

Court of Appeals, State of Michigan

ORDER

John Thomas Miller v Dennis J Duchene II

Docket No. 334731

LC No. 16-011533-CK

William B. Murphy
Presiding Judge

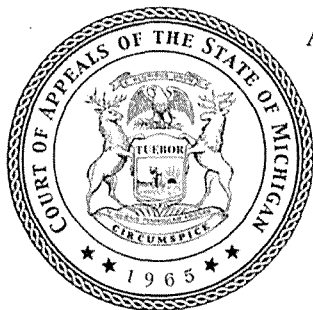
Michael J. Kelly

Brock A. Swartzle
Judges

The Court orders that the motion to reopen is GRANTED TO THE EXTENT set forth in this order. This appeal is REOPENED as to the claims of plaintiff-appellant John Thomas Miller (Miller) against defendant-appellee Dennis J. Duchene, II (Duchene), based on the federal bankruptcy court order lifting the automatic bankruptcy stay to the extent of allowing Miller to proceed against Duchene in this matter. Further, this case is REMANDED to the trial court with regard to Miller's claims against Duchene for further proceedings consistent with the rationale of our December 21, 2017 opinion. Particularly, because Duchene was one of the initial defendants in this case, the rationale of our holding that the initial defendants waived the defense of an agreement to arbitrate extends to Miller's claims against Duchene.

We note that this appeal is not reopened, and the remand provided for by this order does not extend, as to any claims by plaintiff-appellant BG&M, Inc., against Duchene because by its terms the relevant federal bankruptcy court order only lifts the bankruptcy stay to allow Miller to proceed against Duchene in this matter. BG&M, Inc. may file a motion to reopen this case as to Duchene if the federal bankruptcy court enters an order lifting the bankruptcy stay as to any claims by BG&M, Inc., against Duchene.

We do not retain jurisdiction as to the remand of this case to the trial court as to Miller's claims against Duchene.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

JUL 25 2018

Date

Jerome W. Zimmer Jr.
Chief Clerk