IN THE SUPREME COURT OF MISSISSIPPI

NO. 2010-CA-00653-SCT

MARK WOLGIN

v.

EXPERIAN INFORMATION SOLUTIONS, INC.
AND TRANS UNION LLC

DATE OF JUDGMENT:	03/19/2010
TRIAL JUDGE:	HON. D. NEIL HARRIS, SR.
COURT FROM WHICH APPEALED:	JACKSON COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANT:	BLEWETT W. THOMAS
ATTORNEYS FOR APPELLEES:	KACY GOEBEL ROMIG F. EWIN HENSON, III MARTIN E. THORNTHWAITE MICHAEL BRYAN DICKINSON
NATURE OF THE CASE:	CIVIL - TORTS - OTHER THAN PERSONAL INJURY & PROPERTY DAMAGE
DISPOSITION:	AFFIRMED - 11/29/2012
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

CONSOLIDATED WITH

NO. 2010-CA-01177-SCT

THE POWER BROKER, INC. AND ROBIN SPENCE
d/b/a THE POWER BROKER, INC.

v.

MARK WOLGIN

DATE OF JUDGMENT:	06/22/2010
TRIAL JUDGE:	HON. D. NEIL HARRIS, SR.
COURT FROM WHICH APPEALED:	JACKSON COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANTS:	W. EDWARD HATTEN, JR.
ATTORNEY FOR APPELLEE:	BLEWETT W. THOMAS

NATURE OF THE CASE:	CIVIL - TORTS - OTHER THAN PERSONAL INJURY & PROPERTY DAMAGE
DISPOSITION:	REVERSED AND REMANDED - 11/29/2012
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

EN BANC.

RANDOLPH, JUSTICE, FOR THE COURT:

¶1. This consolidated appeal stems from a lawsuit in which Mark Wolgin sued various entities alleging wrongdoing surrounding his 2006 purchase of a condominium on the Gulf Coast. In Cause #2010-CA-00653-SCT, Wolgin appeals the Chancery Court of Jackson County's decision to dismiss two credit reporting agencies (Trans Union LLC and Experian Information Solutions, Inc. ("Experian")), finding that claims against them were preempted by the Fair Credit Reporting Act ("FCRA"). In Cause #2010-CA-01177-SCT, the broker for the sale, The Power Broker, Inc. ("Power Broker"), appeals the Chancery Court of Jackson County's decision to order discovery on the scope of the mandatory arbitration clause in the "Contract for the Sale and Purchase of Real Estate" ("purchase agreement"), instead of fully granting its "Motion to Compel Arbitration."

¶2. Regarding Wolgin's appeal, we affirm the trial court's order dismissing the credit reporting agencies, as Wolgin's claims are preempted by the FCRA. As to Power Broker's appeal, we reverse the trial court judgment ordering discovery and remand with instructions to stay the proceedings and refer the matter to arbitration.

FACTS AND PROCEDURAL HISTORY

¶3. In 2006, Wolgin purchased a condominium in Jackson County, Mississippi, from Ante Bellum, LLC, with plans to rent the property. Power Broker, owned by Robin Spence, was the broker for the sale. The purchase agreement contained a broad mandatory arbitration clause requiring arbitration for "any controversy, claim, action or inaction arising out of, or relating to, the 'purchase' set out herein."

¶4. Following Wolgin's purchase, the condominium sustained a loss in market value and a decrease in rental income. In November 2009, Wolgin filed a "Complaint for Contract Rescission and Damages" against multiple defendants.[1] The Complaint alleged that factors such as the state of the condominium, the rental market in Jackson County, and how the property would be managed after purchase were misrepresented to induce his purchase. The Complaint also included claims of negligence and invasion of privacy against credit reporting agencies for the inclusion of information regarding the condominium-purchase transaction in Wolgin's consumer credit reports.

