

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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SC Court of Appeals

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APPEAL FROM KERSHAW COUNTY  
In the Court of Common Pleas

The Honorable L. Casey Manning, Circuit Court Judge

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Case No. 2013-CP-28-727

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Moore Beauston & Woodham, L.L.P.....Respondent,

v.

Marc A. Quigley.....Appellant.

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RESPONDENT’S MEMORANDUM IN OPPOSITION TO APPELLANT’S NOTICE OF  
APPEAL

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THE RESPONDENT, Moore Beauston & Woodham, L.L.P., respectfully submits this Memorandum in Opposition to Appellant’s Notice of Appeal. Under applicable law, the trial court’s Order to Compel Arbitration is not immediately appealable and thus, this court lacks jurisdiction. Therefore, this appeal should be dismissed.

INTRODUCTION

On March 14, 2013, Respondent, Moore Beauston & Woodham, L.L.P., filed suit against Appellant, Marc A. Quigley, for Breach of Partnership Agreement and Breach of Fiduciary Duty. On May 10, 2013, before any hearings on the merits of the case, Respondent filed a Motion to Compel Arbitration due to Appellant’s refusal to consent to arbitration despite the fact the parties agreed to arbitration pursuant to the terms of the Partnership Agreement and all

amendments thereto. The Partnership Agreement contained the following provision, “**THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO CHAPTER 48 OF THE CODE OF LAWS OF SOUTH CAROLINA (1976)**” which the Court found to be in compliance with § 15-48-20 of the S.C. Code Ann. Following a hearing on October 14, 2013, the Court issued an Order dated December 1, 2015, granting Respondent’s Motion to Compel Arbitration. Appellant filed a Notice of Appeal on January 19, 2016. This appeal should be denied for the following reasons.

### **ARGUMENT**

#### **I. THE ORDER TO COMPEL ARBITRATION DOES NOT FALL WITHIN § 15-48-200, S.C. CODE ANN., WHICH ALLOWS APPEALS IN ARBITRATION ACTIONS.**

“In an arbitration case, the only appeals that may be taken are from an order of the circuit court enumerated in section 15-48-200.” *Steinmetz v. American Media Services, LLC*, 393 S.C. 72, 75, 709 S.E.2d 708, 709 (2011). Section 15-48-200 of the S.C. Code Ann. provides that “an appeal may be taken from: (1) an order denying an application to compel arbitration made under § 15-48-20; (2) an order granting an application to stay arbitration made under § 15-48-20(b); (3) an order confirming or denying confirmation of an award; (4) an order modifying or correcting an award; (5) an order vacating an award without directing a rehearing; or (6) a judgment or decree entered pursuant to the provisions of this chapter.” S.C. Code Ann. § 15-48-200(a) (Supp. 2002).

In *Toler’s Cove Homeowners Ass’n, Inc. v. Trident Const. Co., Inc.*, 355 S.C. 605, 610, 586 S.E.2d 581, 584 (2003), the Court held that a “court’s order compelling arbitration is not immediately appealable under South Carolina law because *Heffner* held all orders relating to

arbitration not mentioned in S.C. Code Ann. § 15-48-200(a) (Supp. 2002) are not immediately appealable.” (citing *Heffner v. Destiny, Inc.*, 321 S.C. 536, 472 S.E.2d 135, overruled as it relates to a federal court’s order compelling arbitration under the FAA not being immediately appealable). Additionally, in *Carolina Care Plan, Inc. v. United HealthCare Services, Inc.*, 361 S.C. 544, 606 S.E.2d 752 (2004), the Court held that § 15-48-200 does not expressly permit an appeal from an order granting an application to compel arbitration and therefore is not immediately appealable. When an appeal does not fall within § 15-48-200 of the S.C. Code Ann., the Court of Appeals lacks jurisdiction over the matter.

In the present case, Appellant seeks to appeal the decision of the Circuit Court, although no grounds for such appeal were stated. Per § 15-48-200 of S.C. Code Ann., an order compelling arbitration is not immediately appealable. Since the Circuit Court’s Order to Compel Arbitration does not fall within the purview of § 15-48-200, this Court lacks jurisdiction to hear the appeal. Therefore, Appellant’s Notice of Appeal should be dismissed.

