

IN THE DISTRICT COURT OF APPEAL
FOURTH DISTRICT OF FLORIDA

CASE NO. 4D2024-2152
L.T. CASE NO.: CACE-23-003562

COMPASS FLORIDA, LLC,

Appellant-Defendant,

v.

MIAMI WATERFRONT REALTY,
LLC,

Appellee-Plaintiff.

**APPELLANT-DEFENDANT, COMPASS FLORIDA, LLC'S,
STATEMENT OF JURISDICTION**

*Appeal of an Interlocutory Order from the 17th Judicial Circuit
in and for Broward County*

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INTRODUCTION¹

Pursuant to the applicable Florida Rules of Appellate Procedure, including Rules 9.130 and 9.030, Appellant-Defendant, COMPASS FLORIDA, LLC (“Compass”), files this brief statement of jurisdiction as required by this Court’s August 27, 2024, Order. Appellee-Plaintiff Miami Waterfront Realty, LLC’s (“Plaintiff”) strategy has placed Compass in a procedural quandary that necessitates resolution. Indeed, the resolution that Compass is seeking, a right to appeal an erroneous interlocutory order of the trial court, is permitted by the Florida Appellate Rules of Procedure.

Pursuant to the trial court’s August 31, 2023 order compelling arbitration, Plaintiff was required to submit its claims to arbitration, but failed to timely do so. Plaintiff’s deadline for an interlocutory appeal of that order also expired, and a motion for reconsideration was unauthorized. Having simply missed its jurisdictional deadlines, Plaintiff used that very neglect as the basis for seeking relief under

¹ References to Appellant’s Appendix to the Statement of Jurisdiction, which contains the relevant portions of the record, will be designated as (A.[page number]).

Fla. R. Civ. P. 1.540—relief which was granted. This appeal arises in response to that grant of relief.

Plaintiff purported to create a situation where Compass was divested of its right to interlocutory appellate review because the initial order compelling arbitration was never appealed, as Compass would have no interest in appealing a grant of the very relief it was seeking. Then, perhaps in recognition of its untimeliness in seeking appellate relief and in seeking the exclusive remedy of arbitration, Plaintiff filed an unauthorized motion under Rule 1.540(b). The trial court considered that motion authorized, and granted relief in favor of Plaintiff and against Compass which was unavailable and improper.

This Court has subject matter jurisdiction over this proceeding for three reasons. First, an order granting relief pursuant to Rule 1.540(b) is appealable pursuant to Rule 9.130(a)(5), regardless of whether the Rule 1.540(b) order is final or, as here, non-final. Second, certiorari relief under Rule 9.030(B)(2)(a) lies to remedy the trial court's grant of unauthorized relief, as it was a departure from the essential requirements of law to grant relief under Rule 1.540(b),

which caused irreparable harm to Compass. Third, the order determines entitlement to arbitration, and is subject to interlocutory appellate review under Rule 9.130(a)(3)(I).

This Court should permit this matter to proceed on the merits.

FACTUAL AND PROCEDURAL BACKGROUND

a. The Trial Court Compelled Arbitration on August 31, 2023. Plaintiff Did Not Appeal.

Plaintiff commenced the underlying lawsuit, arising out of a commission dispute over proceeds for the sale of a commercial property, on March 15, 2023. (A.004-008). Compass immediately sought to enforce the parties' selected forum of arbitration by virtue of their membership in the National Association of Realtors® ("NAR") and Florida Realtors®. *See* (A.011-018).

On April 11, 2024, Compass filed its motion to compel arbitration, arguing that disputes between realtors regarding entitlement to commission must be submitted to arbitration. (*Id.*). Compass argued that by virtue of the NAR membership, the membership's rules constitute a binding agreement that Florida Courts are required to enforce. *See* (A.015-017) (citing *Elbadaramany v. Stanley*, 490 So. 2d 964, 966 (Fla. 5th DCA 1986)). Compass also

argued that the trial court lacked jurisdiction over this procurement dispute based on Article 17 of the NAR rules, which mandated exclusive arbitration for such disputes. (A.017-018).

