



stayed or dismissed pending arbitration. The Chancery Court for Davidson County found that the arbitration clause in the contract between the appellant and appellee was the exclusive remedy for the resolution of all disputes and dismissed the appellant's complaint without prejudice. We reverse the dismissal and instead stay the appellant's action pending arbitration between the two parties.

## I.

On April 18, 1996, M.R. Dillard Construction, appellant, and J.P. Realty II, Inc., appellee, entered into a contract, whereby appellant agreed to perform site grading, drainage, and sewerage work on property owned by appellee. The contract contains the provision that "[a]ny claim or dispute which may arise between the parties relative to this contract shall be referred to arbitration for judgement." A dispute arose regarding the appellant's completion of the duties outlined in the contract. Appellant filed a complaint in the Chancery Court for Davidson County for the purpose of enforcing a mechanics' and materialmen's lien against the appellee. Appellee filed an answer and claimed that the arbitration clause in the contract was an affirmative defense to the complaint. Appellant then filed a motion to stay any action pending a judgment of arbitration pursuant to the contract. Instead, the Chancery Court dismissed the action without prejudice.

## II.

Tennessee's Uniform Arbitration Act, Tenn. Code Ann. § 29-5-301 et seq., encourages the use of agreements to arbitrate by making them irrevocable except for grounds that would make any contract revocable. Tenn. Code Ann. § 29-5-302(a). Tenn. Code Ann. § 29-5-303(a) enables a trial court to make summary determinations as to whether a party is entitled to arbitration, *Samson*

*v. Hartsville Hosp., Inc.*, No. 01A01-9609-CH-00430 (Tenn. Ct. App. filed March 12, 1997 at Nashville), and Tenn. Code Ann. § 29-5-303(d) provides that “[a]ny action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application therefor has been made under this section . . . .”

In the case at bar, the action involved the duty of the defendant to pay for the work performed under the contract and a mechanics’ and materialmen’s lien to secure the money due. Some of the issues were subject to arbitration under the arbitration clause of the contract. Therefore, the statute clearly required the trial court to stay, rather than dismiss, any further proceedings with regard to these issues pending arbitration.<sup>1</sup>

Nevertheless, the appellee contends that the appellant’s complaint was correctly dismissed on the grounds that appellant did not timely file its notice of a mechanics’ and materialmen’s lien and, therefore, the lien is invalid. However, the validity of the appellant’s lien is not at issue in this appeal. Therefore, we decline to address this contention.

The appellee further contends that he would have suffered prejudice if the trial court had not dismissed the action rather than issuing a stay. However, the appellee has failed to demonstrate any prejudice that would result from the issuance of a stay of these proceedings pending arbitration. Therefore, this issue is without merit.

In light of the foregoing, the decision of the trial court is reversed. Remand this cause to the Chancery Court for Davidson County for further

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<sup>1</sup> The appellee claims that, by virtue of the arbitration clause, the appellant has waived his rights to a mechanics’ and materialmen’s lien. However, we have found no authority in Tennessee to support such a claim. The statute itself states that claims subject to arbitration are to be stayed pending arbitration. *See* Tenn. Code Ann. §29-5-303(d). There is no mention of waiver in the statute. In addition, there is no specific waiver of the lien in the contract.

proceedings consistent with this opinion. Tax the costs on appeal to the appellees, J.P. Realty, II, Inc. and Merchants Bonding Company.

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BEN H. CANTRELL,  
PRESIDING JUDGE, M.S.

CONCUR:

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WILLIAM B. CAIN, JUDGE

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PATRICIA J. COTTRELL, JUDGE