¶5. On January 15, 2010, Experian moved to dismiss Wolgin's credit reporting-related claims, arguing they were preempted by the FCRA. On March 19, 2010, the trial court granted Experian's motion. On May 19, 2010, Trans Union filed a Motion to Dismiss Plaintiff's Complaint, which joined Experian's Motion to Dismiss. On June 22, 2010, the court granted Trans Union's motion. Wolgin timely appealed these dismissals.

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[1]Notably, the Complaint failed to attach any contract.

¶6. On April 9, 2010, Power Broker filed its "Separate Answer and Defenses." The first defense asserted was a "Motion to Dismiss and Compel Arbitration," based upon the mandatory arbitration clause in the purchase agreement. The purchase agreement, signed by Wolgin, was attached to the pleading.[2] That same day, Power Broker filed a "Motion to Compel Arbitration and Incorporated Memorandum of Law in Support Thereof," subsequently joined by Spence.

¶7. At the hearing on Power Broker's "Motion to Compel Arbitration," Wolgin argued that some claims in the Complaint centered around a property-management agreement, not the purchase agreement. At the close of hearing, the chancellor stated:

> I think I am compelled to compel arbitration. The difference here is you all have not done enough. . . . There has not been enough done to develop what is and what is not in the arbitration because of the word purchase that is used and put in quotes . . . .
>
> . . . I am going to sustain your motion as to compelling arbitration but I am staying the arbitration. I want you [sic] stay that until you develop what is and what isn't. The management contract will not be subject to the arbitration, whether it is orally, written, or otherwise. It will not be subject, but the purchase will be. You have to determine which is and which isn't. I want y'all to develop it.
>
> . . . You have to be able to tell me what the word purchase applies to. . . .
>
> . . . I am granting the arbitration but I am staying it. You are enjoined from proceeding with arbitration until you conduct some discovery.

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[2]The purchase agreement is the only contract that appears in the record. Although Wolgin later argued that he had claims arising under a separate property-management agreement, the Complaint did not mention a property-management agreement, and the record does not include a property-management agreement.

The June 22, 2010, Order of the trial court stated, "the [m]otion for arbitration is granted in part and denied in part. It is granted to the extent that the parties are directed to do discovery on what part of the transaction involves a purchase. The arbitration is stayed, pending for six (6) months, from June 7, 2010." Pursuant to ***Tupelo Auto Sales v. Scott***, 844 So. 2d 1167, 1170 (Miss. 2003), Power Broker and Spence timely appealed, arguing that the trial court should have compelled arbitration with respect to Wolgin's claims against them.

I. Whether the trial court erred in finding that Wolgin was a consumer under the FCRA, such that his negligence and invasion of privacy claims against Trans Union and Experian were preempted.

¶8. This Court reviews a motion to dismiss de novo, and will not disturb the findings of the trial court "unless they are manifestly wrong, clearly erroneous or an erroneous legal standard was applied." ***Estate of Johnson ex rel. Shaw v. Graceland Care Ctr. of Oxford***, 41 So. 3d 692, 694-95 (Miss. 2010). In our review, all allegations in the complaint are taken as true. *See* ***id***.

¶9. This Court has recognized that the FCRA explicitly preempts state law. *See* ***Harmon v. Regions Bank***, 961 So. 2d 693 (Miss. 2007); 15 U.S.C. § 1681h(e) (2006) ("no consumer may bring any action or proceeding in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any consumer reporting agency" based on information disclosed in a consumer report).

¶10. Wolgin claims that Trans Union and Experian were negligent and invaded his privacy by placing the condominium's mortgage on his consumer credit report. According to Wolgin, his purchase of the condominium as an investment makes this an "exempted

transaction" under the FCRA, such that his claims are not preempted. Wolgin's argument is centered on the definitions of "consumer transaction" and "exempted transaction" provided in 15 U.S.C. §§ 1602 and 1603. 15 U.S.C. §§ 1602 & 1603 (2006) (exempting transactions made primarily for business, commercial, or agricultural purposes, and defining a "consumer transaction" as one made primarily for personal, family, household, or agricultural purposes). Experian counters that those definitions are inapplicable to the FCRA, that Wolgin is clearly a "consumer" as defined by the FCRA, and, therefore, that his state-law claims are preempted.