Plaintiff had failed to submit its claim to arbitration within the required period of time. (A.020) (“[r]equests for arbitration must be filed within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later.”).

Plaintiff, although **the complainant** in the lower court proceedings, opposed the motion on the grounds that Compass did not timely invoke arbitration. (A.112-114). On August 31, 2023, the trial court compelled arbitration and retained limited jurisdiction:

ORDERED AND ADJUDGED that Defendant's Motion to Compel Arbitration is hereby GRANTED. Plaintiff shall submit its claim to arbitration in accordance with the procedures promulgated by the National Association of Realtors, as this Court lacks jurisdiction over this matter. This Court reserves jurisdiction only to enforce this ruling and the ruling from the arbitration.

(A.044). No interlocutory appeal followed.

The matter was closed for administrative purposes on September 7, 2023. (A.046).

b. Plaintiff Failed to Timely Invoke Arbitration. After its Arbitration Request was Dismissed, Plaintiff Sought 1.540 Relief from Judgment and Reconsideration.

Plaintiff's request for arbitration was not timely filed, and was dismissed on February 15, 2024.² (A.059). On April 5, 2024—more than seven months after the trial court had compelled arbitration—Plaintiff sought relief pursuant to Rule 1.540(b)(5), and also sought reconsideration of that order. (A.048-053).

Compass opposed Plaintiff's motion, arguing that Plaintiff was not entitled to the extraordinary relief available under Rule 1.540(b)(5) because it failed to allege new circumstances that make it inequitable for the trial court to enforce the earlier order, and moreover, Plaintiff was well aware of the mandatory obligation as NAR members to arbitrate procurement disputes between brokers.

² The arbitration request was also dismissed because it was “legally complex.” (A.059). The substance of the arbitration request was not made part of the record and was not disclosed to Compass. It is therefore unclear what the arbitration demand sought for adjudication.

(A.063-072). Compass also argued that Plaintiff failed to invoke appellate review of the order compelling arbitration under Rule 9.130(b), and a motion under Rule 1.540(b) does not resurrect Plaintiff's ability to appeal the Court's non-final order compelling arbitration. (Id.).

Now, two years after the commission dispute arose, Miami Waterfront has finally sought to initiate arbitrate, and unsurprisingly, its request has been officially denied by the local association. Miami Waterfront now seeks exceptional relief in this Court under Florida Rule of Civil Procedure 1.540(b)(5). However, Miami Waterfront's errors in failing to timely commence arbitration in front of the local association (which it knew about) does not render this Court's prior ruling inequitable under Rule 1.540(b)(5)...Further, Miami Waterfront's opportunity to appeal the original order has long since expired, and Miami Waterfront's instant motion cannot be used as a vehicle to circumvent the Florida Appellate Rules of Procedure.

(A.064).

The trial court heard arguments on Plaintiff's motion. (A.147-160). At the hearing, Compass explained that Plaintiff's failure to timely request arbitration does not warrant extraordinary relief under Rule 1.540(b)(5):

This is a situation where Plaintiff waited too long to assert arbitration in front of the NAR rules. They didn't appeal Your Honor's order under 9.130(b), which is the exclusive

remedy to appeal Your Honor's order as interlocutory non-final order of the right to compel arbitration. They didn't do that. Instead, they brought a motion - a petition in front of the Board a year after they knew it had already expired and now they're seeking to reinstate the litigation based on what? Based on nothing, Your Honor.

. . .

So just to -- I mean, the rules speak for themselves, Your Honor. The case law that we cite to in our response in opposition speak for themselves. Just something to leave you with, Your Honor, is closing in this case was June 2nd, 2022. We are two years later at this point. They had 180 days to bring this in front of the Board. They didn't. They sought litigation first. They didn't appeal your order, Your Honor. There is no avenue to move forward at this juncture. There are rules and there are rules for a reason.

