

PRIORITY SEND

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL

Case No. EDCV 12-00886 VAP (OPx) Date: December 4, 2012

Title: CILLUFFO, et al. -v- CENTRAL REFRIGERATED SERVICES, INC., et al.

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PRESENT: HONORABLE VIRGINIA A. PHILLIPS, U.S. DISTRICT JUDGE

Marva Dillard
Courtroom Deputy

None Present
Court Reporter

ATTORNEYS PRESENT FOR
PLAINTIFFS:

ATTORNEYS PRESENT FOR
DEFENDANTS:

None

None

PROCEEDINGS: MINUTE ORDER DENYING DEFENDANTS' EX PARTE
APPLICATION (IN CHAMBERS)

Before the Court is an Ex Parte Application for an Order (1) Extending the Time For Filing Notice of Appeal 30 Days to Allow Time for Regularly Noticed Hearing, or (2) Shortening Time For Hearing Motion for Reconsideration with Respect to November 8, 2012 Order (Doc. No. 64) ("Application") filed by Defendants Central Refrigerated Service, Inc., Central Leasing, Inc., Jon Isaacson, and Jerry Moyes (collectively, "Defendants"). Plaintiffs Gabriel Cilluffo, Kevin Shire, and Bryan Ratterree (collectively, "Plaintiffs") filed an Opposition on November 19, 2012 (Doc. No. 66).

On September 24, 2012, the Court issued an Order (Doc. No. 53) ("9/24/12

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Order") compelling arbitration of Plaintiffs' claims subject to the Utah Uniform Arbitration Act ("UUAA") and staying proceedings pending arbitration. On November 8, 2012, the Court, at the request of the parties, issued an Order (Doc. No. 61) ("11/8/12 Order") providing clarification of its 9/24/12 Order. In clarifying, the Court stated that 1) Plaintiffs' FLSA claims should be collectively arbitrated while Plaintiffs' forced labor claim should be arbitrated on an individual basis; 2) the statute of limitations is tolled until the stay is lifted; and 3) notices of consent to sue shall be filed with the Court as well as the arbitrator.

Defendants seek an extension to file a notice of appeal from the Court's 11/8/12 Order, or, in the alternative, an order shortening time for hearing a motion for reconsideration of that same order.

Defendants may not appeal as a matter of right from the Court's 11/8/12 Order. Defendants, therefore, fail to demonstrate good cause and their Application is denied.

Both Plaintiffs and Defendants base their argument regarding appeal rights on the Federal Arbitration Act ("FAA"). Under the FAA, an order compelling arbitration is not appealable. 9 U.S.C. § 16; Bagdasarian Prods., LLC v. Twentieth Century Fox Film Corp., 673 F.3d 1267, 1273 (9th Cir. 2012). The FAA, however, is inapplicable here. The Court found, in its 9/24/12 Order, that the FAA did not apply, and refused to compel arbitration under the FAA. Instead, arbitration was compelled under the UUAA. Because the order compelling arbitration was not under the FAA, the appealability of the 11/8/12 Order is determined under basic finality principles.

The Court of Appeals has jurisdiction to hear appeals from all "final decisions" of the district courts. 28 U.S.C. § 1291. If the "matter remains open, unfinished or inconclusive, there may be no intrusion by appeal." Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541, 546 (1949).

There is no final decision or judgment here. Orders compelling arbitration and stays pending arbitration are not immediately appealable. Abernathy v. Southern Calif. Edison, 885 F.2d 525, 526 (9th Cir. 1989). Defendants argue that the 11/8/12 Order is not an order compelling arbitration, but rather, effectively constitutes a

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denial of Defendants' motion to compel arbitration. (App. at 1 n.1.) Defendants' argument is contradicted by the 11/8/12 Order itself. The Court's 11/8/12 Order only clarified the 9/24/12 Order; the Court still compelled arbitration. Defendants also argue that whether there is an appeal as a matter of right from the 11/8/12 Order is a question that can only be definitively decided by the Ninth Circuit. (App. at 2.) While this is certainly true, the Court must assess whether there is an appeal right in determining whether there is good cause to grant the Application to extend the deadline for appeal.

Here, the Court compelled arbitration and stayed the action pending arbitration. The Court's 9/24/12 Order compelled arbitration and the 11/8/12 Order clarified that order, but still compelled arbitration. Therefore, there is no appeal as a matter of right from the 11/8/12 Order. See Abernathy, 885 F.2d at 526. Defendants have failed to demonstrate good cause.

Accordingly, Defendants' Ex Parte Application is DENIED.

IT IS SO ORDERED.