STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
212 Motors Holding Group, LLC, 212 Motors Columbia, LLC, 212 Motors Florence, LLC, Team 212 Columbia, LLC, and Team 212 Florence, LLC,	)	Civil Action No. 2023-CP-32-00848
Plaintiffs,	)	**ORDER LIFTING STAY AND CONFIRMING ARBITRATION AWARD**
vs.	)	
Adam Maisano,	)	
Defendant.	)	

This matter came before the Court on Defendant Adam Maisano's motion to lift the stay in this case, confirm and compel enforcement of the Arbitrator's Award, and for sanctions in the form of attorney's fees and costs. This Court held a hearing on the motion on February 28, 2024. Benjamin R. Gooding, Esq. appeared on behalf of Defendant, and J. Gregory Studemeyer, Esq. appeared on behalf of Plaintiffs 212 Motors Holding Group, LLC, 212 Motors Columbia, LLC, Team 212 Columbia, LLC, and Team 212 Florence, LLC.

After considering the motion, memoranda in support and in opposition as well as supporting exhibits, and arguments of counsel, the Court **GRANTS** Defendant's motion in full for the reasons below.

BACKGROUND

Plaintiffs 212 Motors Holding Group, LLC, 212 Motors Columbia, LLC, Team 212 Columbia, LLC, and Team 212 Florence, LLC (collectively, "212 Motors" or the "Company") are limited liability companies in the used car business and are owned and operated by four members: Adam Maisano, Rod Slick, Jonathan Sanchez, and Michael Love. In November 2022, a dispute

arose among the members regarding management and day-to-day operations of 212 Motors. Soon after, the Parties agreed the remaining members of 212 Motors—Slick, Sanchez, and Love (the "Remaining Members")—would buy Maisano's interest under the transfer provision of the Company's Operating Agreement. After disputes over valuation of Maisano's interest, the Remaining Members filed this lawsuit on behalf of 212 Motors on March 3, 2023. Before Maisano answered, 212 Motors moved to stay the case and to compel arbitration under section 12.14 of the Operating Agreement. Maisano consented, and the Court issued a Consent Order on May 24, 2023, staying the case pending arbitration and appointing John E. Cuttino as arbitrator ("the Arbitrator").

On June 6, 2023, the Parties executed a Combined Certificate of Action, which set forth the ground rules and agreements of the Parties for the Arbitration. Among other things, the purpose of Arbitration was for the Arbitrator (1) to select a third appraiser to value Maisano's interest in 212 Motors as defined in section 8.3 of the Operating Agreement and (2) to order 212 Motors to buy Maisano's interest in the Company in accordance with that appraisal value. The Parties agreed the appraiser would value "the Company and the Interest Value of Maisano's membership interests in the Company as of December 31, 2022" and that the Parties would accept that appraiser's valuations as "definitive and binding." Pursuant to the agreement, 212 Motors was to buy Maisano's membership interest at a closing "[n]o later than 30 days following" the appraiser's valuation.

Both sides then submitted appraiser candidates to the Arbitrator for consideration. On June 16, 2023, the Arbitrator selected Maisano's candidate: Stuart McCallum, ASA at WithumSmith+Brown, PC. After several months of back forth, McCallum issued a valuation report on November 6, 2023, valuing the fair value of 212 Motors as $746,000.00, meaning

Maisano's 33.33% interest would be worth $248,666.67. The Remaining Members objected to this report because it valued the Company's Fair Value not Maisano's individual interest. The Arbitrator permitted them to voice these concerns to McCallum. And on December 21, 2023, McCallum issued a supplemental valuation report, appraising the fair market value of Maisano's individual interest as $189,000.00, which accounted for a 23.5% discount for his non-controlling interest.

The Remaining Members again objected to the valuation and methodology used by McCallum, claiming he did not use the correct method because he did not consider the Company's liability in valuing Maisano's interest. Maisano disagreed and sought to close on his interest via a buyout under the Combine Certificate of Action. The Remaining Members refused, so Maisano sought relief from the Arbitrator.

