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Oct 12 2023

SC Court of Appeals

Exhibit A

Case No. 2023-CP-23-01567

**Order Dated August 29, 2023, denying
Defendants' Motion to
Compel Arbitration and Stay**

Full Moon Investments Llc et al
PLAINTIFF(S)

Campbell Teague Llc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

See Page 2 for Order of Court

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/28/2023 .

Yield Capital Llc

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NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCP.

This matter comes before the Court upon various Motions filed by Defendants and was heard on August 21, 2023 with counsel appearing for their respective parties.

First, Defendants move to compel arbitration of all causes of action based on an arbitration provisions of the LLC Agreement for Yield Capital LLC. In reviewing the record, the Court finds that none of the defendants are actual parties to this agreement nor does the arbitration provisions relate to the issues presented by the pleadings. Therefore, the Court denies Defendants' Motion to Compel arbitration.

Defendants also moved to dismiss the Complaint on several grounds and each issue will be addressed below:

- (1) The Defendants assert that the accompanying affidavit of Plaintiffs' expert does not meet the requirements of S.C. Code Sec 15-36-100 as the threshold requirement to assert a claim for legal malpractice. The Court disagrees and finds the affidavit sufficient and complies with Sect 15-36-100 and the Complaint adequately sets forth facts to support Plaintiffs' claim;
- (2) The Court has addressed the Defendants' argument regarding the Plaintiffs' cause of action for Breach of Fiduciary duty below.
- (3) The Defendants assert that the Soria entity is an indispensable party which Plaintiff failed to name. In review of the Complaint, the Court finds that Soria is not an indispensable party for the claims asserted against these Defendants.
- (4) The Defendants assert that the 2nd cause of action for breach of Fiduciary Duty should be dismissed because it is duplicative of the 1st cause of action for legal malpractice. The allegations for the cause of action for Breach of fiduciary duty relate to the duties and actions of the Defendants as attorneys. As stated in RFT Management Co., LLC v. Tinsley & Adams, LLP, 399 S.C. 322 (Ct App 2012), the Court found that the Plaintiff did "not set forth any specific facts that demonstrate its breach of fiduciary is distinguishable [from the legal malpractice claim] because it arises out of a duty other than one created by the attorney-client relationship or because it is based on different material facts." The Court of Appeals held that the Breach of Fiduciary Duty was duplicative and upheld the Trial Courts dismissal of this cause of action. Likewise, this Court finds that based on the allegations of the Complaint, the Breach of Fiduciary Duty is based on the same facts as the legal malpractice claim and arise out of the attorney-client relationship and therefore the cause of action is duplicative and the Court grants Defendants' Motion as to this cause of action.
- (5) The Defendants assert that the cause of action for defamation against George Campbell is an identical action filed in Spain between the same parties and therefore should be dismissed pursuant to Rule 12(b)(8). The Court has reviewed the translated version of the Spanish Complaint provided by Defendants and it is difficult to determine whether the issues are identical or not and their impact under Spanish law. Further, the Plaintiffs assert that various actions relating to this cause of action occurred in the United States and clearly cannot be addressed by the Spanish litigation. The Court finds that it is a novel issue of whether Rule 12(b)(8) was intended to relate to litigation filed in 2 separate countries. For these reason, the Court denies Defendants' Motion to Dismiss pursuant to Rule 12(b)(8).
- (6) Finally, the Defendants assert that Greenville County is not the proper venue. The Court finds that venue is appropriate since Defendants reside in Greenville County and the issues alleged in the Complaint arise out of actions in Greenville County.

Therefore, the Court grants Defendants Motion to Dismiss as to the Second Cause of Action for Breach of Fiduciary Duty, but denies the Motion as to the remaining grounds.

The Court also rescinds its previous Order issued on August 21, 2023 staying discovery since Defendants' Motion to Compel arbitration has been denied.



Greenville Common Pleas

Case Caption: Full Moon Investments Llc , plaintiff, et al vs. Campbell Teague Llc ,
defendant, et al
Case Number: 2023CP2301567
Type: Order/Electronic Form 4

So Ordered

s/ Honorable Perry H. Gravely, #2755