

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA09-1150

P C SCALE, INC.; TRANSCOMP
SYSTEMS, INC.

APPELLANTS

V.

ROLL OFF SERVICES, INC.

APPELLEE

Opinion Delivered JUNE 2, 2010

APPEAL FROM THE BENTON
COUNTY CIRCUIT COURT
[NO. CIV-08-1841-2]

HONORABLE DAVID S. CLINGER,
JUDGE

REBRIEFING AND SUPPLEMENTAL
RECORD ORDERED

KAREN R. BAKER, Judge

This appeal is brought from an order denying appellants' motion to compel arbitration. However, we cannot reach the merits of appellants' arguments because one of the contracts that is the subject of the appeal is missing a page. We therefore order the record supplemented with the missing page and order appellants to file a substituted brief with an addendum that contains the full text of the contract.

In September 2004, appellant Transcomp Systems, Inc., contracted to provide appellee Roll Off Services, Inc., with a software program and support services. Appellee signed four separate documents in connection with the transaction. Two of the documents, a Software License Agreement and a Professional Services Agreement, provided that they were governed

by California law and that any disputes arising thereunder would be subject to arbitration. The other two documents, a Proposal and a Support Agreement, contained no arbitration or forum-selection clauses. When a dispute arose over alleged defects in the software, appellee sued Transcomp and its successor in interest, appellant PC Scale, Inc., in circuit court for fraud, breach of contract, breach of the implied covenant of good faith and fair dealing, negligence, and breach of warranty. Appellants moved for a stay and asked the court to compel arbitration in accordance with the arbitration clauses in the Software License Agreement and the Professional Services Agreement. Appellee responded, *inter alia*, that the dispute centered on the other two documents, which had no arbitration clauses. Appellants then asserted that all four documents should be viewed as a single transaction, making a dispute under any of them arbitrable. The circuit court, by its own admission, struggled with the technical nature of the documents and the question of the parties' intentions. Ultimately, the court held two hearings and a bench trial before determining that it would not "merge" the documents and would deny the motion to compel arbitration.

On appeal, appellants argue that the parties intended the four documents to "memorialize a single transaction" and that a "plain reading" of the documents demonstrates that they are "inextricably intertwined." Appellants further state that, in order to fully understand the issues on appeal, it is important "to first understand the four underlying documents." However, the lengthiest and most complex of the documents, the Software License Agreement, is missing its third page. We have no way of knowing what is contained on that page and how it may affect the issues on appeal. We therefore conclude, out of an

abundance of caution, that we must reserve our decision on the merits until we have the contracts before us in their entirety.

Appellants are directed to file with our clerk's office, within thirty days from the date of this order, a certified, supplemental record containing the complete Software License Agreement. *See* Ark. R. App. P. –Civ. 6(e); *Chiodini v. Lock*, 2009 Ark. 343, 322 S.W.3d 9. Upon filing the supplemental record, appellants shall have fifteen days in which to file a substituted brief with an addendum that includes the complete agreement. *See* Ark. Sup. Ct. R. 4-2(b)(3) (2009). If the missing page necessitates a revision in appellants' argument, the revision shall be contained in the substituted brief. After service of appellants' substituted brief, appellee shall have the opportunity to revise or supplement its brief. If appellants fail to file the supplemental record or a conforming brief within the prescribed time, we may affirm for noncompliance with our rules.

Rebriefing and supplemental record ordered.

KINARD and BROWN, JJ., agree.