## **II. THE ORDER TO COMPEL ARBITRATION IS NOT IMMEDIATELY APPEALABLE BECAUSE IT IS NOT A FINAL JUDGMENT.**

The Federal Arbitration Act permits appeals to be taken from “a final decision with respect to an arbitration that is subject to this title.” 9 U.S.C.A. § 16(a)(3) (West). While not expressly stated in South Carolina’s Uniform Arbitration Act, “South Carolina adheres to the final judgment rule. Accordingly, with certain exceptions, an appeal lies only from a final judgment.” *Brunson v. American Koyo Bearings*, 367 S.C. 161, 165, 623 S.E.2d 870, 872 (Ct. App. 2005); S.C. Code Ann. § 14-3-330 (Supp. 2004); Rule 72, SCRCPC; Rule 201(a), SCACR. A final judgment is a decision that “ends the litigation on the merits and leaves nothing more for the court to do but execute the judgment.” *Green Tree Fin. Corp.-Ala. v. Randolph*, 531 U.S. 79,

86 (2000).

*St. Francis Xavier Hosp. v. Ruscon/Abco*, 285 S.C. 584, 586-87, 330 S.E.2d 548, 550 (Ct. App. 1985), dealt with an order denying an application to consolidate pending arbitration proceedings. In determining the appealability of the order, the Court examined § 15-48-200 and found that the statute did not expressly allow an appeal from an order denying an application to consolidate pending arbitration proceedings. *Id.* The Court continued its analysis by turning to the final judgment rule and applied § 14-3-330 to determine whether any exceptions to the final judgment rule were applicable. *Id.* at 587. An exception to the final judgment rule exists when (i) the judgment involves “the merits in actions commenced in the court of common pleas and general sessions;” (ii) the order affects “a substantial right made in an action when such order [ ] in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action;” (iii) the order affects “a substantial right made in any special proceeding;” or (iv) the order “grant[s], continue[s], modifie[s], or refuse[s] an injunction.” S.C. Code Ann. § 14-3-330 (1976).

In the present case, an appeal from an order compelling arbitration is not expressly allowed by § 15-48-200 so the issue becomes whether such order is a final judgment.

In applying the final judgment rule under the Federal Arbitration Act, the Ninth Circuit Court of Appeals held that “an order compelling arbitration may be appealed if the district court dismisses all the underlying claims, but may not be appealed if the court stays the action pending arbitration.” *MediVas, LLC v. Marubeni Corp.*, 741 F.3d 4, 7 (9th Cir. 2014). The Ninth Circuit’s findings are applicable since South Carolina follows the final judgment rule, which is embodied in Section 16(a)(3) of the Federal Arbitration Act. The Ninth Circuit has “consistently treated orders compelling arbitration but not explicitly dismissing the underlying claims as

unappealable interlocutory orders.” *MediVas* at 7 (citing *Dees v. Billy*, 394 F.3d 1290 (9th Cir. 2005), *Sanford v. MemberWorks, Inc.*, 483 F.3d 956 (9th Cir. 2007), and *Bushley v. Credit Suisse First Bos.*, 360 F.3d 1149 (9th Cir. 2004)). The determining factor is whether “plaintiff’s claims remain[ ] before the trial court. *Id.* In *Bushley*, the arbitrable claims were ordered to arbitration and neither dismissed nor stayed. *Id.* at 1153. The Court found that the claims sent to arbitration remained pending before the district court by an implicit stay pending the outcome of the arbitration and thus did not constitute a final decision. *Id.* The *MediVas* Court also went on to adopt “a rebuttable presumption that an order compelling arbitration but not explicitly dismissing the underlying claims stays the action as to those claims pending the completion of the arbitration.” *MediVas* at 9.

Judge Manning’s Order to Compel Arbitration does not explicitly dismiss the underlying claims nor does it explicitly stay the action pending arbitration. Specifically, the Order to Compel Arbitration only provides that “IT IS HEREBY ORDERED, ADJUDGED AND DECREED that: this matter, including all claims and counterclaims in the Complaint and Answer, are ordered for arbitration as soon as practicable.” (Exhibit A). The Order does not dismiss the action nor does it dispose of the action in any other manner. Furthermore, the Kershaw County Clerk of Court’s records indicate the action is still pending. (Exhibit B). Since the Order compels arbitration but does not explicitly dismiss the case, it is presumed that the action has been stayed. The burden is upon Appellant to rebut the presumption and show that the Order to Compel Arbitration is a final judgment that is immediately appealable. Absent such a showing, the Order to Compel Arbitration does not fully dispose of Respondent’s underlying claims (i.e. breach of partnership agreement, accounting, and breach of fiduciary duty. (Exhibit C)) and, as such, does not constitute a final judgment. Therefore, this Appeal should be

dismissed.

