

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

TRUSTAFF TRAVEL NURSING, LLC,	:	APPEAL NO. C-060882
f/k/a EXPRESS HEALTHCARE	:	TRIAL NO. A-0606651
STAFFING, INC.,	:	
	:	<i>JUDGMENT ENTRY.</i>
Plaintiff-Appellee,	:	
	:	
vs.	:	
	:	
ABSOLUTE NURSING, LLC,	:	
	:	
Defendant,	:	
	:	
and	:	
	:	
JEROME CALIA,	:	
	:	
TIMOTHY J. THOMAN,	:	
	:	
and	:	
	:	
SONDRA RYLE,	:	
	:	
Defendants-Appellants,	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

In a single assignment of error, defendant-appellants Jerome Calia, Timothy J. Thoman, and Sondra Ryle assert that the trial court erred when it denied their collective motion to stay this case pending arbitration. We find no such error and affirm.

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

The three appellants were employed by plaintiff-appellee Trustaff Travel Nursing, LLC. Trustaff was engaged in the business of recruiting and placing nurses in employment at various hospitals throughout the country. Appellants had been hired by Trustaff to recruit nurses and to place them at hospitals that had accounts with Trustaff.

At the time that their employment commenced, each of them signed a document entitled “Confidentiality, Non-Disclosure and Non-Use Agreement.” There was also a separate agreement entitled “Employment Agreement.”

Appellants later left Trustaff and joined defendant Absolute Nursing, LLC. Trustaff claimed that appellants took information from Trustaff when they left their employment and then entered into direct competition with Trustaff using that information.

Trustaff commenced this action by seeking a temporary restraining order to prevent appellants and Absolute Nursing from further use of the information. Trustaff also claimed (1) that appellants had breached their agreements; (2) that Absolute Nursing had conspired with appellants to breach the agreements; (3) that Trustaff was entitled to injunctive relief; and (4) that Trustaff was entitled to compensatory and punitive damages.

Appellants, Absolute Nursing, and Trustaff reached an agreement on the temporary restraining order. Appellants then filed a motion to dismiss and an alternate motion to stay the proceedings, claiming that the dispute was subject to an arbitration clause in the “Employment Agreement” signed by each appellant. The trial court

concluded that the clause did not apply and denied the motion. After a de novo review of the issue,<sup>2</sup> we agree.

The arbitration provision in the “Employment Agreement” provided, in relevant part, that “[t]he parties agree that any dispute or claim concerning this Agreement, the terms or conditions of employment or termination of employment, \* \* \* including whether such claim or dispute is arbitral, will be settled by arbitration \* \* \*.”

The claims Trustaff made that invoked the “Employee Agreement” related to the section titled “Noncompetition.” In that section, the parties agreed that “[i]n the event of a breach or a threatened breach by the Employee or his or her Related Parties *of the provisions of this section*, the Employer shall be entitled to an injunction restraining an Employee or his or her Related Party from taking any proscribed action hereunder. *Nothing herein shall be construed as prohibiting the Employer from pursuing any other remedies available for such breach or threatened breach, including the recovery of damages.*” (Emphasis added.)

Notwithstanding the broad language of the arbitration provision, the contract treated breaches of the “Noncompetition” covenants differently than any other part of that agreement and specifically disclaimed any limitation on Trustaff’s ability to litigate a breach. “Arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which it had not agreed to submit \* \* \*.”<sup>3</sup> Under these circumstances, the arbitration clause in the “Employment Agreement” did not apply to alleged breaches arising from the “Noncompetition” section of the contract.

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<sup>2</sup> *Dunkelman v. Cincinnati Bengals*, 158 Ohio App.3d 604, 2004-Ohio-6425, 821 N.E.2d 198, ¶20.

<sup>3</sup> *Id.* at ¶31, quoting *Council of Smaller Enterprises v. Gates McDonald & Co.*, 80 Ohio St.3d 661, 665, 1998-Ohio-172, 687 N.E.2d 1352.

On the other hand, the “Confidentiality, Non-Disclosure and Non-Use Agreement” contained no arbitration clause and made no reference to the arbitration clause in the “Employment Agreement.” In fact, the document specified that Trustaff “reserve[d] the right to seek monetary damages in connection with a breach of this letter.” Thus, not only did this document fail to include an agreement to arbitrate, it expressly contemplated litigation for the claims that Trustaff asserted in this case.

In conclusion, appellants’ motion to stay this case pending arbitration was properly denied. The arbitration clause in the “Employment Agreement” did not apply to the sections made relevant by this litigation, and the “Confidentiality, Non-Disclosure and Non-Use Agreement” contained no arbitration clause.

Therefore, the judgment of the trial court is affirmed.

Further, a certified copy of this Judgment Entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**PAINTER, P.J., HILDEBRANDT and DINKELACKER, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on September 5, 2007  
per order of the Court \_\_\_\_\_  
Presiding Judge