

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
CIRCUIT COURT

John C. Hayes, III, Circuit Court Judge

Cases No. 2009-CP-46-01244

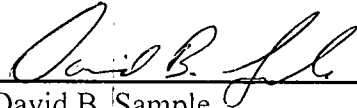
Phil Vasey and Pamela Vasey, Appellants,

v.

Colton Builders, LLC, Respondent.

AMENDED NOTICE OF APPEAL

Phil Vasey and Pamela Vasey appeal the order of the Honorable John C. Hayes, III in Case Number 2009-DR-46-01244 dated September 16, 2013 and filed September 23, 2013. Appellant received written notice of entry of these orders on October 31, 2013.



David B. Sample
1506 Ebenezer Road
Rock Hill, South Carolina 29732
(803) 981-9900
Attorney for Appellant

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JAN 07 2014

SC Court of Appeals

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John C. Hayes, III, Circuit Court Judge

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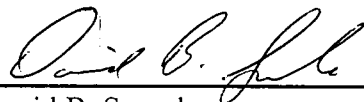
Phil Vasey and Pamela Vasey, Appellants,

v.

Colton Builders, LLC, Respondent.

CERTIFICATE OF SERVICE

I certify that I have served the Amended Notice of Appeal by depositing a copy of it in the United States Mail, postage prepaid, on January 3, 2014, addressed to the Respondent's attorney of record, F. Craig Wilkerson, Jr., 1050 College Avenue Extension, Rock Hill, SC 29732.



David B. Sample
1506 Ebenezer Road
Rock Hill, South Carolina 29732
(803) 981-9900
Attorney for Appellant

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SC Court of Appeals

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF YORK
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2009CP4601244

Phil Vasey	Pamela Vasey	Colton Builders LLC	Collinswood Cabinetry LLC
PLAINTIFF(S)		DEFENDANT(S)	

Submitted by: Craig Wilkerson	Attorney for: <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
--------------------------------------	--

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. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRCP; Rule 41(a), SCRCP (Vol. Nonsuit);
 Rule 43(k), SCRCP (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRCP; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- 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:

ORDER INFORMATION

Order (*Plaintiff's Motion to Vacate Arbitration Award is Denied and Award is Upheld and Confirmed and Shall Be Entered As A Judgment*)

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Colton Builders, LLC	Phil & Pamela Vasey	\$8,751.11

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

s/John C. Hayes, III

Circuit Court Judge

2049

Judge Code

9/23/2013

Date

For Clerk of Court Office Use Only

RECEIVED

JAN 07 2014

SC Court of Appeals

For Clerk of Court Office Use Only

This judgment was entered on September 23, 2013, and a copy mailed first class or placed in the appropriate attorney's box on September 23, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

David B. Sample 2424 India Hook Road Suite 160 Rock Hill,
SC 29732

ATTORNEY(S) FOR THE PLAINTIFF(S)

F. Craig Wilkerson Jr. 1050 College Ave. Ext. Rock Hill,
SC 29732

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

David Hamilton - Clerk of Court

Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Phil Vasey and Pamela Vasey,

Plaintiffs,

vs

Colton Builders, LLC and Collinswood
Cabinetry, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Civil Action No.: 09-CP-46-01244

ORDER

DAVID D. HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

2013 SEP 23 PM 2:26

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This matter came before the Court on August 27, 2013, pursuant to a Notice of Motion and Motion to Confirm Arbitration award filed by the Defendant, Colton Builders, a Notice of Motion and Motion to Vacate Arbitration Award filed by the Plaintiffs, as well as any other motions pending in this case. Present at the hearing were counsel for both Plaintiffs and Defendant, Colton Builders. The Defendant, Collinswood Cabinetry, LLC was not present, as they did not participate in the arbitration.

Based on the record and arguments of counsel, the Court finds:

FINDINGS OF FACT

1. This Court has jurisdiction of the parties and subject matter herein.
2. The parties herein entered into a Consent Order for Arbitration filed December 20, 2012, appointing Terry Millar as the Arbitrator. By agreement of the parties, arbitration was scheduled for January 22, 2013. Neither the Plaintiffs nor Plaintiffs' counsel appeared for the arbitration. An Award Upon Binding Arbitration was issued and filed February 7, 2013. The Arbitration Award is attached hereto and incorporated herein by reference, as if set out verbatim.



3. The Plaintiffs' filed a Motion to Vacate Arbitration Award pursuant to §15-48-130(a)(1) alleging the arbitration award was procured by fraudulent means, and §15-48-130(a)(5) alleging there was no valid arbitration agreement. The Court finds that Plaintiffs' motion pursuant to §15-48-1310(a)(1) is not supported by the record. Nothing in the records indicates that the arbitration award was procured by corruption, fraud, or any other undue means. As to Plaintiff's motion pursuant to §15-48-130(a)(5), the Court affirmatively finds that the parties agreed to, and did, in fact, enter into a binding arbitration agreement and are, therefore, subject to the award issued by the Arbitrator. Plaintiffs' motions are predicated on the contention that the Defendant did not have the ability to proceed with litigation that was instituted by the Plaintiffs.