(A.155-157).

At the hearing, the trial court ruled orally it was granting Plaintiff's motion to reinstate the litigation because its arbitration request had been dismissed by the local association board. (A.158-159).

c. The Trial Court Granted Plaintiff's Motion for Rule 1.540 Relief and Reconsideration of the Order Compelling Arbitration. Compass Timely Appealed.

The order on appeal was rendered on July 24, 2024 (the "Order"). (A.143). The trial court ruled the following:

THIS CAUSE, having come before this Court for hearing on July 18, 2024, on Plaintiff's Motion to Seek Relief from

Prior Court Order, to Reinstate Litigation, and/or For Reconsideration (the “Motion”), the Court, having heard the arguments of respective counsel and being otherwise duly advised in the premises, hereby ORDERS AND ADJUDGES as follows:

1. Plaintiff's Motion is hereby GRANTED. Pursuant to the terms of arbitration allowing for litigation if dismissed at arbitration.

2. Defendant shall file a response to the Complaint within 30 days of the date of this Order.

(*Id.*).

Within twenty-seven days of the Order being rendered, Compass filed a Notice of Appeal. (A.165-191). The Notice invoked this Court’s jurisdiction pursuant to Fla. R. App. P. 9.130(a)(5), for orders “entered on an authorized and timely motion for relief from judgment.” (A.165); *see also* (Fla R. App. P. 9.130(b) (“Jurisdiction of the court under subdivisions (a)(3)–(a)(5) of this rule shall be invoked by filing a notice with the clerk of the lower tribunal within 30 days of rendition of the order to be reviewed.”)).

This Court ordered Compass to provide this brief statement on the Court’s subject matter jurisdiction.

STATEMENT OF JURISDICTION**I. THIS COURT'S EXERCISE OF SUBJECT MATTER JURISDICTION IS PROPER PURSUANT TO RULE 9.130(A)(5) BECAUSE THE ORDER IS ON A MOTION SEEKING RULE 1.540 RELIEF.**

Plaintiff invoked Rule 1.540(b)(5), claiming entitlement to the extraordinary relief that is available only in exceptional circumstances. *Schiavo v. Schiavo*, 792 So. 2d 551 (Fla. 2d DCA 2001). That relief was erroneous—there was no new fact or occurrence that required the trial court to recede from its prior order. Thus, Compass sought this Court's review: Rule 9.130(a)(5).

Presented with the Order, which granted Plaintiff's motion for relief under Rule 1.540, Compass sought immediate review through the vehicle for orders granting that very relief. Indeed, Rule 9.130(a)(5) provides that "[o]rders entered on an authorized and timely motion for relief from judgment are reviewable by the method prescribed by this rule." It is Florida law that orders entered on motions filed under Rule 1.540 are reviewable pursuant to Florida Rule of Appellate Procedure 9.130(a)(5). *Capone v. Philip Morris United States*, 116 So. 3d 363, 373 (Fla. 2013); *see also Jones v. Gov't Emples. Ins. Co.*, 192 So. 3d 614, 615 (Fla. 4th DCA 2016) ("[T]he

defendants below appeal an order denying their motion filed pursuant to rule 1.540(b), Florida Rules of Civil Procedure. This Court has jurisdiction pursuant to rule 9.130(a)(5), Florida Rules of Appellate Procedure.”); *see also Richards v. Crowder*, 191 So. 3d 524, 525 (Fla. 4th DCA 2016) (exercising subject matter jurisdiction based on Rule 9.130(a)(5) over an order denying a Rule 1.540 motion for relief from judgment).

