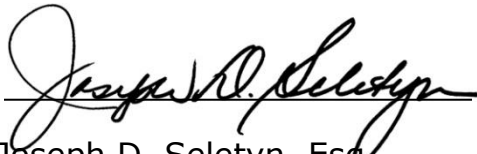
In deciding whether we have jurisdiction “the standard of review . . . is *de novo*, and the scope of review is plenary.” ***In re Admin. Order No. 1-MD-2003***, 936 A.2d 1, 5 (Pa. 2007) (case citations and some punctuation omitted). “The appealability of an order directly implicates the jurisdiction of the court asked to review the order.” ***In re Est. of Cella***, 12 A.3d 374, 377 (Pa. Super. 2010). The General Assembly permits an appeal as of right from an “order denying an application to compel arbitration” 42 Pa.C.S.A. § 7320.

Here, the trial court’s order is not a denial of arbitration. Instead, the trial court held the issue of arbitrability in abeyance until Citibank proceeds to an evidentiary hearing on whether Mr. Gallacher accepted its 2015 offer of arbitration. So far, based on its pleadings, Citibank has only offered their version of events, including an unsigned arbitration agreement. It has not established “a meeting of the minds or mutual assent on all essential terms.” ***Melstad v. Kovac***, 723 N.W.2d 699, 707 (S.D. 2006). Whether Citibank can establish the parties reached an agreement to arbitrate the dispute has yet to be determined. Because the appeal is premature, we quash.

Appeal quashed. Case stricken from the argument list.

J-A10021-22

Judgment Entered.

A handwritten signature in black ink, reading "Joseph D. Seletyn". The signature is written in a cursive style and is positioned above a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/6/2022