¶11. Experian is correct that 15 U.S.C. §§ 1602 and 1603 are inapposite. Both explicitly apply to only "this subchapter," i.e., Subchapter I: Consumer Credit Cost Disclosure, a part of the Truth in Lending Act. They do *not* apply to the FCRA. The relevant portions of the FCRA applicable to this case are found in Subchapter III.

¶12. The FCRA defines the term "consumer" as "an individual." 15 U.S.C. § 1681a(c) (2006). By contrast, it defines the term "person" as "any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity." 15 U.S.C. §1681a(b) (2006). These statutory definitions reflect that a consumer is a human individual, as opposed to a legally-created entity. Wolgin is clearly an individual, who purchased the condominium in his capacity as an individual. Thus, the mortgage was properly reported on his consumer credit report, regardless of the condominium's use or purpose. *See* ***Zahran v. Transunion Corp.***, 2003 WL 1733561, at *3 (N.D. Ill. March 31, 2003) ("business ventures on which the consumer is personally liable are rightfully included on a consumer credit report under the FCRA").

¶13. In support of the argument that his claims are not preempted, Wolgin cites several cases in which credit reporting agencies have argued successfully that a credit report they issued falls outside the scope of the FCRA because it involved business. But these cases have no bearing on whether Wolgin's claims fall within the purview of the FCRA. In citing these cases, Wolgin confuses the definition of "consumer" with the definition of "consumer report."[3] Determining whether a report is a "consumer report" within the FCRA, or a "business report" outside of it, centers on the purpose for which the report was *collected*, not the purpose for entering into the transaction listed on the report. *See* ***Boothe v. TRW Credit Data***, 523 F. Supp. 631, 634 (S.D.N.Y. 1981). Reports collected for business purposes do not fall under the FCRA.[4] But Wolgin's contentions have nothing to do with the purpose for which a report is collected.

¶14. The FCRA does not preempt state law where "false information [is] furnished with malice or willful intent to injure" the consumer. 15 U.S.C. § 1681h(e) (2006). According

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[3]A "consumer report" is defined as:

> any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for credit or insurance to be used primarily for personal, family, or household purposes.

15 U.S.C. § 1681a(d)(1)(A) (2006).

[4]An example is when a corporate entity applies for a business loan and the bank checks the credit report of the business's owner to assist in making its determination regarding extending credit to the corporate entity. Because the report is being used for a decision on the credit of a business, rather than credit for personal, family, or household purposes, the report falls outside the scope of the FCRA.

to Wolgin, he alleged that Experian and Trans Union committed gross negligence in reporting this transaction, because they did so "in disregard of the transaction's underlying facts." Thus, he contends that his claims are not preempted. Yet, given that it is clearly acceptable to place Wolgin's mortgage on his consumer credit report, this argument has no merit. Additionally, Wolgin does not plead malice or willful intent to injure in the Complaint, nor any facts that would tend to support malice. He merely alleges that the transaction has been reported with "deliberate indifference," which does not suffice to bring his claim within the exception to preemption. *See* ***Harmon***, 961 So. 2d at 699-700 (using the common-law standard for malice, and finding that plaintiffs did not show "the intent, without justification or excuse, to commit a wrongful act" because the defendants did not know of falsity nor publish in reckless disregard of the truth).

¶15. Because Wolgin's claims are clearly preempted by the FCRA, the trial court's dismissal of his Complaint as to Trans Union and Experian is affirmed.

