

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM KERSHAW COUNTY
In the Court of Common Pleas

The Honorable L. Casey Manning, Circuit Court Judge

Case No. 2013-CP-28-727

RECEIVED

APR 20 2016

SC Court of Appeals

Marc A. QuigleyAppellant,

v.

Moore Beauston & Woodham, LLP Respondent.

REPLY IN SUPPORT OF IMMEDIATE APPEALABILITY

Florence, South Carolina

April 19th, 2016

TURNER, PADGET, GRAHAM & LANEY, P. A.

J. René Josey, Esquire
Jeffrey L. Payne, Esquire
319 S. Irby Street
Post Office Box 5478 (29502)
Florence, South Carolina 29501
(843) 662-9008
(843) 667-0828 fax
Email: jjosey@turnerpadget.com

ATTORNEYS FOR APPELLANT

Other Counsel of Record:

John James Duggan, Esquire
Duggan Law Firm, LLC
44 Markfield Avenue, Suite E
Charleston, SC 29407

ATTORNEYS FOR RESPONDENT

By letter dated January 21, 2016, the Clerk of this Court invited the parties to this appeal to file a memorandum within 10 days addressing the issue of appealability. Within the required time, the Appellant filed its memo with the Court on January 29, 2016. On January 29, 2016, Respondent filed, by mailing that date, both a memo in opposition to the notice of appeal and a Motion to Dismiss (based upon alleged untimeliness of the appeal and based upon the conclusory argument that public policy favors arbitration). Within the 10 days allowed for a Motion return by SCACR 240(e), the Appellant filed a return opposing dismissal together with a responsive affidavit of counsel (addressing timeliness). Now, some 2.5 months later, the Respondent has submitted a “Response to Appellant’s Memorandum in Support of Immediate Appealability.” This response was received by Appellant counsel’s office on Monday, April 18, 2016. To the extent that this Response is timely under SCACR 240, the Appellant offers this short Reply to those new arguments found in this Response.

The Mode of Adjudication was Expressly and Inherently Before the Trial Court

The Appellant has argued the immediate appealability of the present trial court order because it directly impacted the mode of adjudication by which the matter would proceed. The Appellant’s position with regard to his “substantial right”¹ to such mode was made clear in his counter-claim demanding a jury trial (Page 1 attached as Exhibit A hereto) and it was clear in his affidavit opposing the Motion for Arbitration (Exhibit B hereto). This demanded mode of trial was directly ruled upon by the trial court who concluded that the asserted counterclaims had a “significant relationship” with the contract containing the arbitration provision² and thus, the entire matter “including all claims and counterclaims” should be ordered to arbitration.

¹ Appellant has previously addressed the statutory appealability provision found in S.C. Code 14-3-330(3) to protect such “substantial rights.”

² This issue has been previously addressed to this Court including detailed discussion of the trial court’s misapplication of Zabinski v. Bright Acres Assoc., 346 S.C. 580, 553 S.E.2d 110 (2001).

Respondent's suggestion that a Rule 59(e) motion was needed is erroneous. The trial court's order on the Appellant's substantial right to a jury trial was final and needed no clarification – to have filed anything else would have been superfluous and wasteful of limited judicial resources.

Florence, South Carolina

April 19, 2016

TURNER, PADGET, GRAHAM & LANEY, P. A.

By: 

J. René Josey, Esquire

Jeffrey L. Payne, Esquire

319 S. Irby Street

Post Office Box 5478 (29502)

Florence, South Carolina 29501

(843) 662-9008

(843) 667-0828 fax

Email: RJosey@turnerpadget.com

Email: JPayne@turnerpadget.com

ATTORNEYS FOR APPELLANT

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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

Plaintiff,

v.

Marc A. Quigley,

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
C/A # 2013-CP-10-1535

ANSWER AND COUNTERCLAIM
(Jury Trial Demanded)

The Defendant hereby answers the Plaintiff's complaint and counterclaims thereto as follows:

FOR A FIRST DEFENSE

1. Each and every allegation not hereinafter specifically admitted is denied.
2. Answering the allegations contained in paragraph 1, the Defendant admits that Plaintiff is a limited liability partnership. All remaining allegations are denied.
3. The Defendant admits the allegations contained in paragraph 2.
4. The Defendant denies the allegations contained in paragraph 3.
5. Answering the reallegations contained in paragraph 4, the Defendant would reassert each and every answer previously stated herein.
6. Answering the allegations contained in paragraph 5, the Defendant admits that there is a partnership agreement that governs the partnership and that the Plaintiff became a partner on or about January 1, 2007. The Defendant denies that he is subject to the arbitration provision contained therein and as to the amendments, the Defendant lacks sufficient information upon which to form a belief as to the amendments being referred to by the Plaintiff and therefore would deny any allegations related thereto.

EXHIBIT B

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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

Plaintiff,

v.

