

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Casey L. Manning, Circuit Court Judge

Civil Action No. 2011-CP-40-8456

Civil Action No. 2011-CP-40-8459

Appellate Case No. 2013-000386

Xu Dong Sun,

Appellant.

v.

Xiaolan M. Wang, Rui Cao,
and M. Vista Restaurant, LLC,

Respondents.

Shengen Sun,

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JUL 21 2014

Appellant.

v. **SC Court of Appeals**

Xiaolan M. Wang, Rui Cao,
and Miyo's at Sandhills, LLC,

Respondents.

RESPONDENTS' RETURN TO APPELLANTS' PETITION FOR REHEARING

John E. Schmidt, III
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Attorneys for Respondents

REHEARING IS NOT CALLED FOR IN THIS CASE

In order to prevail on a petition for rehearing, appellants must demonstrate the Court overlooked or misapprehended their argument. *Rule 221(a), SCACR*. Here, Appellants show no argument that was made which was overlooked by the Court. Instead, Appellants merely re-argue matters that were raised, argued and fully considered previously. Appellants make no real argument that the Court actually misapprehended or overlooked any argument previously made.

To the extent that Appellants contend any of the arguments advanced is a "new" argument, such arguments are not permitted. *See, e.g., Kennedy v. S.C. Retirement System*, 349 S.C. 531, 564 S.E. 2d 322 (2001)("The argument [on rehearing] was not considered because it was never presented to this Court.") Here, Appellants' argue what the Court misapprehended by simply repeating their brief and argument.

The Court decided this case in full accord with *C-Sculptures v. Brown*, 403 S.C. 53, 742 S.E.2d 359, 360 (2013), and applied the other, clearly applicable law as clearly expressed by the Supreme Court. In *C-Sculptures*, the Supreme Court held that where the governing law ignored by the arbitrator is well defined, explicit and clearly applicable, the manifest disregard standard for vacating the arbitrator's award has been met. *Id.* The Court's decision is fully consistent with that law.

Appellants argue the decision in *Trident Technical College v Lucas and Stubbs*, 286 S.C. 98, 333 S.E. 2d 781 (1985) to suggest that the Arbitrator somehow erroneously construed the agreement, and that was the cause of his failure to follow the clear law, and that such erroneous construction is beyond the power of the Court to correct. However, there is no basis whatsoever for this argument. The simple facts are that the arbitrator's own reasoned decision plainly contravened the clear and well-established, applicable law which was presented to him and

known to him. The facts he found cannot legally support the conclusions he drew. Appellants seek to claim as a "fact" the very erroneous conclusion that the law forbade. As in *C-Sculptures*, such a conclusion in an arbitration award is one of the few that must be corrected.

CONCLUSION

The Court properly observed that here, the Arbitrator was presented with clear, well settled and plainly applicable law, and that he knew of that law, but he simply chose not to apply it to the very facts that he found. No matter which was overlooked by this Court has been disclosed. Therefore, rehearing is not warranted.

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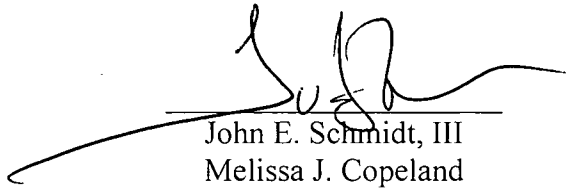
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and Miyo's at Sandhills, LLC,

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PROOF OF SERVICE

I certify that I have served a copy of Respondents' Return to Appellants' Petition for Rehearing by serving a copy of the same by U.S. Mail, all postage paid, and via e-mail on A. Jackson Barnes, Esquire, at Allen Jackson Barnes Attorney at Law, LLC, P.O. Box 2838, Sumter, South Carolina 29151 on July 21, 2014.

SIGNATURE PAGE FOLLOWS

A handwritten signature in black ink, appearing to read 'J. Schmidt, III', is written over a horizontal line. The signature is stylized and extends to the left and right of the line.

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July 21, 2014

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1205 Pendleton Street
Columbia, South Carolina 29201

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SC Court of Appeals

RE: Xu Dong Sun (Shengen Sun) v Xiaolan M. Wang, et al
Appellate Case No. 2013-000386

Dear Ms. Kitchings:

Enclosed please find the original and eight copies of Respondents' Return to Appellants' Petition for Rehearing and Proof of Service. Please file the original and six copies and return two copies to me so that I may serve a copy on Appellants' counsel and retain one for my file. I appreciate your assistance in this matter

Very truly yours,

A handwritten signature in cursive script, appearing to read 'John E. Schmidt, III'.

John E. Schmidt, III

cc: A. Jackson Barnes, Esquire