II. Whether the trial court erred in "denying in part" Power Broker's "Motion to Compel Arbitration."

¶16. In ***Tupelo Auto Sales***, this Court declared that "an appeal may be taken from an order denying a motion to compel arbitration." ***Tupelo Auto Sales***, 844 So. 2d at 1170. In ***Sawyers v. Herrin-Gear Chevrolet Company***, 26 So. 3d 1026 (Miss. 2010), this Court stated:

> [w]e thus wish to establish via today's case but *one procedure* for this Court's review of a trial court's *grant or denial of a motion to compel arbitration*, and that one procedure shall be via a *direct appeal* pursuant to the provisions of Mississippi Rules of Appellate Procedure 3 & 4.

Sawyers, 26 So. 3d at 1032 (emphasis added). Accordingly, this Court has jurisdiction to consider the merits of this appeal.[5]

¶17. This Court has stated that "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration . . . ." ***East Ford, Inc. v. Taylor***, 826 So. 2d 709, 713 (Miss. 2002) (citations omitted). *See also* ***IP Timberland Operating Co., Ltd. v. Denmiss Corp.***, 726 So. 2d 96, 107 (Miss. 1998) (citation omitted) ("unless it can be said with positive assurance that an arbitration clause is not susceptible of an interpretation which would cover the dispute at issue, then a stay pending arbitration should be granted."). In deciding:

> whether a particular claim falls within the scope of the arbitration agreement[, courts] "focus on factual allegations *in the complaint* rather than the legal causes of action asserted. If the allegations underlying those claims 'touch matters' covered by the parties' . . . agreements, then those claims must be arbitrated, whatever the legal labels[[6]] attached to them."

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[5]The separate opinion makes reference to Mississippi Rule of Civil Procedure 54(b) in its *sua sponte* argument that the June 22, 2010, Order is "interlocutory," and that in the absence of an interlocutory appeal, this Court lacks jurisdiction. (Sep. Op. at ¶¶ 27, 31). Yet rulings on motions to compel arbitration are not final judgments for Rule 54(b) purposes, as they pertain only to the forum in which claim(s) should proceed, not a partial final judgment based on the underlying claims. This Court has stated that direct appeal remains the *sole* procedure for this Court's review of the trial court's judgment on the motion to compel arbitration. *See* ***Sawyers***, 26 So. 3d at 1032. Here, the trial court's order granted the motion to compel in part and denied it in part.

[6]It is unclear whether Wolgin's claims even have any "legal labels" which suggest that they did not arise under or are unrelated to the purchase agreement. While Wolgin now argues he may have "legal causes of action" arising under a property-management agreement, that agreement was neither attached to, nor referenced in, his twenty-nine-page Complaint, and is altogether absent from this record.

Furthermore, this Court would be remiss in failing to note that Wolgin's "Response to Motion to Compel Arbitration" expressly stated:

> prior to undertaking service on [Power Broker], the attorney for [Power Broker] was advised that [Wolgin] did ***not*** object to arbitration of the *entirety*

Scruggs v. Wyatt, 60 So. 3d 758, 766 (Miss. 2011) (citations omitted) (emphasis added). Wolgin's non-credit report claims related to his decision to purchase the condominium, financing of that purchase, and losses sustained as a result of allegedly being fraudulently induced to enter into the purchase agreement. Specifically, Wolgin's Complaint provided that if the defendants had not made the misrepresentations and omissions described therein, but instead had "made a candid disclosure to [Wolgin] of those facts and matters alleged [in the Complaint], *[Wolgin] would not have made a decision to purchase this condominium unit* . . . ." (Emphasis added.)

¶18. The allegations in Wolgin's Complaint indisputably touched matters covered by the purchase agreement, for the Complaint alleged that the defendants' fraudulent misrepresentations and omissions had induced him to purchase the condominium. Thus, despite Wolgin's subsequent argument that some of his claims related solely to a separate property-management agreement – which was neither referenced in the Complaint nor included in the record – all of the claims pleaded in his Complaint clearly touched the subject of the purchase agreement, i.e., Wolgin's condominium purchase.