Furthermore, no exceptions to the final judgment rule apply because the Order to Compel Arbitration does not fall within the purview of § 14-3-330. The Order to Compel Arbitration does not involve “the merits in [an] action [ ] commenced in the court of common pleas [or] general sessions” [S.C. Code Ann. § 14-3-330(1) (1976)]. “An order “involves the merits,” as that term is used in statute governing appellate jurisdiction in law cases, and is immediately appealable, when it finally determines some substantial matter forming the whole or part of some cause of action or defense.” *Watson v. Underwood*, 407 S.C. 443, 756 S.E.2d 155 (Ct. App. 2014). Although this matter was commenced in the Court of Common Pleas, the Order to Compel Arbitration does not address the merits of the case. The underlying causes of action in this matter are breach of partnership agreement, accounting, and breach of fiduciary duty. Thus far, Respondent’s Motion to Compel Arbitration is the only issue on which the parties have been heard and the only issue on which the Court has issued an Order. There have been no hearings on the issues of breach of partnership agreement, accounting, or breach of fiduciary duty, nor have there been any Orders directed at such causes of action. Since the Order to Compel Arbitration does not “finally determine some substantial matter” related to the underlying causes of action, the Order is not “on the merits” and thus is not immediately appealable pursuant to § 14-3-330(1) (1976).

Furthermore, the Order to Compel Arbitration does not affect “a substantial right made in an action” in that it either “determines the action and prevents a judgment from which an appeal might be taken or discontinues the action” *Id.* § 14-3-330(2)(a) (1976). The Order to Compel Arbitration is but one component of this matter and does not determine the action since there has been no determination made on the causes of action raised in the pleadings. Nor does the Order

discontinue the action since the rights of the parties remain to be adjudicated and the trial court must still enter a judgment after such adjudication.

Additionally, the Order to Compel Arbitration does not “grant[] or refuse[] a new trial” nor does it “strike[] out an answer or any part thereof or any pleading in [the] action.” *Id.* § 14-3-330(2)(b)-(c) (1976). There are no special proceedings involved nor does the Order involve an injunction or appointment of a receiver. *Id.* § 14-3-330(3)-(4) (1976). The Order to Compel Arbitration is not deemed a final judgment; therefore, no exception to the final judgment rule applies. Consequently, this Appeal should be dismissed.

### **CONCLUSION**

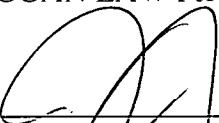
Because the Order to Compel Arbitration does not fall within § 15-48-200, S.C. Code Ann., which allows appeals in arbitration actions and because the Order to Compel Arbitration is not a final judgment and therefore not immediately appealable, this Court should dismiss Appellant’s Notice of Appeal.

Respectfully submitted,

Charleston, South Carolina

January 29, 2016

DUGGAN LAW FIRM, LLC

By:  \_\_\_\_\_

**J. James Duggan, Esquire**  
44 Markfield Drive, Suite E  
Charleston, South Carolina 29407  
(843) 414-7730  
(843) 414-7738 (fax)  
Email: [duggan@dugganlawgroup.net](mailto:duggan@dugganlawgroup.net)

ATTORNEY FOR RESPONDENT

THE STATE OF SOUTH CAROLINA  
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SC Court of Appeals

APPEAL FROM KERSHAW COUNTY  
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The Honorable L. Casey Manning, Circuit Court Judge

Case No. 2013-CP-28-727

Moore Beauston & Woodham, L.L.P.....Respondent,

v.

Marc A. Quigley.....Appellant.

PROOF OF SERVICE

I certify that I have served a copy of Respondent's Memorandum in Opposition to Appellant's Notice of Appeal on Appellant by depositing a copy of it in the United States Mail, postage prepaid, on January 29, 2016, addressed to his attorney of record at the following address:

Jeffrey L. Payne, Esquire  
319 S. Irby Street  
Post Office Box 5478 (29502)  
Florence, South Carolina 29501



J. James Duggan, Esquire  
44 Markfield Drive, Suite E  
Charleston, South Carolina 29407  
(843) 414-7730  
(843) 414-7738 (fax)  
Email: [duggan@dugganlawgroup.net](mailto:duggan@dugganlawgroup.net)

ATTORNEY FOR RESPONDENT

# Exhibit A

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 MOORE BEAUSTON & WOODHAM, L.L.P., )  
 )  
 Plaintiff, )  
 )  
 -versus- )  
 )  
 MARC A. QUIGLEY, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT  
~~2013-CP-10-1535~~

2013-CP-28-727

**ORDER TO COMPEL  
 ARBITRATION**

FILED FOR RECORD  
 2015 DEC 10 PM 12:18  
 JOYCE ALDRONALD  
 CLERK OF COURT  
 KERSHAW COUNTY, S.C.

