

ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

FILED

) IN THE COURT OF COMMON PLEAS

2014 APR 28 P 3:01

Jeff Robert Sarokas,

Plaintiff,

vs.

Cafe Enterprises, Inc., d/b/a FATZ
and Joel Taylor,

Defendants.

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

**ORDER DENYING PLAINTIFF'S
MOTION TO RECONSIDER,
ALTER, OR AMEND ORDER
GRANTING DEFENDANTS'
MOTION TO COMPEL
ARBITRATION AND DENYING
PLAINTIFF'S MOTION TO
DISMISS COUNTERCLAIMS**

C.A. No. 2013-CP-32-03007

Before this Court is the Motion to Reconsider, Alter, or Amend ("Motion to Reconsider") filed by Plaintiff Jeff Robert Sarokas ("Sarokas"), dated February 24, 2014, and file-stamped February 25, 2014, with respect to the Order granting the Motion to Compel Arbitration filed by Defendants Cafe Enterprises, Inc., d/b/a FATZ ("FATZ") and Joel Taylor, and denying Sarokas' Motion to Dismiss Counterclaims, dated and filed-stamped January 17, 2014. Oral argument was heard on April 2, 2014.

After reviewing Sarokas' Motion to Reconsider and the parties' underlying motions, memoranda, supplemental memoranda, and exhibits, after hearing oral argument on the underlying motions on December 13, 2013, and after oral argument herein, the Court is of the opinion that the Motion to Reconsider should be DENIED.

The basis for the Court's decision to grant the underlying Motion to Compel Arbitration has been addressed in the underlying Order granting the Motion to

Compel Arbitration and is consistent with the memoranda, supplemental memoranda, affidavits, and related documents submitted by the parties therewith.

The South Carolina Supreme Court has clarified when a Rule 59(e) motion for reconsideration is appropriate. "A party may wish to file such a motion when she believes the Court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the Court to reconsider or rule on it. A party must file such motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." *Elam v. S.C. Dept. of Transportation*, 602 S.E.2d 772, 780 (S.C. 2004). In this case, plaintiff's arguments are in many respects consistent with those raised previously during the parties' oral argument and memoranda and supplemental memoranda with respect to the underlying motions. With respect to issues raised previously, the Court affirms its prior analysis on all issues.

However, the Court desires to be clear in its ruling and to ensure that all issues raised have been thoroughly addressed. Sarokas' counsel stressed at oral argument, and on pp. 1-2 of Sarokas' Motion for Reconsideration, the issue of timeliness of the Cannon affidavit pursuant to Rule 6(d), *SCRCP*. Although Defendants' affidavit was filed subsequent to the filing of the related Motion to Compel Arbitration, Sarokas submitted a lengthy responsive affidavit, numerous exhibits thereto, and a supplemental memoranda after oral argument, but never requested any additional time to submit further affidavits or argument. Moreover, Sarokas has not shown prejudice other than to argue that the underlying motion

was granted and that the affidavit at issue was accepted. At most, the Cannon affidavit provided additional information with respect to the question of “interstate commerce” under the Federal Arbitration Act (“FAA”), which element was also shown otherwise by Defendants given that the parties’ underlying agreement for which Sarokas would serve as an Operating Partner was a restaurant, which inherently involves interstate commerce as shown by the United States Supreme Court in *Katzenbach v. McClung*, 379 U.S. 294 (U.S. 1964).

In addition, Sarokas’ Motion to Reconsider at p. 2 suggests that paragraph 14 of the parties’ Operating Partner Employment Agreement (“the Agreement”) states it “shall in all respects be subject to, and governed by, the laws of the State of South Carolina.” However, Sarokas also argues that the Agreement is unenforceable under South Carolina law. As argued in Defendants’ supplemental memorandum in support of the underlying Motion to Compel Arbitration, South Carolina state law would require arbitration in this instance pursuant to the FAA since South Carolina law, as Sarokas argues, would render the arbitration agreement unenforceable. *See, Towles v. United Health Care Corp.*, 524 S.E.2d 839, 843 (S.C. App. 1999) (“because interstate commerce is involved, the FAA applies and displaces the South Carolina Uniform Arbitration Act”); *Zabinski v. Bright Acres Assocs.*, 553 S.E.2d 110, 116 (S.C. 2001) (“[T]he FAA will pre-empt any state law that completely invalidates the parties’ agreement to arbitrate”).