An order on a Rule 1.540 motion seeking relief from judgment may be final or non-final. *New Day Miami, LLC v. Beach Developers, LLC*, 225 So. 3d 372, 375 (Fla. 3d DCA 2017). Here, the Order is a non-final order. *Id.* at 375 n.6 (holding that an order granting a party’s rule 1.540 motion is non-final if it permits adjudication of the dispute to proceed). Rule 9.130(a)(5) is “applicable to all orders granting or denying a party’s rule 1.540 motion, ***irrespective of whether the order is ‘final’ or ‘non-final.’***” *Hidalgo v. Binder*, 355 So. 3d 487, 491 (Fla. 3d DCA 2023) (emphasis in original) (holding that the order on appeal granting a 1.540(b) motion was a non-final order appealable under Rule 9.130(a)(5)).

Thus, the trial court's non-final Order granting relief under Rule 1.540(b) is appealable under Rule 9.130(a)(5). *See Nastasi v. Thomas*, 88 So. 3d 407, 410 (Fla. 4th DCA 2012) (holding that the trial court's rulings in the non-final order, denying Rule 1.540 relief, are appealable under Rule 9.130(a)(5)). Subdivision (a)(5) grants a right of review of authorized and timely orders on motions seeking relief from a previous court order on the grounds listed in Florida Rule of Civil Procedure 1.540. *See Fla. R. App. P. 9.130, Committee Notes.*

Compass consistently argued that Plaintiff's motion was improper and that it must be denied. (A.063-072, 155-157). Instead, the trial court considered and adjudicated Plaintiff's motion, and thus, to the trial court, the motion was authorized and timely. As a party-defendant in the proceedings below, Compass was presented with a rule 1.540 motion followed by an order granting that motion and that very relief, and in response, Compass exercised the right to invoke interlocutory review.

Thus, because Plaintiff elected to request rule 1.540 relief, and because the trial court agreed that Plaintiff was entitled to that relief, Compass was forced to seek interlocutory review of the Order, which

effectively undid the prior arbitration order eleven months after-the-fact. Rule 9.130(a)(5) was seemingly the only appropriate vehicle for seeking review.

II. THIS COURT'S EXERCISE OF CERTIORARI JURISDICTION IS PROPER PURSUANT TO RULE 9.030(B)(2)(A).

a. Certiorari Jurisdiction Is Alternatively a Proper Mechanism for Appealing Erroneous Orders Granting Rule 1.540(b) Relief

This Court alternatively has jurisdiction pursuant to Rule 9.030(b)(2)(A), which confers certiorari jurisdiction to review certain non-final orders of lower tribunals. To obtain certiorari relief from an erroneous interlocutory order, there must be departure from the essential requirements of law and irreparable harm that cannot be corrected on final appeal. *J.B.J. Inv. of S. Fla., Inc. v. Maslanka*, 163 So. 3d 726, 727 (Fla. 5th DCA 2015).

While Compass did not originally seek review under Rule 9.030(b)(2)(A), Compass respectfully requests that this proceeding be treated as a petition for writ of certiorari in the event this Court holds that it lacks subject matter jurisdiction under Rule 9.130. See § 59.45, Fla. Stat. (“If an appeal be improvidently taken where the remedy might have been more properly sought by certiorari, this

alone shall not be a ground for dismissal; but the notice of appeal and the record thereon shall be regarded and acted on as a petition for certiorari duly presented to the Supreme Court.”); *see also* Fla. R. App. P. 9.040 (“If a party seeks an improper remedy, the cause must be treated as if the proper remedy had been sought; provided that it will not be the responsibility of the court to seek the proper remedy.”).

Section 59.45 and Rule 9.040(c) allow an appellant, with leave from the appellate court, to use their notice of appeal and the associated record as a petition for writ of certiorari. *Ceslow v. Bd. of Cty. Comm’rs*, 428 So. 2d 701, 702 (Fla. 4th DCA 1983); *see also Decius v. Decius*, 366 So. 3d 1092, 1096 (Fla. 4th DCA 2023) (addressing a non-final, non-appealable order: “We therefore order that the Notice of Appeal filed with the clerk of the lower tribunal is treated as a Petition for Writ of Certiorari. Petitioner shall file a petition and appendix in compliance with Florida Rule of Appellate Procedure 9.100 within twenty (20) days from the date of this opinion.”). The fact that Compass filed a timely notice of appeal, not a petition for writ of certiorari, should not result in the dismissal of this action, as any errors subject to relief would be allowed to stand.

b. The Trial Court's Order Granting Rule 1.540(b) Relief to Reinstate the Action Is a departure from the essential requirements of law and consists of irreparable harm to Compass.