¶19. But even assuming *arguendo* that some of Wolgin's claims did not directly relate to his condominium purchase under the purchase agreement, the mandatory arbitration clause expressly provided that "*all claims*" between the parties involved in the purchase agreement were to be governed by the Federal Arbitration Act, as follows:

> *of [Wolgin's] claims alleged in this [c]ause* on the condition that [Power Broker] pay any arbitration costs that were not assigned to or assumed by [Wolgin] under the terms of the Contract.

(Emphasis added.)

> *any* controversy, claim, action or inaction arising out of, or *relating to*, the "purchase" set out herein, as against the listing company or selling company and/or their agents or representatives (hereinafter "company") involved in this transaction, shall be resolved by arbitration . . . ; and . . . the Federal Arbitration Act . . . shall govern the interpretation and enforcement of this arbitration agreement *along with all claims between or among any parties and the company(ies) involved in this transaction*.

(Emphasis added.) Wolgin's claims that fraudulent misrepresentations and omissions induced him to enter into the purchase agreement were clearly "between or among [the] parties and the company(ies) involved in" the sale and purchase of the condominium.

¶20. As the question of whether arbitration should be required is controlled by his Complaint, we conclude that all of Wolgin's claims against Power Broker are arbitrable. *See **id***. Accordingly, the trial court erred by granting the motion to compel arbitration in part, denying it in part, and ordering the parties to engage in discovery. No authority existed for the trial court to "gran[t] the arbitration but . . . sta[y] it." Furthermore, once arbitration was granted, there is no authority to grant discovery. The scope of arbitration is determined by the arbitrator, not a court which has relinquished the dispute to another forum for disposition. Therefore, we reverse the trial court's judgment ordering discovery and remand with instructions to stay the proceedings and refer the claims contained in the Complaint to arbitration.

CONCLUSION

¶21. In Cause #2010-CA-00653-SCT, this Court affirms the trial-court orders dismissing Experian and Trans Union, as Wolgin's claims are clearly preempted by the FCRA. In Cause #2010-CA-01177-SCT, this Court reverses the trial court's judgment ordering discovery and

remands with instructions to stay the proceedings and refer the claims contained in the Complaint to arbitration.

¶22. **AS TO 2010-CA-00653-SCT: AFFIRMED. AS TO 2010-CA-01177-SCT: REVERSED AND REMANDED.**

WALLER, C.J., CARLSON, P.J., LAMAR AND PIERCE, JJ., CONCUR. KING, J., CONCURS IN PART AND DISSENTS IN PART WITH SEPARATE WRITTEN OPINION JOINED BY KITCHENS AND CHANDLER, JJ.; WALLER, C.J., JOINS IN PART. DICKINSON, P.J., NOT PARTICIPATING.

KING, JUSTICE, CONCURRING IN PART AND DISSENTING IN PART:

¶23. Because I disagree that we have the jurisdiction to address The Power Broker's appeal regarding its Motion to Compel Arbitration, I respectfully dissent from that portion of the majority.[7]

¶24. In 2006, Wolgin purchased a condominium in Jackson County, Mississippi, from Ante Bellum, LLC. The broker for the sale was The Power Broker, Inc. Wolgin's contract for sale and purchase of the condominium contained a broad mandatory arbitration clause requiring arbitration for "any controversy, claim, action or inaction arising out of, or relating to, the 'purchase' set out herein."

¶25. The Power Broker filed a Motion to Compel Arbitration. At the hearing on the motion, the parties' arguments centered around whether and which allegations in the complaint related to the purchase. Wolgin argued that some of the claims in the complaint centered around a property management contract, not the purchase contract. At the hearing, the chancellor stated:

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[7] I agree with the majority in its determination that Wolgin's claims against Experian and Trans Union are preempted by the FCRA.

