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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM YORK COUNTY
Court of Common Pleas

JUL 06 2016

John C. Hayes, III, Circuit Court Judge

SC Court of Appeals

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

PETITION FOR REHEARING

Phil Vasey
609 Deberry Hollow
Rock Hill, SC 29732
Appellant

MEMORANDUM

STATEMENT OF THE CASE

Appellants filed the underlying action against Respondent, Colton Builders LLC. in 2009, alleging breach of a construction contract and several other causes of action delineated in SCDLLR Case 2007-76. This case was concluded by the issuance of a consent agreement dated on or about September 30, 2008 which resulted in the Respondent being fined and publicly reprimanded. In late 2012, the parties entered into a consent order to submit the case to binding arbitration. After entering into this consent order, but about four days prior to the date scheduled for arbitration, the Appellants learned that in September 2008 the Respondent's legal entity had been restructured from a LLC. to a Corporation effectively negating the impact of the reprimand. The day prior to the scheduled arbitration the Appellants further discovered that in December, 2010 the State administratively dissolved the Corporation yet Colton Builders continued to do business as such. Taking the position that the dissolution of the Respondent entity invalidated that agreement to submit to arbitration and that had a favorable ruling been awarded the Appellants there were no means to collect as neither Colton Builders LLC. nor Inc. existed. The Arbitrator and Respondent council was immediately advised that for these reasons the Appellants would not participate in the arbitration. The Arbitrator continued with the hearing however and issued a judgement against the Appellants for failure to appear. Appellants filed a motion to set aside the consent order to arbitrate. The court denied this motion and suggested that the Appellants were entitled to relief, but that the proper remedy was to seek relief pursuant to the South Carolina Arbitration Act, and allowed the Appellants time to file a motion accordingly.

Appellants then filed a motion for relief under South Carolina Code §15-48-130, alleging that (1) the Respondent obtained an arbitration award by fraudulent means and, (2) that there was no binding arbitration agreement due to a lack of a meeting of minds. This motion was heard on 9/3/13 was also denied. It was about this time, almost three years later, that the Respondent filed for re-instatement of the corporation.

By order dated June 22, 2016, the Court of Appeals affirmed the Circuit Court decision.

POINT ALLEGEDLY OVERLOOKED

1. The Appellant's argument is two-pronged. The second prong, lack of meeting of the minds, appears to have been overlooked by the Court.

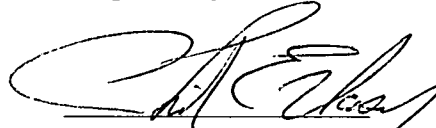
South Carolina Code §15-48-130 (a)(5) allows for relief from an arbitration award where "there was no arbitration agreement..."

"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 contend that because they entered into the arbitration agreement without the material knowledge that Respondent had been administratively dissolved, there was no meeting of the minds and therefore no valid agreement to arbitrate.

CONCLUSION

For the reasons set forth above, the June 22, 2016 order of the Court of Appeals decision affirming the Circuit Court should be reversed and the arbitration and award in the lower court vacated.

Respectfully submitted,



Phil Vasey
609 Deberry Hollow
Rock Hill, SC 29732
Appellant

July 5, 2016

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**CERTIFICATE OF SERVICE
BY MAIL**

I certify that I have served the Petition for Rehearing 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. at 1050 College Avenue Extension, Rock Hill, SC 29730 on July 5, 2016.



July 5, 2016

Phil Vasey
609 Deberry Hollow
Rock Hill, SC 29732
Appellant