The trial court's underlying order compelling arbitration, in which the trial court retained jurisdiction over the case "only" to enforce its ruling and the arbitration ruling, was unequivocally subject to interlocutory review. An order compelling arbitration is appealable as a non-final order that determines "the entitlement of a party to arbitration" under Florida Rule of Appellate Procedure 9.130(a)(3)(I). Jurisdiction to review the order is invoked by filing a notice of appeal "within 30 days of rendition of the order to be reviewed." Fla. R. App. P. 9.130(b). Plaintiff did not appeal that order.

Instead of appealing the order compelling arbitration, Plaintiff sought relief pursuant to Rule 1.540 and attempted to request reconsideration as well. "Because an order granting a motion to compel arbitration is non-final, a motion for rehearing or reconsideration is not authorized." *Wegner v. Schillinger*, 921 So. 2d 854, 855 (Fla. 4th DCA 2006) (citing *Josephthal Lyon & Ross, Inc. v. C & A Fin. Programs, Inc.*, 709 So. 2d 1384 (Fla. 4th DCA 1998)); cf. *Lovelace v. Lovelace*, 124 So. 3d 447, 447 (Fla. 1st DCA 2013) ("The

law in Florida is well settled that a motion for rehearing or reconsideration does not toll the time for filing an appeal from a non-final order reviewable pursuant to the provisions of Florida Rule of Appellate Procedure 9.130.”).

Nevertheless, Plaintiff attempted to revive its appellate remedies, inexplicably waiting 219 days after the trial court’s August 31, 2023 order compelling arbitration to file its motion for Rule 1.540 relief/motion for reconsideration. Its appellate deadline had long expired.

The trial court departed from the essential requirements of law by entertaining Plaintiff’s motion. Plaintiff was effectively bringing Compass’s motion to compel arbitration before the trial court twice. “Florida law does not authorize multiple motions to compel arbitration.” *Wegner v. Schillinger*, 921 So. 2d 854, 855 (Fla. 4th DCA 2006) (citing § 682.03(1), Fla. Stat.); *Freedom Life Ins. Co. of Am. v. Wallant*, 953 So. 2d 16, 17 (Fla. 4th DCA 2007) (same). The motion for reconsideration was not authorized. *Wegner*, 921 So. 2d at 855 (“Appellants cannot avoid the consequences of their failure to appeal

the January 24 order and revive their right to appeal by filing a renewed motion for arbitration after the time to appeal has expired.”).

Plaintiff had 30 days from August 31, 2023 to appeal the order compelling arbitration, but did not do so. Its appellate remedy was thus extinguished. Yet, the trial court still permitted Plaintiff to again raise the issue of arbitration and then undid its prior interlocutory order which was no longer appealable, as the deadline to invoke this Court’s jurisdiction had passed. *Cf. Martin-Johnson, Inc. v. Savage*, 509 So. 2d 1097, 1099 (Fla. 1987) (certiorari review is limited, as “the most urgent interlocutory orders” are appealable under Rule 9.130). The trial court permitted Plaintiff to circumvent the purpose of Rule 9.130.

Indeed, the trial court reinitiated the litigation/dispute in the judicial forum, requiring Compass to litigate what should have been subject to arbitration, and creating irreparable harm to Compass. *See Hollifield v. Renew & Co.*, 18 So. 3d 616, 617 (Fla. 1st DCA 2009) (“circuit court departed from the essential requirements of law and worked irreparable harm to petitioner by granting relief from a non-final order to effectuate an otherwise untimely appeal”).