4. The Court finds that the Plaintiffs have suffered no prejudice by the arbitration going forward. The Defendant, as much as the Plaintiffs, had the right to protect their interest, whatever it may have been, as well as the right to have the case timely resolved. The Court, therefore, upholds the arbitration award, confirms the award, and denies motion to vacate.

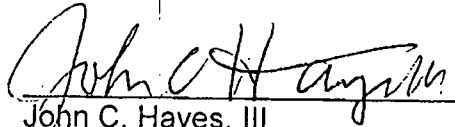
CONCLUSIONS OF LAW

5. This court has jurisdiction of the parties and the subject matter herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiffs' motion to vacate the arbitration award is hereby denied and the award for arbitration is upheld and confirmed and shall be entered as a judgment by the York County Clerk of Court.

AND IT IS SO ORDERED

York, SC
9/16, 2013


John C. Hayes, III
Judge, Sixteenth Judicial Circuit

#2

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Phil Vasey and Pamela Vasey,)
)
Plaintiffs,)

Case No.: 09-CP-46-01244

vs)

AWARD

Colton Builders, LLC and)
Collinswood Cabinetry, LLC,)

UPON BINDING ARBITRATION

Defendants.)

This contract and building defect dispute is in arbitration by Consent Order dated December 18, 2012, filed December 20, 2012, and signed by the Court and counsel for both Plaintiff and Defendant Colton Builders, LLC. A copy of the Consent Order is attached hereto as Exhibit "A".

This matter was scheduled by agreement for a hearing January 22, 2013 at 10:00 a.m. The Arbitrator was advised that the Defendant Collinswood Cabinetry had never been served and was not a party to the arbitration.

Pursuant to the terms of the Consent Order and the Agreement to Arbitrate attached hereto as Exhibit "B", all witness lists, exhibits, etc. were to be exchanged between the parties and provided to the Arbitrator ten (10) days prior to arbitration. The Consent Order further provided that all South Carolina Rules of Evidence would be followed. Counsel for the Defendant timely provided Plaintiffs' counsel and the Arbitrator with a list of witnesses and proposed exhibits. Nothing was received from Plaintiffs or their counsel.

On Friday, January 18, 2013, at 4:54 p.m. Plaintiffs' counsel, by e-mail, raised an issue of the Defendant's designation with the

South Carolina Secretary of State as being that of Colton Builders, Inc. and not Colton Builders, LLC as captioned in this case. Plaintiff's Counsel indicated he would be filing a motion the next week to have the Consent Order for Arbitration set aside as "illusory." Counsel for the Defendant responded to the Plaintiffs' counsel's 4:54 p.m. e-mail at 5:28 p.m. on Friday, January 18, 2013 indicating that under Rule 15 (c) of the SCRPC and the applicable case law, that should Plaintiffs recover damages, Defense Counsel would consent to substitution of Colton Builders, Inc. for Colton Builders, LLC and as such there would be no prejudice to either side. Defense Counsel stated in part:

Changing a complaint to correct the name of a party relates back to the original filing.

S.C. R. Civ. P. 15© requires that (1) the basic claim must have arisen out of the conduct set forth in the original pleading; (2) the party to be brought in must have received such notice that it will not be prejudiced in maintaining its defense; (3) that party must or should have known that, but for a mistake concerning identity, the action would have been brought against it; and (4) the second and third requirements must have been fulfilled within the prescribed limitations period.

Hughes v. Water World Water Slide, 314 S.C. 211 (S.C. 1994)

The undersigned was copied with the e-mails. Plaintiffs' counsel's email was treated as a motion for a continuance which defense counsel opposed. Therefore, the matter was addressed via phone conference with the Arbitrator and counsel at 11:00 a.m. on Monday, January 21, 2013. Defense counsel again stipulated that substitution of the entities would be made, that any recovery by

I have filed my motion and will serve it today by mail, and also by email as soon as possible. The Vaseys and I will not be in attendance as it is their position that there is no valid agreement to submit the case to mediation.

This Arbitrator was advised by Defense counsel that the law clerk for Judge John C. Hayes had advised there had been no contact other than Defendant's counsel Wilkerson's e-mails to chambers advising of the Motion, that no Order had been issued, and that Judge Hayes was out of town.

Although the arbitration was postponed until 11:00 a.m., the actual hearing did not begin until approximately 11:30 a.m. in order to allow time for Plaintiffs' counsel to contact the Court with his motion to set aside the Arbitration Order and to appear or contact the Arbitrator concerning any problem. The Plaintiffs nor the Plaintiffs' attorney appeared for the arbitration hearing.

