

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

NICOLE ZENTNER, individually and on behalf of all others similarly situated,	:	
	:	
	:	
ANDREW KIVETT, individually and on behalf of all others similarly situated, Plaintiffs	:	No. CV-20-1193
	:	
v.	:	
	:	Superior Court Docket
BRENNER CAR CREDIT, LLC and PAXTON SECURITIES CO., Defendants	:	751 MDA 2021
	:	
	:	APPEAL

Date: June 25, 2021

**OPINION IN SUPPORT OF THE COURT’S MAY 19, 2021 ORDER
IN COMPLIANCE WITH RULE 1925(a) OF THE
RULES OF APPELLATE PROCEDURE**

Brenner Car Credit, LLC and Paxton Securities, Co. (hereinafter referred to as “Appellants”) filed this appeal following the issuance of this Court’s Order docketed May 19, 2021, overruling their sole preliminary objection. The Notice of Appeal was timely filed on June 8, 2021. For the reasons set forth below, the Court has not ordered Appellants to file a Concise Statement of Matters Complained of on Appeal.

An appeal may be taken as of right when the order issued by the trial court is final. Pa.R.A.P. 341(a). A final order is defined as one that disposes of all claims and of all parties. Pa.R.A.P. 341(b)(1). An interlocutory order, on the other hand, “does not place either a party or a claim out of court.” *F.D.P. v. Ferrara*, 804 A.2d 1221, 1226 (Pa. Super. 2002). An interlocutory order may be appealed by permission pursuant to 42 Pa.C.S.A. § 702(b)¹ or as of right pursuant to Pa.R.A.P. 311.² “An order denying a

¹ “When a court . . . shall be of the opinion that [an interlocutory] order involves a controlling question of

party's preliminary objections is an always has been defined as an interlocutory order." *F.D.P.*, 804 A.2d at 1226.

This Court's May 19, 2021 Order does not put any litigant out of court and disposes of no claims. The Order simply renders an arbitration clause inapplicable and unenforceable. The parties will be litigating the exact same claims, but the issue must be litigated before the Court rather than before an arbitration panel. Therefore, it is not a final Order and cannot be certified under Pa.R.A.P. 341(c). The interlocutory Order is also not appealable by right under Pa.R.A.P. 311 as it does not fit in any of the eight enumerated categories. Additionally, no petition was filed asking for permission to take appeal pursuant to Pa.R.A.P. 1311. For these reasons, the appeal should be quashed.

Even if the appeal is not quashed due to the procedural deficits set forth above, the appeal nevertheless fails substantively. The May 18, 2021 Opinion is considered the

law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the matter, it shall so state in such order. The appellate court may thereupon, in its discretion, permit an appeal to be taken from such interlocutory order."

² An appeal may be taken as of right and without reference to Pa.R.A.P. 341(c) from:

(1) *Affecting judgments*.--An order refusing to open, vacate, or strike off a judgment. If orders opening, vacating, or striking off a judgment are sought in the alternative, no appeal may be filed until the court has disposed of each claim for relief.

(2) *Attachments, etc.*--An order confirming, modifying, dissolving, or refusing to confirm, modify or dissolve an attachment, custodianship, receivership, or similar matter affecting the possession or control of property, except for orders pursuant to 23 Pa.C.S. §§ 3323(f), 3505(a).

(3) *Change of criminal venue or venire*.--An order changing venue or venire in a criminal proceeding.

(4) *Injunctions*.--An order that grants or denies, modifies or refuses to modify, continues or refuses to continue, or dissolves or refuses to dissolve an injunction unless the order was entered:

(i) Pursuant to 23 Pa.C.S. §§ 3323(f), 3505(a); or

(ii) After a trial but before entry of the final order. Such order is immediately appealable, however, if the order enjoins conduct previously permitted or mandated or permits or mandates conduct not previously mandated or permitted, and is effective before entry of the final order.

(5) *Peremptory judgment in mandamus*.--An order granting peremptory judgment in mandamus.

(6) *New trials*.--An order in a civil action or proceeding awarding a new trial, or an order in a criminal proceeding awarding a new trial where the defendant claims that the proper disposition of the matter would be an absolute discharge or where the Commonwealth claims that the trial court committed an error of law.

(7) *Partition*.--An order directing partition.

Opinion of the Court in support of its Order and provides a comprehensive analysis of the Trial Court's decisions and findings of fact. The Trial Court's May 19, 2021 Order should be affirmed and Plaintiff's appeal quashed.

BY THE COURT,

Ryan M. Tira, Judge

RMT/ads

cc: Superior Court (Original +1)
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