> I think I am compelled to compel arbitration. The difference here is you all have not done enough. . . . There has not been enough done to develop what is and what is not in the arbitration because of the word purchase that is used and put in quotes . . . .
> . . . I am going to sustain your motion as to compelling arbitration but I am staying the arbitration. I want you [sic] stay that until you develop what is and what isn't. The management contract will not be subject to the arbitration, whether it is orally, written, or otherwise. It will not be subject, but the purchase will be. You have to determine which is and which isn't. I want y'all to develop it.
> . . . You have to be able to tell me what the word purchase applies to. . . .
> . . . I am granting the arbitration but I am staying it. You are enjoined from proceeding with arbitration until you conduct some discovery.

In its June 22, 2010, written order disposing of several motions, including the instant Motion to Compel, the court stated that "the Motion for arbitration is granted in part and denied in part. It is granted to the extent that the parties are directed to do discovery on what part of the transaction involves a purchase. The arbitration is stayed, pending for six (6) months, from June 7, 2010." The Power Broker appealed from the June 22, 2010, order, arguing that the court should have simply compelled arbitration with respect to all of Wolgin's claims against it.

¶26. Regardless of the merits of The Power Broker's arguments, I believe that this Court lacks jurisdiction over this appeal, as it is interlocutory, and The Power Broker did not seek permission for an interlocutory appeal under Mississippi Rule of Appellate Procedure 5.[8] The Power Broker states that this appeal is proper under ***Tupelo Auto Sales, Ltd. v. Scott***, 844 So. 2d 1167 (Miss. 2003), as an order denying its motion to compel arbitration. Wolgin does not contest jurisdiction. "Though the right of the appellant to appeal is not contested

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[8] I do not disagree with the majority's analysis of the appeal on the merits, only with the assessment that we have the jurisdiction to address the merits in the first place.

by appellees, it is nevertheless the duty of this Court to raise the question which involves jurisdiction, on its own motion, of whether this appeal from the interlocutory decree will lie." ***Slater v. Bishop***, 169 So. 2d 465, 467 (Miss. 1964). When an order that does not dispose of all claims of all parties and issues is not the subject of a Rule 54(b) certificate, the order is interlocutory. ***M.W.F. v. D.D.F.***, 926 So. 2d 897, 900 (Miss. 2006). If this Court does not grant permission for an interlocutory appeal, it lacks jurisdiction to consider the appeal. ***Id.***

¶27. In ***Tupelo Auto Sales***, this Court adopted the procedure of the Federal Arbitration Act in allowing a direct appeal to be taken from an order denying a motion to compel arbitration. ***Tupelo Auto Sales***, 844 So. 2d at 1170. It is upon this premise that The Power Broker bases its right to appeal, because the trial court's order stated that it "denied in part" the motion. This Court expanded that premise in ***Sawyers v. Herrin-Gear Chevrolet Company, Inc.***, finding that "any *final* decision with respect to arbitration is appealable to this Court pursuant to [Mississippi Rules of Appellate Procedure] 3 and 4." ***Sawyers v. Herrin-Gear Chevrolet Co., Inc.***, 26 So. 3d 1026, 1034 (Miss. 2010) (emphasis added). This Court analyzed the meaning of "final decision" and found that "an order compelling arbitration which disposes of *all the issues before the trial court* or orders the *entire controversy* to be arbitrated is a final decision." ***Id.*** (emphasis added). The Court emphasized that "when binding arbitration is compelled, there is nothing left for the court to do but enforce the award." ***Id.*** at 1032; *see also* ***id.*** at 1033-34 ("the trial court has nothing left to do but supervise compliance with an order for arbitration or enforce an arbitration award. . . . Thus, '[t]here is nothing interlocutory about an order compelling arbitration that does all the court has to do.'" (citations omitted) (alterations in original)).