Plaintiff's appellate remedies had been exhausted by September 30, 2023, and it was a departure from the essential requirements of law for this Court to permit Plaintiff to argue its improper motion when an interlocutory appeal of the Order was not sought. "Whatever else may be said of the order at issue here, no action attributable to the circuit court...contributed to counsel's neglect in failing to take a timely appeal." *Hollifield*, 18 So. 3d at 617 (issuing a writ of certiorari because rule 1.540 relief is unavailable to correct the mistake of counsel and effectuate what is an otherwise untimely appeal) (citing *Dresdner v. Charter Oak Fire Ins. Co.*, 972 So. 2d 275, 276 (Fla. 2d DCA 2008) (holding that "the trial court does not have the authority to relieve a party of the consequences of his or her lawyer's mistake" and is precluded from using rule 1.540 to permit a party to perfect an appeal). When the appellate deadline expired, so did the trial court's ability to reconsider its original order terminating this action.

The trial court also departed from the essential requirements of law in allowing Plaintiff to seek relief under Rule 1.540 because the prior order compelling arbitration was a non-final order, and Rule 1.540 does not authorize a trial court to grant relief from a non-final

order. See *Garcia v. Navy Fed. Credit Union*, 224 So. 3d 339, 341 (Fla. 5th DCA 2017) (“rule [1.540(b)] does not . . . authorize a trial court to grant relief from a non-final order.”); *Hollifield v. Renew & Co., Inc.*, 18 So. 3d 616, 617 (Fla. 1st DCA 2009) (“Rule 1.540 authorizes a trial court to grant relief ‘from a final judgment, decree, order, or proceeding’—not from a non-final order”); *Lawrence v. Marina Tower of Turnberry Isle Condo. Ass’n*, 323 So. 3d 271, 273 (Fla. 3d DCA 2021) (rule 1.540(b) “is applicable to seek *vacatur* of orders that are final”) (citing *In re: Amendments to the Fla. Rules of Civil Proc.-2019 Regular-Cycle Rep.*, 292 So. 3d 660, 661 (Fla. 2019)).

Plaintiff thus also could not seek Rule 1.540(b) relief. Paradoxically, for the Plaintiff to argue that Rule 9.130(a)(5) does not confer subject matter jurisdiction to this Court, it will necessarily have to concede that its motion for relief from the prior order and to reinstate the case was erroneously filed, and that the Court’s granting of this was a departure from the essential requirement of the law. *Stubbs v. Fannie Mae*, 250 So. 3d 151, 152 (Fla. 2d DCA 2018) (holding that rule 1.540(b) does not authorize a trial court to grant relief from a non-final order).

In *Hollifield v. Renew & Co.*, 18 So. 3d 616 (Fla. 1st DCA 2009), the First District issued a writ of certiorari where the trial court, pursuant to Rule 1.540(b), granted relief from a non-final order.

Rule 1.540 authorizes a trial court to grant relief “from a final judgment, decree, order, or proceeding”--not from a non-final order such as that at issue here. Fla. R. Civ. P. 1.540(b); see *Hialeah Hotel, Inc. v. Woods*, 778 So. 2d 314, 315 (Fla. 3d DCA 2000) (explaining that “Rule 1.540 applies only to final judgments, not to interlocutory orders”); *Badger v. Badger*, 568 So. 2d 79, 80 (Fla. 4th DCA 1990) (“We commence by pointing out that the order ... holding the husband in contempt was a non-final order. That being the case, Florida Rule of Civil Procedure 1.540(b) was not available to the husband, since that rule may be directed only to final judgments.”); see generally *Bennett's Leasing, Inc. v. First St. Mortg. Corp.*, 870 So. 2d 93, 97-98 (Fla. 1st DCA 2003) (commenting that, because underlying order was non-final, “a motion [for relief pursuant to rule 1.540] addressed to it is not a motion seeking relief from a final judgment, order, decree or proceeding”). *But see Wechsler v. Wechsler*, 436 So. 2d 1090, 1091 (Fla. 3d DCA 1983) (holding, without elaboration, that party was entitled to relief under rule 1.540(b) from order denying exceptions to general masters report). ***To respondents, the trial court granted relief that the rule does not authorize.***

18 So. 3d at 617 (emphasis supplied). Rule 1.540(b) did not authorize the trial court to grant relief from an interlocutory order.