Pursuant to §15-48-20 of the S.C. Code Ann., this action came before the Court by Motion to Compel Arbitration of the Plaintiff on October 14<sup>th</sup>, 2013 and was heard by the Honorable L. Casey Manning.

**FINDINGS OF FACT**

1. The Plaintiff, MOORE BEAUSTON & WOODHAM, L.L.P., came into existence in 1996 by way of a written Partnership Agreement (the "Agreement").
2. The 1996 Agreement had, as its first page, a Table of Contents. The 1996 Agreement to the Partnership Agreement had, as its second page, the actual beginning of the Agreement. On the top of the second page of the 1996 Agreement was the provision **"THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO CHAPTER 48 OF THE CODE OF LAWS OF SOUTH CAROLINA (1976)"** and is typed in large bold print and underlined as mandated in §15-48-20 of the S.C. Code Ann.
3. In 2001, the case of Zabinski v. Bright Acres Assocs., 346 S.C. 580, 597, 553 S.E.2d 110, 118-19 (2001) clarified that §15-48-10 of the S.C. Code Ann. defined "first page" as meaning the very first page of a document. Thus, the Agreement in 1996 failed to comply with §15-48-20 of the S.C. Code Ann. because the Arbitration notice was on page 2 of the Agreement, due to the Table of Contents being page 1.

Copy of Original on File in this Court

*Okya S. Arnold*  
 Clerk of Court Kershaw County

4. In 2006, the partners of MOORE BEAUSTON & WOODHAM, L.L.P. amended the Agreement for the purpose of bringing the Agreement in compliance with §15-48-10 of the S.C. Code Ann. as clarified by Zabinski. The First Amendment of the Agreement had an effective date of September 1, 2006 and states in the second paragraph that “The Table of Contents of the Partnership Agreement is deleted in its entirety.” In addition, the first page of the First Amendment contained an arbitration legend as follows: **AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO S.C. CODE ANN. § 15-48-10 et seq., AS MODIFIED HEREIN**, which complies with §15-48-10 of the S.C. Code Ann. After the signature of the First Amendment, the original Table of Contents was removed and destroyed as part of the Agreement.
5. In 2007, the partners of MOORE BEAUSTON & WOODHAM, L.L.P. amended the Partnership Agreement for purpose of admitting the Defendant, Marc A. Quigley, to the Partnership. He signed the Second Amendment to the Partnership Agreement which had an effective date of November 27, 2007. The first page of the Second Amendment contained an arbitration provision as follows: **AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO S.C. CODE ANN. § 15-48-10 et seq., AS MODIFIED HEREIN**, which complies with §15-48-10 of the S.C. Code Ann.
6. In July and November of 2011 respectively, a Third Amendment and a Fourth Amendment were signed by the partners of MOORE BEAUSTON & WOODHAM, L.L.P., including Marc A. Quigley. Both the Third and Fourth Amendments contained an arbitration provision as follows: **AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO S.C. CODE ANN. § 15-48-10 et seq., AS MODIFIED HEREIN**, which complies with §15-48-10 of the S.C. Code Ann.
7. There was no other way for the Partnership Agreement of MOORE BEAUSTON & WOODHAM, L.L.P. to comply with the format and placement of Arbitration language other than to amend the Agreement.
8. The Defendant, Marc A. Quigley, maintained that the Agreement failed to comply with S.C. Code Ann. §15-48-10 even after all four amendments, three of which he signed had the proper arbitration legend, because the actual copy of the Partnership Agreement he was given prior to becoming a partner still contained a copy of the Table of Contents as page 1 even though the Second Amendment expressly deleted the Table of Contents.

9. The Defendant also argued that while the main dispute is purely a contractual matter over who is owed money under the Agreement, the complaint and counterclaim also raise related matters that are not normally arbitrated, such as breach of fiduciary duties or any claims under the South Carolina Payment of Wages Laws.

