

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

Case No.: 2009-CP-46-01244

Appellate Case No. 2013-002633

Phil and Pamela Vasey,

Appellants,

v.

Colton Builders, LLC and
Collinswood Cabinetry, LLC,

Defendants,

Of whom Colton Builders, LLC is the Respondent

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APR 15 2015

SC Court of Appeals

INITIAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

Table of Authorities.....	3
Statement of the Issues on Appeal.....	4
Statement of the Case	4
Standard of Review.....	4
Argument.....	5
1. The Circuit Court erred in denying Appellant’s Motion to Vacate Arbitration Award pursuant to South Carolina Code §15-48-130.....	5
Conclusion.....	6

TABLE OF AUTHORITIES

CASES

J.K. Const., Inc. v. Western Carolina Regional Sewer Auth , 336 S.C. 162, 519 S.E.2d 561 (1999).....4

Player v. Chandler, 299 S.C. 101, 105, 382 S.E.2d 891, 893 (1989).....5

OTHER AUTHORITIES

South Carolina Code §15-48-130.....5

STATEMENT OF THE ISSUES ON APPEAL

1. The Circuit Court erred in denying Appellant's Motion to Vacate Arbitration Award pursuant to South Carolina Code §15-48-130.

STATEMENT OF THE CASE

Appellants filed the underlying action against Respondent in 2009, alleging breach of a construction contract and several other causes of action. In late 2012, the parties entered into a consent order to submit the case to binding arbitration. After entering into this consent order, but prior to the date scheduled for arbitration, Appellants learned that the Respondent corporate entity had been administratively dissolved. Taking the position that the dissolution of the Respondent entity invalidated that agreement to submit to arbitration, Appellants filed a motion to set aside the consent order to arbitrate. This motion was denied. Appellants then filed a motion for relief under South Carolina Code §15-48-130, alleging that the Respondent obtained an arbitration award by fraudulent means, and that there was no binding arbitration agreement, and this motion was also denied.

The Appellants, Phil and Pamela Vasey, now respectfully appeal the Circuit Court order of the Honorable John C. Hayes, III denying their Motion to Vacate Arbitration Award.

STANDARD OF REVIEW

The instant case involves a question of law and the application of the law to the particular facts of the case. Questions regarding the law or application of the law to a set of facts are reviewed de novo. J.K. Const., Inc. v. Western Carolina Regional Sewer Auth , 336 S.C. 162, 166-167, 519 S.E.2d 561, 563 (1999).

ARGUMENT

1. The Circuit Court erred in denying Appellant's Motion to Vacate Arbitration Award pursuant to South Carolina Code §15-48-130.

The Circuit Court ruled that the parties entered into a binding arbitration agreement and that Appellants are therefore subject to the arbitration award that resulted. (R.p. ____). However, it is undisputed Respondent as a corporate entity had been administratively dissolved when the parties agreed to arbitrate and the consent order for arbitration was signed. (R.p. ____). It is also undisputed that Appellants were unaware of the dissolution of Respondent when the agreement was reached. (R.p. ____). Appellants contend that having a viable, ongoing concern as an opponent (a corporate entity in good standing) was material to the meeting of the minds required for a valid agreement to arbitrate. (R.p. ____).

South Carolina Code §15-48-130 (a)(1) allows for relief from an arbitration award where “the award was procured by corruption, fraud or other undue means”. Further, South Carolina Code §15-48-130 (a)(5) allows for relief where “there was no arbitration agreement...”.

“South Carolina common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement.” Player v. Chandler, 299 S.C. 101, 105, 382 S.E.2d 891, 893 (1989). “The ‘meeting of minds’ required to make a contract is not based on secret purpose or intention on the part of one of the parties, stored away in his mind and not brought to the attention of the other party, but must be based on purpose and intention which has been made known or which, from all the circumstances, should be known.” *Id.*

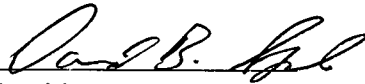
Appellants submit that Respondent's failure to notify them of the dissolution of Respondent as a corporate entity constitutes undue means in the process of obtaining an arbitration award. Appellants further submit that there can be no meeting of the minds where a party to a contract or agreement is unaware that the other party has been administratively dissolved and is no longer a corporation in good standing. This would mean that there was no valid agreement by the parties to enter into arbitration, which at the time was voluntary in the jurisdiction of the trial court. Therefore, Appellants therefore ask this Court to find that they were entitled to relief under the provisions of South Carolina Code §15-48-130, and therefore the Circuit Court erred in refusing to grant the relief requested in Appellants' Motion to Vacate Arbitration Award.

CONCLUSION

For the reasons set forth above, the September 23, 2013 order of the Circuit Court denying the Appellants' Motion to Vacate Arbitration Award should be reversed, and underlying case restored to the trial roster of the Circuit Court as if the arbitration of the case had never been ordered.

Respectfully submitted,

April 12, 2015


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**CERTIFICATE OF SERVICE
BY MAIL**

I certify that I have served the Initial Brief of Appellant and Designation of Matters on Appeal on Respondent, Colton Builders, LLC by placing a copy of same in the United States Mail to the attorney for the Respondent, F. Craig Wilkerson, Jr., 1050 College Avenue Ext., Rock Hill, SC 29732.

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