On January 29, 2023, the Arbitrator issued an Award requiring the Remaining Members of 212 Motors to conduct the closing—the buyout of Maisano's membership interest—"no later than 6PM Eastern time on Thursday, February 1, 2024" (the "Award"). As for the valuation of Maisano's individual interest, the Arbitrator confirmed McCallum's supplemental valuation—$189,00.00. The next day, 212 Motors' counsel emailed Maisano's counsel and the Arbitrator, stating "[t]here will be no closing."

When the closing did not take place on February 1, Maisano filed the current motion, asking the Court to lift the stay, confirm and compel enforcement of the Award, and for sanctions in the form of attorney's fees and costs on February 2, 2024.

ANALYSIS

The Parties agreed in their respective memoranda and at the hearing on this matter that the Court should lift the stay. The Parties disagree, however, as to what the Court should do after

lifting the stay. Maisano insists the Court must confirm the Award and order the Remaining Members to buy his interest as valued by McCallum as soon as practicable as agreed to in the Combined Certificate of Action. The Remaining Members argue the Award is not a final award and the Court should still lift the stay but restore this case to the non-jury roster for a bench trial on the valuation of Maisano's interest. Alternatively, at the hearing, the Remaining Members argued the Award should be vacated because the Arbitrator disregarded the law by adopting McCallum's supplemental valuation, which they claim did not follow the transfer provision of the Operating Agreement.

I. A Final Award was Ordered.

As an initial point, the Court finds the Arbitrator's January 29, 2023, email to the Parties was his final Award. Under § 15-48-90 of the South Carolina Code, an arbitration award must be "in writing and signed by the arbitrators joining in the award," and the arbitration must "deliver a copy to each party personally . . . or as provided in the agreement." While the Award was in an email, the Arbitrator has signed it and delivered to the Parties via their counsel. And the Award email concluded with "AND IT IS SO ORDERED." Considering the agreement of the parties, the Arbitrator's order adopting the appraisal value and ordering the closing to take place should be considered a final Award.

The Court also rejects the Remaining Members' argument that the order cannot constitute the Award because the Arbitrator did not hold a hearing. While section 15-48-50 of the South Carolina Code generally contemplates that a hearing shall take place in an arbitration, that section also provides a hearing is a requirement "[u]nless otherwise provided by the agreement." The Parties' June 6 Combined Certificate of Action governs the Arbitration here and sets forth the purpose and procedures of it. That agreement provides in relevant part as follows:

I. The undersigned Members agree to submit the selection of an appraiser to arbitration;
II. The undersigned Members agree that this arbitration will be conducted by a single arbitrator rather than a panel of three arbitrators as is required by § 12.14 of the Operating Agreement;
III. The undersigned Members agree that John E. Cuttino, Esq. will serve as the arbitrator;
IV. The undersigned Members agree that the arbitrator will determine who will pay the arbitrator's fees;
V. The undersigned Members agree that the arbitrator's choice of appraiser will be definitive;
VI. The undersigned Members agree that the cost of the appraiser will be split between Maisano and the Company, with the split determined by the arbitrator;
VII. The undersigned Members agree that they will cooperate with the requests of the appraiser, including but not limited to, by providing access to all governing documents, books, accounts, and records that the appraiser may deem relevant to the preparation of his report;
VIII. The undersigned Members agree that the appraiser will value the company and the Interest Value of Maisano's membership interests in the Company as of December 31, 2022;
IX. The undersigned Members agree that they will accept the valuations determined by the appraiser as definitive and binding;
X. The undersigned Members agree that no later than 30 days following the appraiser's determination of the Interest Value of Maisano's membership interests, the purchase of Maisano's membership interest by the Company will take place at a closing pursuant to § 8.5 of the operating agreement[].

Here, as the Arbitrator stated, the Arbitration was "unusual; there [was] no sworn testimony submitted, no typical evaluation of credibility of witnesses or evidence, and the 'evidence' consist[ed] of the Withum reports and the Operating Agreement." But it is clear from the Combined Certificate of Action that the Parties did not intend to proceed to a hearing. The purpose of the Arbitration, as set forth the Combined Certificate of Action, was to value Maisano's interest and then conduct a buyout. The Parties agreed the "valuations determined by the appraiser as definitive and binding," which implies they knew they would not have a hearing on McCallum's valuation. Thus, the Court determines the Arbitrator's January 29 order is the final Award and this case is properly before the Court to confirm the Award.