At the commencement of the hearing, Defendant made a motion that the Plaintiffs' case be dismissed for failure to prosecute and failing to produce a witness list and exhibits, as provided in the Consent Order and Agreement for Arbitration. Defense counsel advised that he had made two prior motions to compel and a motion for sanctions, and that the Plaintiffs had previously agreed to participate in Voluntary Mediation, at which the Plaintiffs failed to appear, that Plaintiffs had failed to list or exchange any evidence or exhibits of any kind, prior to raising the objection as to the designation of Colton Builders on the Friday before the Tuesday scheduled Arbitration hearing.

*M
PH*


Whereupon, Defendant's motion to dismiss Plaintiffs' complaint for failure to prosecute and failure to produce evidence was granted.

In support of its counterclaim, Defendant Colton then called two witnesses, Scott Price, Owner of Colton Builders, and Missy Snipes Thurm, Office Manager for Colton Builders, who testified under oath that, although Colton's counterclaim initially sought \$22,565.11 as past due for work performed at the Plaintiffs' home under the contract and the added work done at Plaintiffs' request, they had discovered there were credits of approximately \$15,000.00 due to the Plaintiffs for materials purchased by the Plaintiffs. The unpaid balance was actually \$8,758.11, the amount Colton sought to recover. Their testimony was not disputed.

Wherefore, the Plaintiffs' case was, and is, dismissed for failure to prosecute and failure to produce any evidence. The Defendant Colton Builders, LLC and/or Colton Builders, Inc. is awarded \$8,751.11 on its counterclaim.

The Arbitrator understands that a hearing on Plaintiffs' counsel's motion to set aside the Consent Order for Arbitration is pending. The Arbitrator will make himself available for any information the Court requests.

AND IT IS SO ORDERED.


TERRY B. MILLAR
Arbitrator
Terry B. Millar, LLC
PO Box 10590
Rock Hill, SC 29731
(803) 324-3196
tbmillar@tbmlc.com

February 5, 2013

STATE OF SOUTH CAROLINA
COUNTY OF YORK

FILED-RECEIVED
2013 FEB -7 AM 11:42
DAVIS HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Phil Vasey and Pamela Vasey,
Plaintiffs,

Case No.: 09-CP-46-01244

vs

Colton Builders, LLC and
Collinswood Cabinetry, LLC,

Defendants.

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UPON BINDING ARBITRATION**

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Handwritten signature/initials
p. 2

the Plaintiffs could be entered against Colton Builder, Inc. or Colton Builder, LLC, and explained that the dissolution of the LLC was believed to be an administrative action by the Secretary of State. Given the stipulation by Defendant to allow any award to Plaintiffs to be entered as a judgment against the LLC and/or the corporation (Inc.), no prejudice to the Plaintiffs was evident. Other than the entity status as being "illusory", no other reason for a continuance was raised by Plaintiffs' counsel. Counsel was advised that the arbitration would go forward on January 22, 2013, as scheduled. However, as an accommodation, the Arbitrator delayed the hearing start of 10:00 a.m. until 11:00 a.m. to allow the Plaintiffs' attorney to seek an Order of the Court staying the arbitration.

Later that same day, On Monday, January 21, 2013, at 3:30 p.m., Plaintiffs' counsel sent an e-mail to Defendant's attorney and the Arbitrator advising that he would be filing a motion to set aside the Consent Arbitration Order and that neither he nor the Plaintiffs' would be present for the arbitration. Counsel for Defendant objected and the undersigned advised counsel for both parties that the arbitration hearing would go forward as scheduled, that Plaintiffs' counsel could seek a Court order delaying the hearing, and that the Plaintiffs could appear or not appear at their own risk.

On the morning of January 22, 2013, at 10:45 a.m. Plaintiffs' Counsel sent an email stating:

DM
P3

I have filed my motion and will serve it today by mail, and also by email as soon as possible. The Vaseys and I will not be in attendance as it is their position that there is no valid agreement to submit the case to mediation.

This Arbitrator was advised by Defense counsel that the Law Clerk for Judge John C. Hayes had advised there had been no contact other than Defendant's counsel Wilkerson's e-mails to chambers advising of the Motion, that no Order had been issued, and that Judge Hayes was out of town.

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*Mr
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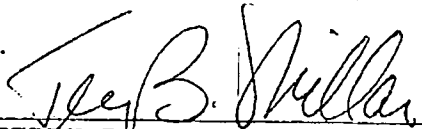
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February 5, 2013

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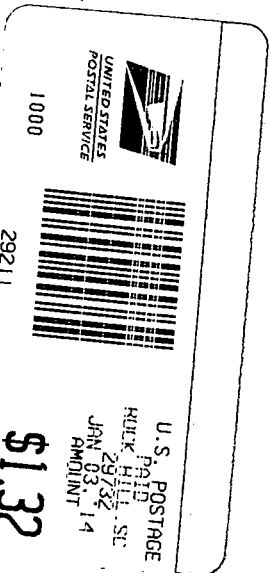
David B. Sample
Attorney at Law
1506 Ebenezer Road
Rock Hill, SC 29732

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JAN 07 2014

South Carolina Appeals

South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211



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JAN 06 2014

~~South Carolina Court of Appeals~~