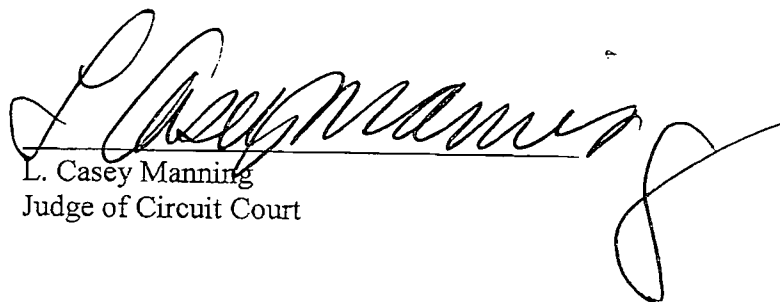
### APPLICATION OF LAW TO FACTS

1. Public Policy in the State of South Carolina heavily favors the use of arbitration to settle matters. Zabinski, 346 S.C. at 596, 553 S.E.2d at 118. A motion to compel arbitration made pursuant to an arbitration clause in a written contract should only be denied where the clause is not susceptible to any interpretation which would cover the asserted dispute. Tritech [Elec, Inc. v. Frank M. Hall & Co., 343 S.C. 396, 540 S.E.2d 864].
2. The Agreement was amended in 2006 to officially remove the Table of Contents from the Agreement so that Page 2 of the Agreement would then become the first page of the Agreement with an arbitration provision that was in compliance with S.C. Code Ann. §15-48-10. The original Table of Contents was removed and destroyed as part of the Agreement after the First Amendment. For convenience, some partners maintained “copies” of the Table of Contents of the Agreement, while acknowledging that it was not officially part of the Agreement.
3. Any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration. Towles v. United Healthcare Corp., 338 S.C. 29, 41, 524 S.E.2d 839, 846 (Ct.App.1999).
4. The test of whether arbitration can be used to settle a tort claim is based on a determination of whether the particular tort claim is so interwoven with the contract that it could not stand alone. If the tort and contract claims are so interwoven, both are arbitrable. On the other hand, if the tort claim is completely independent of the contract and could be maintained without reference to the contract, the tort claim is not arbitrable. Zabinski, 346 S.C. at 597 n. 4, 553 S.E.2d at 119 n. 4.

5. A broadly-worded arbitration clause applies to disputes that do not arise under the governing contract when a 'significant relationship' exists between the asserted claims and the contract in which the arbitration clause is contained. Zabinski, at 598, 553 S.E.2d at 119. Public policy supports the rule that if a tort is significantly relevant to a contract, the tort would also be arbitrable. If this were not the case, then arbitration would never be available for any person seeking relief if there is a tort allegation brought forward. In this case, there would be no breach of fiduciary duty or claims under the South Carolina Payment of Wages Laws without the contractual relationship between MOORE BEAUSTON & WOODHAM, L.L.P. and Marc A. Quigley pursuant to the Agreement.

NOW THEREFORE, based on the foregoing, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

This matter, including all claims and counterclaims in the Complaint and Answer, are ordered for arbitration as soon as practicable.

  
L. Casey Manning  
Judge of Circuit Court

Date: Dec 1, 2015



# Exhibit B

## Kershaw County Fifth Judicial Circuit Public Index



Kershaw County Home Page South Carolina Judicial Department Home Page SC.GOV Home Page

Switch View

### Moore Beauston & Woodham, LLP VS Marc A Quigley

Case Number:	2013CP2800727	Court Agency:	Common Pleas	Filed Date:	09/03/2013
Case Type:	Common Pleas	Case Sub Type:	Breach of Cont 140	File Type:	Non-Jury
Status:	Pending	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:		Disposition Date:		Disposition Judge:	
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials

Click the  icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
Blackwell, David Reese II(Inactive)	PO Box 2799 201 W. Dunlap Street Lancaster SC 29721				Alternate Mediator		10/10/2014
<input checked="" type="checkbox"/> Duggan, John James	44 Markfield Avenue, Suite E Charleston SC 29407				Plaintiff Attorney		09/03/2013
<input checked="" type="checkbox"/> Gibson, Charles Mac Jr.	1118 Savannah Hwy Charleston SC 29407				Plaintiff Attorney		09/03/2013
<input checked="" type="checkbox"/> Malloy, Gerald	PO Box 1200 Hartsville SC 29551				Plaintiff Attorney		10/16/2015
<input checked="" type="checkbox"/> Moore Beauston & Woodham, LLP					Plaintiff		10/01/2014
<input checked="" type="checkbox"/> Payne, Jeffrey L.	PO Box 5478 Florence SC 29502				Defendant Attorney		09/03/2013
<input checked="" type="checkbox"/> Quigley, Marc A					Defendant		09/03/2013
Robertson, Claron A. III	177 Meeting St., Ste. 300 Charleston SC 29401				Mediator		10/10/2014

# Exhibit C

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	2013-CP-10- <u>1535</u>
	)	
MOORE BEAUSTON & WOODHAM, L.L.P.,	)	
	)	
Plaintiff,	)	
	)	<b>COMPLAINT</b>
-versus-	)	
	)	
MARC A. QUIGLEY	)	
	)	
Defendant.	)	
_____	)	

2013 MAR 14 PM 2:17  
 JULIE J. ARMSTRONG  
 CLERK OF COURT  
 BY \_\_\_\_\_

FILED

The Plaintiff above-named complaining of the Defendant above-named alleges and says as follows:

1. That Plaintiff Moore Beauston & Woodham, L.L.P. is a limited liability partnership that has been created pursuant to §33-44-101 of the South Carolina Code of Laws, and its principal place of business is in the County of Charleston, State of South Carolina.
2. That upon information and belief, Defendant Marc A. Quigley is a resident of the County of Kershaw, State of South Carolina.
3. That this Court has jurisdiction over the parties and the causes of action.

**FOR A FIRST CAUSE OF ACTION**

(Arbitration)

4. That Plaintiff realleges paragraphs 1 through 3 of the Complaint as if fully set forth verbatim.
5. That on January 1, 1996, the partners of Plaintiff Moore Kirkland & Beauston, L.L.P. n/k/a Moore Beauston & Woodham, L.L.P. executed a partnership

agreement, and Article XIV of the partnership agreement and subsequent amendments to the partnership agreement mandated that any and all disputes between the partners and Moore Kirkland & Beauston, L.L.P. n/k/a Moore Beauston & Woodham, L.L.P. would be subject to arbitration. The Defendant became a partner on or about January 1, 2007, and Defendant as a partner of Plaintiff was subject to the terms of the partnership agreement including Article XIV and the amendments thereto.

6. That the Plaintiff's partnership agreement and amendments thereto comply with all the requirements of §15-48-10 et seq. of the Code of Law of South Carolina, 1976; therefore, all causes of action and counterclaims, if any, are subject to arbitration.

#### **FOR A SECOND CAUSE OF ACTION**

(Breach of Partnership Agreement)

7. That Plaintiff realleges paragraphs 1 through 7 of the Complaint as if fully set forth verbatim.
8. That Defendant was employed as an accountant with Plaintiff, and Defendant became a partner on or about January 1, 2007, and at such time Defendant was subject to the terms of the partnership agreement of Moore Kirkland & Beauston n/k/a Moore Beauston & Woodham dated January 1, 1996 ("Agreement") and all subsequent amendments to the Agreement.
9. That as of July 1, 2011, Defendant had an 18.5185% interest as a partner with the Plaintiff.

10. That on or about October 25, 2012, Plaintiff through its managing partner and at the annual partners meeting held in Charleston Office verbally apprised Defendant that his employment was being immediately terminated without cause in accordance with Article IX, paragraph 9-3 of the Agreement.
11. That subsequent to Defendant being dismissed by Plaintiff, the managing partner for Plaintiff learned from some of the Plaintiff's clients served by the Defendant that the Defendant had engaged in late delivery of professional services and invoices to Plaintiff's clients, which caused the Plaintiff to lose such clients, many of which it had worked with for years.
12. That as a result of the additional information from Plaintiff's clients, Plaintiff through its attorney sent a certified letter dated December 20, 2012 to Defendant to inform Defendant that he has been expelled from Plaintiff for cause per Article IX, paragraph 9-1 of the Agreement. Defendant received such certified letter on December 24, 2012.
13. That the basis for Defendant's dismissal with cause is the Defendant's late delivery of professional services and invoices to the Plaintiff's clients which impaired the professional standing of the Partnership. Plaintiff through its managing partner had given prior warnings to Defendant of his failure to provide timely professional services and invoices to Plaintiff's clients, and, notwithstanding such warnings, Defendant failed and refused to perform timely professional services and entry of time for the preparation of invoices for Plaintiff's clients as requested.