In addition, Sarokas argues the underlying order granting the Motion to Compel Arbitration failed to address evidence that the arbitration provision was

unconscionable and unenforceable. This is inaccurate. The Court specifically found in the Order below that there was insufficient evidence of unconscionability. Sarokas' argued he had insufficient time to review the Agreement prior to execution. Still, this is only one allegation supporting an absence of meaningful choice. No other facts were presented and Sarokas presented no sufficient evidence of one-sided contract provisions or oppressive terms supporting unconscionability pursuant to *Simpson v. MSA of Myrtle Beach, Inc.*, 644 S.E.2d 663, 668 (S.C. 2007).

Sarokas also argues at p. 3 of his Motion to Reconsider that his bifurcation argument was not addressed. Sarokas cites *Wellman, Inc. v. Square D Co.*, 620 S.E.2d 86 (S.C. 2005), and others as supporting law. However, the cases cited do not support Sarokas' position, which is essentially that Defendants are not entitled to arbitration because they did not institute arbitration and because they filed counterclaims to Sarokas' lawsuit. This position is not supported at law. Further, the allegations against Defendant Joel Taylor, the only non-signatory to the Agreement, arise out of the same facts and circumstances, Sarokas' termination and his claims against Defendant Cafe Enterprises, Inc. Judicial efficiency will be enhanced, particularly when counsel for Defendant Joel Taylor has stated his preference for resolving all related issues at arbitration.

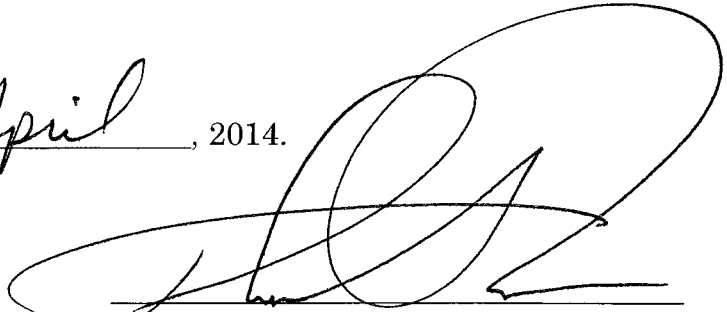
Finally, Sarokas argues at p. 4 of his Motion to Reconsider that paragraph 11 of the Agreement would require Defendant Cafe Enterprises, Inc., to immediately pursue binding arbitration in all instances where it has reason to believe a departing operating partner disputes his or her termination for cause. Sarokas'

theory suggests that Defendant Cafe Enterprises, Inc., should have immediately begun arbitration proceedings once it learned that Sarokas disputed his termination, which would presumably be the case in nearly all terminations. The Court does not read this paragraph as placing such a requirement upon Defendant Cafe Enterprises, Inc., not does Sarokas cite case law supporting such an interpretation. In context, this provision appears designed to confirm the parties' agreement to arbitrate, not to place a statute of limitations or other time limitations preventing Defendant Cafe Enterprises from seeking to enforce the parties' agreement to arbitrate in a subsequent lawsuit, as in this instance.

It is, therefore, ORDERED that the Motion to Reconsider is DENIED.

AND IT IS SO ORDERED.

Dated this 28th day of April, 2014.



The Honorable Thomas A. Russo

17622114.1

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2013CP3203007

Jeff Robert Sarokas

Cafe Enterprises Inc
 Joel Taylor

FATZ

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 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), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; 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

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)

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.**

Circuit Court Judge

Judge Code

4/30/2014

Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on **1st of May 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

Nancy A. Lipski 101 Martel Dr. Lexington, SC 29072

ATTORNEY(S) FOR THE PLAINTIFF(S)

Matthew Kinard Johnson
PO Box 2757 Greenville, SC 29602

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/mh

Court Reporter

Beth A. Carrigg - Clerk of Court

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.