Marc A. Quigley,

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
C/A # 2013-CP-10-1535

AFFIDAVIT OF MARC A. QUIGLEY

FILED
13 JUL 24 PM 1:36
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

PERSONALLY APPEARED before me Marc A. Quigley, who, being duly sworn, deposes and says as follows:

1. I am a resident of Kershaw County and I have resided there since 1997. Nonetheless, and although the Plaintiff knows that I reside in Kershaw County, it has chosen to file this lawsuit against me in Charleston County, South Carolina.

2. I effectively became a partner in Moore Beauston & Woodham, LLP in January 2007. At that time, I was provided the Partnership Agreement ("Partnership Agreement") attached hereto as Exhibit A. In July 2007, I was provided numerous documents including the Partnership Agreement ("Partnership Agreement") attached hereto as Exhibit A, and the First Amendment to Partnership Agreement attached hereto as Exhibit B.

3. Page 1 of the Partnership Agreement that I was provided did not contain the required notice that the Partnership Agreement was subject to Arbitration as is required by S.C. Code § 15-48-10. (See Exhibit A)

4. I object to arbitrating any dispute related to the Partnership Agreement, and I request that the Plaintiff's Motion be denied.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM KERSHAW COUNTY
In the Court of Common Pleas

The Honorable L. Casey Manning, Circuit Court Judge

Case No. 2013-CP-28-727

RECEIVED

APR 20 2016

SC Court of Appeals

Marc A. QuigleyAppellant,

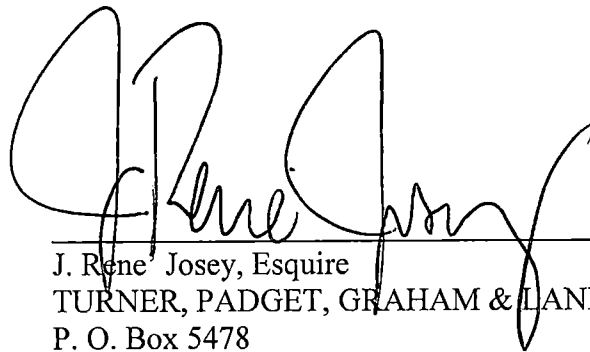
v.

Moore Beauston & Woodham, LLP Respondent.

CERTIFICATE OF SERVICE

I certify that I have served **APPELLANT'S REPLY IN SUPPORT OF IMMEDIATE APPEALABILITY** by depositing one (1) copy of it in the United States Mail, postage prepaid, on April 19, 2016, addressed to:

John James Duggan, Esquire
Duggan Law Firm, LLC
44 Markfield Avenue, Suite E
Charleston, SC 29407



J. Rene Josey, Esquire
TURNER, PADGET, GRAHAM & LANEY, P.A.
P. O. Box 5478
Florence, SC 29502-5478
(843) 662-9008
(843) 667-0828 fax
Email: jjosey@turnerpadget.com

ATTORNEYS FOR APPELLANT

Turner | Padget

REPLY TO:

J. René Josey

E-Mail: RJosey@TurnerPadget.com
Writer's Direct Dial: (843) 656-4451
Writer's Direct Fax: (843) 413-5818

April 19, 2016

Hon. Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: Marc A. Quigley v. Moore Beauston & Woodham, L.L.P.
Appellate Case Number: 2016-000094
Civil Action No.: 2013-CP-28-727
TPGL File No.: 12086.101

RECEIVED
APR 20 2016
SC Court of Appeals

Dear Ms. Kitchings:

Enclosed please find the Appellant's Reply in Support of Immediate Appealability (including exhibits). I have enclosed the unbound original and six copies of the Response (including exhibits) for the Court in accordance with SCACR 240(d). I've also enclosed an additional seventh copy of the Response (including exhibits) which I would appreciate your office stamping as filed and returning to us for completeness of our file. An original Certificate of Service is also enclosed with a single additional copy to be stamped and returned to us.

By copy of this letter to counsel for the Respondent, we are serving him with a copy of the enclosed Reply (including exhibits) and Certificate of Service. Thank you for your attention to this matter.

Sincerely,

TURNER/PADGET GRAHAM & LANEY P.A.

J. René Josey

JRJ:vlb
Enclosures

Cc: Marc Quigley (w/enclosures)
John James Duggan, Esquire (w/enclosures)
Jeffrey L. Payne, Esquire (w/enclosures)

Hasler

FIRST-CLASS MAIL

04/19/2016

US POSTAGE

\$03.04⁰



ZIP 29502
011D11647668

TURNER PADGET

TURNER PADGET GRAHAM & LANEY P.A.

P. O. Box 5478

Florence, South Carolina 29502

RECEIVED

APR 20 2016

SC Court of Appeals

12086.101

Hon. Jenny Abbott Kitchings, Clerk of
Court

South Carolina Court of Appeals

Post Office Box 11629

Columbia, SC 29211