By granting Plaintiff’s motion for relief under Rule 1.540(b)(5), the trial court granted relief that was not authorized, causing

irreparable harm to Compass, and departing from the essential requirements of law. Certiorari relief clearly lies here to remedy the trial court's erroneous ruling.

III. THE ORDER DETERMINES ENTITLEMENT TO ARBITRATION, AND IS ALSO SUBJECT TO INTERLOCUTORY REVIEW PURSUANT TO RULE 9.130(A)(3)(I).

A non-final order that determines entitlement to arbitration is an interlocutory order appealable to a district court of appeal pursuant to Rule 9.130(a)(3)(I). The parties, by their membership in the National Association of Realtors® and Florida Realtors®, opted for a non-judicial forum—i.e., arbitration. *See* (A.012-013). The trial court's determination that the parties should instead proceed with litigating the merits of the lawsuit provides an additional basis for this Court's exercise of subject matter jurisdiction.

This Court has jurisdiction “to hear an appeal of a non-final order denying a motion to enforce an arbitration agreement.” *GMRI, Inc. v. Brautigan*, 49 Fla. L. Weekly D1717 n.2 (Fla. 1st DCA August 14, 2024) (citing Art. V, § 4(b)(1), Fla. Const.; Fla. R. App. P. 9.130(a)(3)(C)(iv)); *see also Mallory v. Brinckerhoff*, 312 So. 3d 944, 946 (Fla. 4th DCA 2021) (holding that the Court has jurisdiction

pursuant to Rule 9.130 to adjudicate an appeal from a non-final order determining entitlement to arbitration).

After the trial court initially compelled arbitration on August 31, 2023, (A.044), the trial court then entered the Order reinstating litigation “pursuant to the terms of arbitration,” (A.143), thus determining the parties’ entitlement to arbitration for a second time. *See Sovereign Healthcare of Tampa, LLC v. Estate of Yarawsky*, 150 So. 3d 873, 874 (Fla. 2d DCA 2014) (adjudicating an interlocutory appeal from an order rescinding a prior order compelling arbitration, 10 months after entry of that order).

The trial court changed its mind regarding entitlement to arbitration, but that should not divest Compass of its right to interlocutory review. This Court can, alternatively, exercise subject matter jurisdiction to adjudicate this proceeding under Rule 9.130(a)(3)(I).

CONCLUSION

This Court has subject matter jurisdiction pursuant to Florida Rules of Appellate Procedure 9.130 and 9.030. This proceeding arose because of Plaintiff's failure to timely appeal an order that was rendered over one year ago, and the trial court's subsequent grant of improper Rule 1.540 relief. Compass should be permitted to pursue this appeal because this is its only avenue for appellate review in a case where Plaintiff disregarded the Florida Rules of Appellate Procedure by engaging in improper motion practice after the case had been closed, and where the trial court nevertheless granted that improper relief.

WHEREFORE, based on the above facts and legal authorities, Appellant, COMPASS FLORIDA, LLC, respectfully requests that this Court exercise subject matter jurisdiction over this proceeding, and/or grant Compass leave to file a comprehensive petition for writ of certiorari.

Dated: September 6, 2024.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was electronically filed through the Florida E-Filing Portal and served via e-mail this 6th day of September, 2024, to all parties on the attached Service List.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I CERTIFY that this Statement of Jurisdiction complies with the font requirements set forth in Florida Rule of Appellate Procedure 9.045 by using Bookman Old Style 14-point font.

s/ Jenna L. Fischman

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