II. Confirmation of the Arbitration Award.

A written agreement to submit any existing controversy to arbitration, or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties, is valid, enforceable, and irrevocable. *See South Carolina Pub. Serv. Auth. v. Great W. Coal*, 312 S.C. 559, 437 S.E.2d 22 (1993). Unless the court can say with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the dispute, arbitration should be ordered. *Id.* Here, the parties have consented to the provision to compel arbitration under section 12.14 of the Operating Agreement. The parties do not dispute they were bound to arbitrate the dispute but instead dispute the outcome of the arbitration proceedings.

Pursuant to § 15-48-120 of the South Carolina Code, "[u]pon application of a party, the court shall confirm an [arbitration] award, unless . . . grounds are urged for vacating or modifying or correcting the award." To be sure, "[c]onfirmation is mandatory unless the opposing party has established statutory grounds to vacate, modify, or correct the award." *Henderson v. Summerville Ford-Mercury, Inc.*, 405 S.C. 440, 454, 748 S.E.2d 221, 228 (2013).

According to these authorities, the Court must confirm the Award unless the Remaining Members urge the Court to vacate or modify the Award under §§ 15-48-130 or -140 of the South Carolina Code. Section 15-48-130(a) provides five grounds on which a party can seek to vacate an arbitration award. Before the hearing, the Remaining Members argued only that the Award was not in fact an award and asked the Court to restore the case to the nonjury docket. At the hearing, counsel for the Remaining Members suggested that, if the Court found there was an Award, the Court should vacate the Award because it constituted a "manifest disregard of the law." As stated

above, the Court finds the January 29 order is the Award. Thus, the Court considers the Remaining Members' argument asking the Court to vacate the Award.

"Generally, an arbitration award is conclusive and courts will refuse to review the merits of an award." *Gissel v. Hart*, 382 S.C. 235, 241, 676 S.E.2d 320, 323 (2009). Our court of appeals has stated "[t]he scope of judicial review for an arbitrator's decision is among the narrowest known at law because to allow full scrutiny of such awards would frustrate the purpose of having arbitration at all." *Grp. III Mgmt. v. Suncrete of Carolina, Inc.*, 425 S.C. 141, 149, 819 S.E.2d 781, 785 (Ct. App. 2018) (internal quotation marks omitted) (quoting *Three S Del., Inc. v. DataQuick Info. Sys., Inc*, 492 F.3d 520, 527 (4th Cir. 2007)). "Indeed, 'broad judicial review on the merits would render resort to arbitration wasteful and superfluous.'" *Swentor v. Swentor*, 336 S.C. 472, 484, 520 S.E.2d 330, 337 (Ct. App. 1999) (citation omitted).

The Court shall vacate an arbitration award under § 15-48-130(a)(3) if "[t]he arbitrators exceeded their powers," which includes if the arbitrator "manifestly disregards or perversely misconstrues the law." *C-Sculptures, LLC v. Brown*, 403 S.C. 53, 56, 742 S.E.2d 359, 360 (2013) (quoting *Gissel*, 382 S.C. at 241–42, 676 S.E.2d at 323). Under this high standard, the "governing law ignored by the arbitrator must be well defined, explicit, and clearly applicable" and a manifest disregard occurs only "when the arbitrator knew of a governing legal principle yet refused to apply it." *Gissel*, 382 S.C. at 241, 676 S.E.2d at 323 (citations omitted).

At the hearing, the Remaining Members argued the Arbitrator manifestly disregarded the law by adopting McCallum's supplemental valuation of $189,000. Specifically, they argue the valuation did not follow the definition of "Interest Value" for Maisano's membership interest as provided in the Operating Agreement because it allegedly did not consider all the considerations listed in the definition of "Interest Value."

The Arbitrator heard arguments from counsel on this issue in writing before he issued his Award and rejected the Remaining Members' argument.[1] The Arbitrator essentially found the valuation, as agreed, was "definitive and binding," and the Combined Certificate of Action did not provide an avenue for objecting to the valuation, and even if it did, the appraisal process is subjective in nature such that experts may disagree.

