

A COURT ORDER GRANTING OR DENYING A STAY OF COURT'S PROCEEDING PENDING ARBITRATION IS IMMEDIATELY APPEALABLE



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The Ohio Supreme Court, in the case of *Mynes v. Brooks* (2009), 124 Ohio St.3d 13, 2009-Ohio-5946, issued an important ruling dealing with the appealability of a court order granting or denying a stay of a trial court's proceeding, pending arbitration. The Court in *Mynes* held that an order granting or denying a stay, pending arbitration, issued under O.R.C 2711.02(B), is a final appealable order under O.R.C 2711.02(C). Therefore, every time a party to litigation moves a court to stay the trial pending an arbitration, the judge's ruling, whether granting or denying the motion, will be an order which can be immediately appealed. The *Mynes* opinion will have a broad impact as arbitration clauses are often included in various contracts, including real estate transactions and nursing home admissions.

In *Mynes*, the plaintiffs were purchasers of a house which, unbeknownst to them at the time of purchase, contained mold and structural defects. The Mynes sued the defendants alleging that the home inspectors had negligently failed to discover and report the defects in the home. The contract between the Mynes and the home inspectors contained an arbitration provision. The Mynes originally agreed to stay the claims against the home inspectors pending the arbitration, but then subsequently filed a motion for relief from the order staying the proceedings. The trial court granted the plaintiffs' motion, effectively denying a stay in the proceeding pending the arbitration, ordering the home inspectors to participate in the lawsuit.

The home inspectors filed an appeal from the order denying their motion to stay the proceeding pending arbitration. On appeal, the Fourth District Court of Appeals dismissed the home inspectors' appeal. The Fourth District held that the order may have been a final order, but pursuant to the Civil Rules, it was not deemed an appealable order. Generally, under the Civil Rules, a trial court in its order has to determine that an order should be appealable. The trial court makes this determination in order to further the efficient administration of justice and to avoid piecemeal litigation. The Ohio Supreme Court ultimately ruled that a trial court need not make this determination when dealing with a motion to stay the proceedings pending arbitration. The Supreme Court recognized that Ohio legislators had already provided that an order, either granting or denying a stay in trial proceedings pending arbitration, was a final appealable order, which would be immediately appealable, when they enacted O.R.C. 2711.02(C).

The Ohio Supreme Court also looked to the analogous case of *Sullivan v. Anderson Twp.* (2009), 122 Ohio St.3d 83, which involved a statute similarly worded, and found that the statute in that case permitted an immediate appeal following a determination concerning the applicability of political subdivision immunity.

The *Mynes*' opinion will have a noticeable impact on litigation involving arbitration provisions. Generally, in the course of litigation, if an arbitration provision applies, a party will raise this issue early, in an attempt to stay the proceeding. Now, under the *Mynes*' opinion, a motion to stay the proceeding pending arbitration filed early in the litigation will provide one party the right to an immediate appeal. This additional step will inevitably delay some proceedings. Both plaintiffs and defendants should be aware of this issue and be ready to address an appeal early in the litigation, if an arbitration provision or agreement may apply.

If you would like a full copy of the opinion, or if you have other questions relating to arbitration provisions in general, or those that are used in specific agreements such as real estate, construction or nursing home and assisted living admissions, please feel free to call upon one of our Practice Area Leaders.

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