¶28. In this case, the trial court stated that it was granting the motion in part, denying it in part, staying arbitration, and ordering discovery.[9] The substance of the court's order is that it did not make a final decision on the motion to compel arbitration. The court acknowledged that it must compel arbitration at least in part, but determined that it could not ascertain the proper scope of arbitration without more information, and thus ordered discovery. The court did not state which claims it was sending to arbitration or which claims it would retain, if any.[10] It merely asked for more information with which to make its decision as to the scope of the arbitration. No final decision was made, as the trial court has decisions left to make regarding the motion to compel arbitration. Rather, the court made the decision to order discovery so that it could finalize its decision on the motion to compel. Such an order is interlocutory.

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[9]In its footnote 5, the majority attempts to color over the fact that the trial court made no final decision on arbitration. As a part of that effort, the majority states that "[t]his Court has stated that direct appeal remains the *sole* procedure for this Court's review of the trial court's judgment on the motion to compel arbitration." That assertion would be true if the trial court had completed its work on this matter and sent it on for arbitration. The problem with which this Court is faced is that even a cursory reading of the trial court's order reveals that, in actual substance, the trial court did not make any final decision to grant or deny anything, in whole or in part. The trial court ordered discovery in order that it might be in a position to determine what its decision would be. The trial court did not end its work and send this matter on to arbitration. It is true that final decisions on arbitration are appealable judgments. However, it is not true that tentative or interlocutory decisions on arbitration are final and appealable judgments.

[10]To illustrate that the trial court did not make any final decision, we may ask the following questions: Which claims did the trial court send to arbitration? Which claims did it retain for its own determination? These questions cannot be answered because the trial court has yet to send anything to arbitration or retain any portion of the claims for its own determination.

¶29. Without citation to authority, the writer of the majority opinion has unilaterally declared, "[n]o authority existed for the trial court to 'gran[t] the arbitration but . . . sta[y] it.' Furthermore, once arbitration was granted, there is no authority to grant discovery." This Court has not ruled on the question of whether a trial court may grant arbitration, stay it, and order discovery. Indeed, there is no indication that this issue has ever been discussed by this Court. There does appear to be authority in the federal court system, which is contrary to the majority writer's unilateral declaration. *See, e.g.,* ***Henggeler v. Brumbaugh & Quandahl, P.C., LLO***, 2012 WL 762103, No. 8:11CV334 (D. Neb. March 7, 2012) (allowing discovery on the existence and scope of an arbitration agreement prior to ruling on a motion to compel arbitration); *see also* ***In re Houston Pipe Line Co.***, 311 S.W.3d 449 (Tex. 2009) (the Texas Arbitration Act allows the trial court to conduct discovery regarding the scope of an arbitration provision).

¶30. The Power Broker asks this Court to find that all of Wolgin's claims are encompassed by the arbitration provision because all are related to the purchase of the condominium. Whether all or only some of Wolgin's claims are related to the purchase is a decision that the trial court has yet to make. This Court should not determine issues upon which a trial court has not ruled. *See* ***Management, Inc. v. Crosby***, 186 So. 2d 466 (Miss. 1966).

¶31. Despite the fact that the court's order stated that it granted the motion to compel arbitration in part and denied it in part, in substance, the court has not yet determined what it will grant or deny. While The Power Broker relies on the court's "denial in part" of its motion to avail itself of this Court's jurisdiction, this Court does not have the benefit of knowing what, if anything, the trial court denied. The trial court is still in the process of

determining the scope of the arbitration. Thus, this appeal is interlocutory, and as permission for an interlocutory appeal was not sought, this Court does not have jurisdiction over this appeal and should dismiss it. "[T]he attempt to appeal an unappealable order is a total departure from the orderly administration of justice and cannot and should not be approved." ***Pipkin v. State***, 292 So. 2d 181, 182 (Miss. 1974). Therefore, The Power Broker's appeal should be dismissed for lack of jurisdiction. For this reason, I dissent from the majority on this issue.

KITCHENS AND CHANDLER, JJ., JOIN THIS OPINION. WALLER, C.J., JOINS IN PART.