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May 07 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
J. Cordell Maddox, Jr., Circuit Court Judge

Appellate Case No. 2023-001479
Case No. 2021-CP-02-00889

Julianne Foster,Respondent,

v.

Rhett Riviere, Katherine A. Thomas, Chase Enterprises,
LLC of South Carolina, and Airbnb, Inc.,..... Defendants,

of which

Airbnb, Inc. is the.....Appellant,

And Rhett Riviere is a Respondent.

/s/ Deborah B. Barbier
Deborah B. Barbier, S.C. Bar No. 6920
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**Respondent Julianne Foster’s Reply to Appellant Airbnb, Inc.’s
Return to her Motion for Certification**

In its Return, Appellant Airbnb, Inc. (“Airbnb”) argues that Respondent Julianne Foster (“Ms. Foster”) has not identified a significant public interest or legal principle of major importance warranting transfer under Rule 204(b), SCACR, and that Ms. Foster’s argument that this appeal is frivolous contradicts any argument that this appeal presents issues of significant public interest or legal principles of major importance. (Airbnb’s Return at 1-2). These arguments are meritless.

First, in her Motion for Certification, Ms. Foster not only identified, she discussed at length, the significant public interest and legal principle of major importance warranting transfer under Rule 204(b), which Airbnb does not challenge on the merits or even address in its response. In sum, the issue is whether a party should be deprived of her constitutional right to a jury trial and forced to arbitrate her claims despite never having entered into any arbitration agreement. (Mot. for Cert. at 4-5). As the Court recently noted, “[a]rbitration rests on consent of the parties, where parties freely exchange the expansive litigation rights court actions provide for the speed, informality, and finality arbitration promises.” *Waldo v. Cousins*, ___ S.E.2d ___, 2024 WL 1900583, *3 (May 1, 2024, Appellate Case No. 2022-000134). Because Ms. Foster was never even presented with a proposed arbitration agreement, she was deprived of the right to decide whether to consent to arbitration after “calculate[ing] the benefits and risks.” *Id.* Additionally, as Ms. Foster argued in her motion, forcing arbitration under the circumstances of this case has far reaching implications beyond short-term rentals and affects a significant public interest. (Mot. for Cert. at 4-5). The unchallenged grounds that Ms. Foster set forth in her motion warrant the Court granting her Motion for Certification.

Moreover, there is no contradiction in Ms. Foster, as a respondent in this action, arguing that Airbnb’s appeal is frivolous and seeking certification. These arguments are not mutually exclusive because, despite Airbnb using the appellate process strategically to delay litigation, the circuit court correctly ruled on important legal issues of significant public interest, and Ms. Foster seeks to have the Court affirm this decision expeditiously as possible so that she may continue litigating her claims in the circuit court. As the United States Supreme Court recently recognized, interlocutory appeals of orders denying arbitration are fraught with the potential for unwarranted delays and frivolous appeals. *Coinbase, Inc. v. Bielski*, 599 U.S. 736, 143 S.Ct. 1915, 1922 (2023) (addressing stays in cases governed by the FAA procedural rules). The Court stated that the federal courts of appeals “possess robust tools to prevent unwarranted delay and deter frivolous interlocutory appeals” and “a party can ask the court of appeals to summarily affirm, to expedite an interlocutory appeal, or to dismiss the interlocutory appeal as frivolous,” and the court can “impose sanctions because the possibility of sanctions also helps deter frivolous appeals.” *Id.* By filing a meritless appeal, even if ultimately unsuccessful, Airbnb has achieved its goals of delaying this case and thwarting discovery for potentially years while this case makes its way through a backlog of appellate cases.

For the reasons set forth above and in her motion, the Court should grant Respondent’s Motion for Certification under Rule 204(b), SCACR.

Respectfully submitted,

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Attorneys for Plaintiff/Respondent Julianne Foster

May 7, 2024
Columbia, South Carolina

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of which

Airbnb, Inc., is the..... Appellant,

and

Rhett Riviere is a..... Respondent.

/s/ Wesley D. Few

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PROOF OF SERVICE

The undersigned hereby certifies that on May 7, 2024, **Respondent Julianne Foster's Reply to Appellant Airbnb, Inc.'s Return to her Motion for Certification** was served on all counsel of record and the Court of Appeals Clerk of Court via Mail/E-Filing/Email as follows:

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals, Clerk of Court
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-and-

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May 7, 2024
Columbia, South Carolina

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May 7, 2024

Via E-File and Email:

The Hon. Jenny Abbott Kitchings, Clerk of Court

South Carolina Court of Appeals

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Columbia, South Carolina 29211

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RE: Airbnb Inc. v. Rhett Riviere
Appellate Case No.: 2023-001479
Case No. 2021-CP-02-00889
Our File No.: 00305-001

Dear Ms. Kitchings:

Enclosed for filing is Respondent Julianne Foster's Reply to Appellant Airbnb, Inc.'s Return to her Motion for Certification and proof of service for same.

Sincerely Yours,



Wesley D. Few

Enclosures

WDF/cgy

CC: All Counsel of Record (*Via Email and U.S. Mail*)
Client (*Via Email*)