

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
LUCAS COUNTY

Fry Brothers Heating and  
Air Conditioning Co., Inc.

Court of Appeals No. L-11-1124

Trial Court No. CI0201002496

Appellee

v.

Directory Assistants, Inc., et al.

**DECISION AND JUDGMENT**

Appellants

Decided: May 11, 2012

\* \* \* \* \*

Marshall D. Wisniewski, for appellee.

Christopher R. Conard and Sasha Alexa M. VanDeGrift, for appellants.

\* \* \* \* \*

**OSOWIK, J.**

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas denying appellants' motion to stay pending arbitration. For the reasons set forth more fully below, this court affirms the judgment of the trial court.

{¶ 2} Appellants set forth the following four assignments of error:

1. The trial court erred by granting Fry Brothers' time-barred motion to vacate the arbitration award.
2. The trial court erred by denying DAI's motion to confirm the arbitration award.
3. The trial court erred by finding that Fry Brothers' claims against Cassin were not arbitrable.
4. The trial court erred by denying DAI's motion for summary judgment because the arbitrator's award is *res judicata* on the issues in this case.

{¶ 3} This case stems from a May 24, 2007 consulting contract executed between Directory Assistants, Inc. ("DAI"), appellant, and Fry Brothers Heating and Air Conditioning Co., Inc. ("Fry Brothers"), appellee. Daniel Cassin negotiated the contract between DAI and Fry Brothers. In 2009, a dispute arose between the parties regarding the terms of the consulting contract. On December 3, 2009, in accordance with the "Resolution of Dispute" section of the contract, appellant sent appellee correspondence furnishing the requisite notice of intent to arbitrate the underlying dispute.

{¶ 4} The initial arbitration hearing was scheduled for February 4, 2010. It was continued so that the possibility of a voluntary settlement could be explored. Ultimately, no settlement was attained. Thus, a new hearing was scheduled for March 29, 2010. On March 4, 2010, appellee filed a complaint for rescission of contract in the trial court

against both DAI and Cassin. In the complaint, appellee alleged fraudulent inducement, false representations, negligent representation, and that appellants' conduct was in conscious disregard of appellee's rights.

{¶ 5} On March 26, 2010, appellants filed a motion to stay pending arbitration. On March 29, 2010, the arbitration was conducted. On April 9, 2010, a decision in appellants' favor in the amount of \$76,727.82 was issued. On July 1, 2010, appellants filed a motion to confirm the arbitration award and a motion for summary judgment. Appellee filed a motion to vacate the arbitration award.

{¶ 6} On May 4, 2011, the trial court denied appellants' motion to confirm, denied appellants' motion for summary judgment, and granted appellee's motion to vacate. In the same order, the trial court granted appellants' motion to stay pending arbitration for the claims appellee had against DAI, but denied the motion to stay the claims appellee had against Cassin.

{¶ 7} On July 8, 2011, appellants filed a brief with this court. On July 20, 2011, appellee filed a motion to dismiss the appeal for lack of a final appealable order. On August 18, 2011, this court granted in part, and denied in part, appellee's motion to dismiss. This court held that the lower court's judgment denying a stay pending arbitration regarding the claims against Cassin was a final appealable order. In conjunction with this, we held that the lower court's order vacating the arbitration award was not a final appealable order.

{¶ 8} This prior determination in this matter renders appellants' first, second, and fourth assignments of error moot. This court ruled that the appeal should proceed only as to the order of the trial court denying appellants' motion to stay appellee's claims against Cassin pending arbitration.

{¶ 9} The standard of review on a motion to stay is abuse of discretion. A review of appellants' brief reveals that they assigned no error to the trial court's denial of their motion to stay. Even assuming *arguendo* that it is properly up for review by this court, which is likewise debatable given our earlier ruling, we find appellants' assertion to nevertheless be without merit. Cassin was not a party to the arbitration agreement. Claims against Cassin in his individual capacity were not subject to arbitration and thus the trial court properly denied the stay pending arbitration. We find no abuse of discretion by the trial court. We find the appellants' third assignment of error not well-taken.

{¶ 10} Wherefore, we hereby affirm the judgment of the Lucas County Court of Common Pleas. Pursuant to App.R. 24, appellants are ordered to pay the costs of this appeal.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.  
*See also* 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

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JUDGE

Arlene Singer, P.J.

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JUDGE

Thomas J. Osowik, J.  
CONCUR.

\_\_\_\_\_  
JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:  
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.