

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

PHILLIP HILL,)	
)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION
)	No. 08-2548-KHV
RICOH AMERICAS CORPORATION,)	
)	
)	
Defendant.)	
)	
)	
)	

MEMORANDUM AND ORDER

Phillip Hill filed suit against his former employer, Ricoh Americas Corporation, alleging retaliatory discharge in violation of the Sarbanes-Oxley Act, 18 U.S.C. § 1514A *et seq.*, and Kansas common law. On June 12, 2009, the Court overruled Defendant’s Motion To Stay Proceedings And To Compel Arbitration. See Memorandum And Order (Doc. #27). On June 26, 2009, defendant filed a notice of appeal with the Tenth Circuit. See Doc. #28. This matter comes before the Court on Plaintiff’s Motion And Memorandum To Certify Defendant’s Appeal Frivolous (Doc. #29). For reasons set forth below, the Court overrules the motion.

The Federal Arbitration Act, 9 U.S.C. § 16(a), specifically provides that a party may file an interlocutory appeal of the denial of a motion to arbitrate. The general rule is that when a party files an appeal, the district court loses power to proceed with trial. See Stewart v. Donges, 915 F.2d 572, 576-77 (10th Cir. 1990). Federal district courts have the authority to certify that an appeal from a denial of a motion to compel arbitration is frivolous. McCauley v. Halliburton Energy Servs., Inc., 413 F.3d 1158, 1162 (10th Cir. 2005).

In ruling on the motion to stay and compel arbitration, the Court found that the record contains sufficient evidence of an enforceable arbitration agreement.¹ The Court then determined that defendant waived its right to arbitrate based on the six factors set out in Metz v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 39 F.3d 1482, 1489 (10th Cir. 1994). As defendant points out, however, the Court found that several of the factors weighed only slightly in favor of waiver. For substantially the reasons set forth in defendant's opposition, the Court finds that plaintiff has failed to show that Ricoh's appeal is frivolous.

IT IS THEREFORE ORDERED that Plaintiff's Motion And Memorandum To Certify Defendant's Appeal Frivolous (Doc. #29) be and hereby is **OVERRULED**.

Dated this 31st day of July, 2009 at Kansas City, Kansas.

s/ Kathryn H. Vratil
Kathryn H. Vratil
United States District Judge

¹ The Court set forth the factual and procedural background in the Memorandum And Order (Doc. # 27) which the Court incorporates herein by reference.