

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

JONATHAN BRYANT,
PETITIONER,

v.

KEVIN FOUNTAIN,
RESPONDENT.

IN RE:

SOUTHERN WHOLESALE, INC.,
PLAINTIFF,

v.

CHAD KERR and JONATHAN BRYANT,
DEFENDANTS,

and

JONATHAN BRYANT,
THIRD-PARTY PLAINTIFF,

v.

SOUTHERN WHOLESALE, INC. and
KEVIN FOUNTAIN,
THIRD-PARTY DEFENDANTS.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

RECEIVED
Mar 27 2023
SC Court of Appeals

CASE NOS.: 2012-CP-42-4733
2012-CP-42-4915
(Consolidated)

ORDER

This matter was before the Court on September 23, 2022 via virtual courtroom for a Motion to Confirm Award of Arbitrator filed by Petitioner, Jonathan Bryant, by and through his counsel of record on December 5, 2020, and a Motion For Supplemental Order filed by Respondent, by

and through his counsel of record on January 11, 2021. In the motions before the Court the Petitioner is asking the Court to confirm that the report of Ray Brandt is binding per the Order of this Court issued February 12, 2016, signed by the Honorable Roger L. Couch. This Court takes judicial notice of the aforesaid Order. Further, the Petitioner seeks to confirm the award of the arbitrator in favor of the Petitioner against the Respondent, Kevin Fountain in the amount of \$62,637.31 as set forth in the final report of Ray Brandt dated December 3, 2017. Respondent seeks clarification regarding Tom Stephenson's authority with regard to the content of Mr. Brandt's final report, and how the parties are to proceed in the case where Mr. Brandt declines to make corrections to the final report necessary to comport with the parties' settlement agreement, as instructed by Mr. Stephenson.

This matter was commenced with both parties making allegations as set forth in the respective pleadings filed in the case. Mediation took place on March 17, 2014, which led to a binding settlement agreement. Pursuant to the binding settlement agreement, specifically paragraph 6 set forth therein, the Parties hired Ray Brandt to serve as an arbitrator to determine whether or not any monies were improperly taken by either party by way of excessive distributions, improper expenses or other improper payments. Mr. Brandt began work pursuant to the parties agreement. During the course of Brandt's work, Fountain filed a Motion seeking to remove Brandt from his role. That Motion led to a hearing and the Court's Order dated February 12, 2016. Brandt continued work pursuant to that Order, with oversight by Tom Stephenson. Ultimately, Brandt issued his final report dated December 3, 2017. As permitted by the February 12, 2016 Order, before issuance of his final report, Brandt received a letter from Tom Stephenson raising issues that were testified about during this hearing.

At the call of the case on the Motion before the Court, counsel for the Petitioner, Scott F. Talley, Esquire was present as well as Westbrook Willis, Esquire, counsel for the Respondent Kevin Fountain. The Parties stipulated to the admission of the following exhibits:

1. Exhibit 1- Order on Motion for Reconsideration filed on February 12, 2016 signed by the Honorable Roger L. Couch;
2. Exhibit 2- The binding settlement agreement signed by the parties on March 17, 2014;
3. Exhibit 3- The settlement agreement and mutual release totaling 19 pages signed by the Respondent April 10, 2014 and the Petitioner July 1, 2014;
4. Exhibit 4- September 7, 2016 Letter/Report of Ray Brandt
5. Exhibit 5- August 2, 2017 report of Ray Brandt;
6. Exhibit 6- November 1, 2017 letter to Ray Brandt from Tom Stephenson;
7. Exhibit 7- December 3, 2017 report of Ray Brandt.

Mr. Ray Brandt was subpoenaed to testify for this hearing and indicated that he had previously performed some work in this matter for the receiver, Larry Flynn, and that both parties were given the opportunity and did provide to him numerous documents regarding their positions about the other party's improper taking of excessive distributions, improper expenses or other improper payments. Mr. Brandt indicated that he had met with both parties and had discussions with both parties' counsel during his work. The Court finds that the February 12, 2016 Order controls procedural aspects of this case. In particular, in that Order the Court found that it would be appropriate to appoint a representative of the Court to oversee Mr. Brandt in the arbitration process, as well as to review Mr. Brandt's report and certify same as in compliance with the scope as set out in the settlement documents before it becomes final and binding. The Court appointed

Tom Stephenson in that capacity due to him previously being involved with the mediation on this case. Mr. Stephenson also testified at the Motion hearing.

As set forth in the February 12, 2016 Order, Mr. Stephenson reviewed the initial report of Mr. Brandt and wrote a letter to Mr. Brandt dated November 1, 2017, which was entered into evidence as *Exhibit 6*. The February 16, 2016 Order states that Mr. Brandt's supplemental/final report "will be the final report of the arbitrator and any party may take such action thereon as they deem best". The Order goes on to state that any report and charges submitted by Mr. Brandt in this matter shall only become final and binding upon the parties after review and certification by Mr. Stephenson as set forth above. While he initially declined to certify the report of Brandt, Mr. Stephenson testified at this hearing that he had reviewed Mr. Brandt's report and had discussed with him in detail regarding the consent. Further, Mr. Stephenson testified that he certified the December 3, 2017 final report.

The Court notes that Mr. Brandt was appointed pursuant to an agreement dated March 17, 2014. The Settlement Agreement and Mutual Release entered into the record as *Exhibit 3* was a more formal agreement, which further states that the parties will hire Ray Brandt as an arbitrator to resolve certain claims set forth in the agreement. That agreement states that if there were improper distributions, expenses or payments by the party that amount would be multiplied by two. That agreement further states that any amounts the arbitrator determines are owed shall be conclusive upon the parties, not appealable and may be recorded as final individual judgment.

After careful consideration of the written motions and arguments of counsel, the Court hereby GRANTS the Motion to Confirm the Award of Arbitrator. Based on the testimony of Mr. Ray Brandt and Mr. Tom Stephenson at this hearing the parties participated in the preparation of the report and had draft copies upon which they could comment. Mr. Stephenson's role was to

question irregularities as he saw them or addressed by the parties and pose them to Mr. Brandt. Mr. Stephenson questioned several items/methods and Mr. Brandt responded (*Exhibit 6 and 7*). No CPA testified to disagree with Mr. Brandt's methods. There was no challenge by Mr. Fountain with a professional accountant nor expert opinion numbers to show that the method Brandt used was flawed. Further, there is a large time lapse between the draft report and today's hearing, which is approximately 1755 days from Mr. Brandt's December 3, 2017 report. Respondent Fountain alleged that there was no certification by Tom Stephenson in the January, 2021 filing of Notice of and Motion for Supplemental Order, yet sought no injunctive relief to stay the report being certified by Stephenson. All of this was available per the agreement. The report has now been certified and is the Final Order pursuant to the terms of the February 12, 2016 Order. Therefore, the Clerk of Court is directed to enter Judgment against Kevin Fountain in Favor of Jonathan Bryant in the amount of Sixty-Two Thousand Six Hundred and Thirty-Seven Dollars and Thirty-One Cents (\$62,637.31).

IT IS SO ORDERED.



Spartanburg Common Pleas

Case Caption: Jonathan Bryant VS Kevin Fountain , defendant, et al

Case Number: 2012CP4204915

Type: Order/Other

It is so Ordered.

s/ R. Keith Kelly - 2165