The Court agrees. The Arbitrator did not exceed his powers in interpreting the "definitive and binding" provision of the Combined Certificate of Action as absolute. Our supreme court has stated that "[e]ven a 'clearly erroneous interpretation of the contract' cannot be disturbed." *Gissel*, 382 S.C. at 241, 676 S.E.2d at 323. Much less a reasonable interpretation. The Arbitrator's interpretation of the "definitive and binding" language was more than reasonable. The Combined Certificate of Action specifically states its purpose—as is the purpose of most arbitrations—was "to proceed with the valuation and sale of Maisano's membership interests in a fair and expeditious manner." To further that purpose, the Parties agreed "the arbitrator's choice of appraiser will be definitive" and they would "accept the valuations determined by the appraiser as definitive and binding." This left no room for quibbling about the valuation or methodology after McCallum determined the value of Maisano's interest.

Additionally, as to the merits of McCallum's valuation or his methodology, while the valuation may not be what the Remaining Members' appraiser would have calculated, the Court agrees with the Arbitrator that "[t]he valuation process inherently includes matters of opinion upon

[1] Arbitrator Cuttiono responded that "the valuation set forth in Withum's supplemental valuation report of December 21, 2023 is binding upon the parties. The specific agreement of the parties to be bound appears to have no contingency or provision for objection. Rather, it is admitted by all that the parties have widely divergent opinions on the valuation of Maisano's interest, and that language appears to be intended specifically to avoid unending disagreement about the valuation. This arbitration decision, however, does not turn disproportionally on the aforesaid "definitive and binding" provision. The valuation process inherently includes matters of opinion upon which reasonable minds and experts can disagree, as has happened here. If the valuation was subject to a specific mathematical formula with static components, there presumably would never be any disagreement on valuation."

which reasonable minds and experts can disagree, as has happened here." The Court finds the Remaining Members' disagreement is simply with the appropriateness of the methodology employed and conclusion reached by McCallum, which inherently includes subjective inquiries. Neither the Arbitrator—nor McCallum for that matter—knew of a "well defined, explicit, and clearly applicable" legal principle yet "manifestly disregarded" such principle in issuing the Award adopting McCallum's valuation. The Court declines to wade into those issues further as it would be improper under the Court's limited role in reviewing this Award. *See Gissel*, 382 S.C. at 241, 676 S.E.2d at 323.

Therefore, because the Remaining Members have not argued a valid ground for vacating the Award under § 15-48-130, but simply disagree with McCallum's valuation of Maisano's interest, the Court must confirm the Award under § 15-48-120. The Award—in accordance with the Combined Certificate of Action requiring a closing within thirty (30) days of the valuation—required a buyout of Maisano's interest by February 1, 2024. Because that date has already passed, the Court finds it appropriate to grant Maisano's request for a closing as soon as practicable. The Arbitrator set a closing for three business days after the Award. *See* S.C. Code Ann. § 15-48-130 ("[T]he fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award."). Thus, the Court confirms the Arbitrator's Award adopting the valuation of $189,000 for Maisano's interest and orders the closing to take place within three (3) days of the entry of this confirmation order. Further, because neither party challenged the remaining portions of the Award ordering the Company to pay his fees and the costs of the appraiser, those findings are also confirmed in this Order.

III. Attorneys' Fees and Costs.

Maisano also asks the Court to impose sanctions in the form of attorneys' fees and costs against 212 Motors and the Remaining Members under various authorities. The Court finds that Attorney's Fees and Costs are not appropriate under either § 15-48-150 nor the Company's Operating Agreement. The parties to this matter, in good faith, pursued arguments on the merits of the Arbitration process.

CONCLUSION

IT IS THEREFORE ORDERED AND ADJUDGED that, in accordance with the Arbitration Award, 212 Motors buy Maisano's membership interest in the Company for a value of $189,000 within three (3) business days of this Order.

IT IS SO ORDERED.

[JUDICIAL E-SIGNATURE PAGE TO FOLLOW]

Lexington Common Pleas

Case Caption: 212 Motors Holding Group, Llc , plaintiff, et al VS Adam Maisano

Case Number: 2023CP3200848

Type: Order/Other

It Is So Ordered

s/ Walton J. McLeod