

STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)
)
 RICHARD PENNOYER,)
)
 Plaintiff,)
)
 v.)
)
 HAROLD LENN JEWEL A/K/A)
 LENN JEWEL and SPIFFY 3, LLC,)
)
 Defendants.)
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)

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2022-CP-10-03817

**ORDER DENYING MOTION TO
DISMISS, OR IN THE ALTERNATIVE
TO COMPEL ARBITRATION**

This matter came before the Court upon Defendants’ Motion to Dismiss or in the Alternative to Compel Arbitration.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Plaintiff is a minority member of, Defendant Spiffy 3, LLC (“Spiffy”), owning an 18% interest. Defendant Harold Lenn Jewel (“Jewel”) is the managing member of Spiffy. Defendant Spiffy serves as the majority member of SC North Charleston Uptown, LLC (“Uptown”). Uptown came to own several parcels of real estate in North Charleston, which was to be developed as the (“Uptown Project”). Several parcels of the Uptown Project were sold. Plaintiff alleges in suit, Defendants sold these parcels for less than market value to entities which Defendants have a self-serving interest in.

On September 29, 2022, Defendants filed a Notice of Motion and Motion to Dismiss or in the Alternative, to Compel Arbitration. In Defendants’ Motion to Dismiss or in the Alternative Compel Arbitration, Defendants argued the arbitration clause of Section 12.7 of the Spiffy operating agreement governs this dispute and not this Court.

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LEGAL ANALYSIS

I. This controversy does not arise under or in connection with the Spiffy 3, LLC operating agreement.

The arbitration clause as provided under Spiffy 3, LLC's operating agreement requires, the dispute or controversy to arise from, under or in connection with the operating agreement. Section 12.7 of Spiffy 3, LLC's operating agreement provides:

12.7. Arbitration. Any Dispute or controversy *arising under or in connection with this Agreement* shall be submitted to binding arbitration in accordance with the requirements of the South Carolina Uniform Arbitration Act, S.C. Code 15-48-10 et seq. as then in effect ("SCUAAA"). All arbitration proceedings shall be conducted in Charleston, South Carolina...

(emphasis added). Section 12.7. of the Spiffy 3, LLC operating agreement ("Arbitration Clause"), requires the dispute or controversy to be arbitrated to arise under or in connection with the Spiffy 3, LLC operating agreement.

However, I find that this controversy does not arise under or in connection with the operating agreement of Spiffy 3, LLC. When the Plaintiff and Jewel entered into this operating agreement, Defendants' alleged actions were not a foreseeable consequence of the operating agreement.¹

When agreeing to the Arbitration clause it is not reasonably foreseeable that other parties of the operating agreement would act with gross negligence, engage in corporate waste, breach fiduciary duties of good faith, loyalty or fair dealing or unjustly enrich themselves. I find that Plaintiff could not reasonably foresee that Defendants would allegedly engage in self-dealing, breaches of fiduciary duty, duty of loyalty and of good faith and fair dealing.

¹ Where the dispute or disputes are not foreseeable at the time of signing the agreement containing the arbitration clause, the arbitration clause should not govern the dispute. *Partain v. Upstate Auto. Grp.*, 386 S.C. 488, 689 S.E.2d 602 (2010), *citing Aiken v. World of Fin. Corp.*, 373 S.C. 144, 644 S.E.2d 705, 708 (2007).

II. The judicial process is needed to properly name all parties in this controversy.

Plaintiff conservatively only named Spiffy and Jewel in the current action. Without the ability to conduct meaningful discovery, Plaintiff cannot ensure all proper parties to this dispute are named in this action. I find that a fair, just, and meaningful resolution of this dispute cannot be achieved without all necessary and proper parties named. Furthermore, I find that arbitration cannot afford Plaintiff the judicial process to conduct meaningful discovery.

I find that Defendant's Motion to Dismiss or in the Alternative Compel Arbitration must be denied, as this Court retains proper jurisdiction over this matter.

III. Plaintiff's complaint provides a sufficient facts and allegations to support the causes of actions brought forth in the Complaint.

In Defendants' Motion to Dismiss or in the Alternative Compel Arbitration, Defendants allege Plaintiff has failed to state facts and allegations sufficient to constitute a cause of action. However, I find Plaintiff has set forth sufficient allegations to support the causes of action brought forth.

IT IS THEREFORE ORDERED that the Defendants' Motion to Dismiss or in the Alternative to Compel Arbitration is DENIED.

IT IS ORDERED.

The Honorable Judge McFaddin
Ninth Judicial Circuit

Date: _____
Charleston, South Carolina



Charleston Common Pleas

Case Caption: Richard Pennoyer VS Harold Lenn Jewel Jr , defendant, et al

Case Number: 2022CP1003817

Type: Order/Other

So Ordered

S/George M. McFaddin, Jr., #2759