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Jun 24 2024

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Courtney Clyburn Pope, Circuit Court Judge

C.A. No.: 2021-CP-02-01306

Regions Bank, an Alabama banking corporationRespondent,

v.

CDIC Development Company, LLC, a South Carolina limited liability companyAppellant.

RETURN TO PETITION FOR REHEARING

As requested by the Court, Regions Bank submits this return to the petition for rehearing submitted by CDIC Development Company, LLC (“CDIC”).¹ The Court affirmed the circuit court’s order confirming an arbitration award to Regions Bank in an unpublished, Rule 220, SCACR opinion.

CDIC does not dispute the amount of the underlying arbitration award, \$220,309.81 as of June 21, 2019, which includes interest at the per diem rate \$28.18 accruing thereafter (“Award”). (R. at 28-29). Nor does it dispute the “the construction, interpretation, and enforcement of this arbitration provision” as decided in the arbitration. Instead, it contends it should not pay anything

¹ Regions Bank incorporates its Respondent’s Brief by reference.

based on when Regions Bank sought to enforce the Award in the circuit court. This Court disagreed, finding that the South Carolina Uniform Arbitration Act (“Act”) applied to the procedure for the confirmation of the Award and that the Act does not include a statute of limitations absent a motion to vacate, modify, or correct.

APPLICABLE CONTRACT LANGUAGE

Regions Bank loaned CDIC \$250,000.00 on January 10, 2008 pursuant to a Business Line Agreement (the “Note”). (R. at 22 ¶3, 25-27). CDIC defaulted on the Note. (R. at 23 ¶¶4-5). The Note provides that “[t]he Federal Arbitration Act [“FAA”] applies to the construction, interpretation, and enforcement **of this arbitration provision.**” (R. at 27 (emphasis added)). The Note also states, “Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction.” (*Id.*).

ARGUMENT IN RESPONSE

CDIC argues that the FAA applies to any possible matter regarding arbitration in this case, including the procedural matter of confirming an arbitration award. That is not what the parties agreed. Instead, the parties agreed that “to the construction, interpretation, and enforcement **of this arbitration provision.**” With respect to any award, the parties agreed that judgment “may be entered in any court having jurisdiction.” CDIC has not argued that the courts of this state lack jurisdiction.

Neither this Court nor the circuit court overlooked or failed to enforce any portion of the parties’ agreement. This is not a dispute relating to the arbitration provision. It is an action to confirm the Award in a court having jurisdiction. Both this Court and the circuit court honored the parties’ agreement.

Hoping to avoid this result and having to pay the Award, CDIC argues that *Henderson v. Summerville Ford-Mercury Inc.*, 405 S.C. 440, 748 S.E.2d 221 (2013), should be limited to its own facts and is not applicable here. Nothing about the face of the opinion suggests that it is to be so narrowly construed. As set forth there, state law, not the FAA, applies when confirming an arbitration award in South Carolina state court. *Henderson*, 405 S.C. at 448, 748 S.E.2d at 225. This is because “the FAA does not preempt state *procedural* law relating to arbitration.” *Id.* As set forth in *Henderson*, “[t]he FAA’s substantive provisions apply to arbitration in federal or state courts, but a state’s procedural rules apply in state court unless they conflict with or undermine the purpose of the FAA.” *Id.* at 450, 748 S.E.2d at 226-27. Confirmation of an arbitration award is procedural, not substantive. *Id.* As such, “section 9 of the FAA applies only in federal court[.]” *Id.*

Given this express holding, the circuit court correctly applied state law and confirmed the award pursuant to S.C. Code Ann. § 15-48-120, which provides as follows:

Upon application of a party, **the court shall confirm an award**, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in §§ 15-48-130 and 15-48-140.

(Emphasis added). As found by the Court, there is not a limitations period for confirmation of an award in the absence of a request to vacate, modify, or correct the underlying award.

Nothing about the language of the Note changes this result. In *Henderson*, the parties agreed that any disputes would be submitted to binding arbitration that “shall be governed by the [FAA].” 405 S.C. at 445, 748 S.E.2d at 223. Even given that broad language, which is broader than the language here which is limited to “to the construction, interpretation, and enforcement of this arbitration provision,” the South Carolina Supreme Court found that state law applied to the

confirmation process and that 9 U.S.C.A. § 9 did not apply. The same applies here as found by the Court.

CONCLUSION

CDIC has not raised any issues in its Petition that were overlooked or misapprehended by the Court as contemplated by Rule 221, SCACR. For these reasons and those previously presented, the Petition should be denied.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.

s/ Sarah P. Spruill

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APPEAL FROM AIKEN COUNTY
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Courtney Clyburn Pope, Circuit Court Judge

Appellate Case No. 2022-000546

Regions Bank, an Alabama banking corporationRespondent,


v.

CDIC Development Company, LLC, a South Carolina limited liability companyAppellant.

PROOF OF SERVICE

I certify that I have served the *Return to Petition for Rehearing* on counsel of record on
June 24, 2024, by electronic mail only to the following:

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June 24, 2024

VIA EMAIL

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: *Regions Bank, an Alabama banking corporation v. CDIC Development Company, LLC, a South Carolina limited liability company*
Appellate Case No.: 2022-000546

Dear Ms. Kitchings:

This firm represents Respondent CDIC Development Company in the above matter. Enclosed for filing is the Respondents' *Return to Petition for Rehearing and Proof of Service* of same.

By copy of this letter, I am serving a copy of the Return on all counsel of record.

If you have any questions, please give me a call.

Sincerely yours,

HAYNSWORTH SINKLER BOYD, P.A.



Sarah P. Spruill

SPS/sac

Enclosure

cc: Ainsley Tillman (ainsley.tillman@fordwallace.com)
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