14. That Plaintiff had the right to terminate Defendant for cause per Article IX, paragraph 9-1 of the Agreement.
15. That pursuant to Article IX, paragraph 9-2 of the Agreement, partners, including the Defendant, agreed that if a partner is expelled, upon his expulsion, such expelled partner forfeits to “the Partnership any amount The Partnership would have owed such Partner should such Partner have been removed....Such amounts include but are not limited to repayment of capital contribution, ..., payment of Partner’s interest in The Partnership.”
16. That in addition to the forfeiture of the expelled partner’s interest in the Partnership, the expelled partner has to pay the Plaintiff the value of the “Partnership’s then-current clients or any clients served by the Partnership within the immediately preceding three calendar years” as mandated in Article IX, paragraph 9-2 of the Agreement. Such value of the Plaintiff’s clients “shall be determined in accordance with paragraph 7-7, and such value shall be due and payable to The Partnership within thirty (30) days from the date that such expelled Partner commenced such work for such client(s).”
17. That as a result of Defendant being expelled with cause, Plaintiff is entitled to be paid the value of Plaintiff’s clients that existed from 2009 through 2012 that Defendant provided services and or consultations since October 25, 2012 and continuing for two years thereafter pursuant to Article IX, paragraph 9-2 of the Agreement.

**FOR A THIRD CAUSE OF ACTION**

(Accounting)

18. That Plaintiff realleges paragraphs 1 through 18 of the Complaint as if fully set forth verbatim.
19. That as a result of Defendant's termination with cause, and in accordance with paragraphs 9-2 and 7-7 of the Agreement, the Defendant has to provide an accounting to Plaintiff of the "type and with the frequency required of withdrawing Partners under paragraph 7-7" of the Agreement.

**FOR A FOURTH CAUSE OF ACTION**

(Breach of Fiduciary Duty)

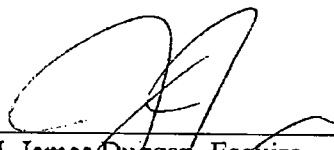
20. That Plaintiff realleges paragraphs 1 through 20 of the Complaint as if fully set forth verbatim.
21. That Defendant, as a partner of Plaintiff Moore Beauston & Woodham, L.L.P., was a fiduciary and owed a duty of loyalty and duty of care to Plaintiff. As a fiduciary, Defendant had a fiduciary duty to act in good faith and in the best interest of Plaintiff, the Partners of the Plaintiff, and Plaintiff's clients.
22. That Defendant breached his fiduciary duty by engaging in late delivery of professional services and invoices to Plaintiff's clients, which caused the Plaintiff to lose clients, many of which it had worked with for years.
23. That as a result of Defendant's breach of fiduciary duty in failing and refusing to comply with the warnings of the managing partner of Plaintiff to provide timely professional services and invoices to Plaintiff's clients, Plaintiff was forced to write-off potential fees for services performed to Plaintiff's clients to the detriment of the Plaintiff. As a proximate cause of Defendant's breach of fiduciary

duty, Plaintiff is entitled to actual damages in an amount to be determined by the trier of fact or arbitrator.

WHEREFORE, Plaintiff Moore Beauston & Woodham, L.L.P. prays that this Honorable Court issue an Order:

- A. Mandating that this matter be arbitrated per the rules of the American Arbitration Association;
- B. Awarding to Plaintiff the value of the Plaintiff's clients that existed from 2009 through 2012 that Defendant Marc A. Quigley provided services and or consultations since October 25, 2012 and continuing for two years thereafter.
- C. Requiring that Defendant Marc A. Quigley provide an accounting to Plaintiff Moore Beauston & Woodham, L.L.P. in accordance with paragraph 7-7 and 9-2 of Plaintiff's Partnership Agreement;
- D. Award actual damages in an amount to be determined by trier of fact or arbitrator to Plaintiff for Defendant's breach of fiduciary duty.
- E. Awarding costs and disbursement for this action to Plaintiff; and
- F. Granting such further relief as this Court deems proper.

Attorney for Plaintiff  
Moore Beauston & Woodham, L.L.P.



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J. James Duggan, Esquire  
44 Markfield Drive, Suite E  
Charleston, SC 29407  
(843) 414-773

Charleston, South Carolina  
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