

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea Gist Benjamin, Circuit Court Judge

Case No. 2017-CP-40-02822

Palmetto Wildlife Extractors, LLC,
And Patrick Charming,

Respondents,

v.

Justin Ludy and First Community Corporation d/b/a,
First Community Bank,

Appellant (Justin Ludy).

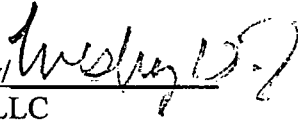
RECEIVED

SEP 05 2018

SC Court of Appeals

NOTICE OF APPEAL

Pursuant to S.C. Code Ann. § 15-48-200(a), Justin Ludy appeals the order of the Honorable DeAndrea Gist Benjamin dated July 23, 2018 (attached), denying reconsideration of the order dated June 21, 2018 (attached). Appellant received electronic notice of entry of the order denying the motion for reconsideration on July 23, 2018.

s/ Wesley D. Few 
Wesley D. Few, LLC
Post Office Box, 9398
Greenville, SC 29604
(864) 527-5906 | wes@wesleyfew.com

August 14, 2018
Greenville, South Carolina

Other Counsel of Record:

James M. Griffin
Post Office Box 999
Columbia, South Carolina 29202
(803) 774-0800

Margaret Fox
Post Office Box 999
Columbia, South Carolina 29202
(803) 774-0800

ATTORNEYS FOR RESPONDENTS PALMETTO WILDLIFE EXTRACTORS, LLC, AND
PATRICK CHARPING

Jody Bedenbaugh
Nelson Mullins
1320 Main Street
Columbia, South Carolina 29201

ATTORNEYS FOR FIRST COMMUNITY CORPORATION D/B/A, FIRST COMMUNITY
BANK

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

SEP 05 2018

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea Gist Benjamin, Circuit Court Judge

Case No. 2017-CP-40-02822

Palmetto Wildlife Extractors, LLC,
And Patrick Charping,

Respondents,

v.

Justin Ludy and First Community Corporation d/b/a,
First Community Bank,

Appellants,

Of whom Justin Ludy is the Appellant.

PROOF OF SERVICE

I certify that I have served a copy of the Appellant Justin Ludy's Notice of Appeal to The Honorable Jeannette W. McBride, Richland County Clerk of Court, addressed at 1702 Main Street, 1st Floor, Columbia, SC 29201 by depositing a copy in the United States Mail, postage prepaid, on September 4, 2018.



Cassy G. Young

September 4, 2018
Columbia, South Carolina

WESLEY D. FEW, LLC
Attorney at Law
P.O. Box 9398, Greenville, South Carolina 29604
www.wesleyfew.com | wes@wesleyfew.com
O: 864-527-5906 | M: 864-404-7792

September 4, 2018

Via U.S. Mail

The Honorable Jeannette W. McBride
Richland County Clerk of Court
1701 Main Street, 1st Floor
Columbia, South Carolina 29201

RE: Palmetto Wildlife Extractors, LLC and Patrick Charping v. Justin Ludy and First
Community Corporation d/b/a, First Community Bank
Civil Action No.: 2017-CP-40-02822
Our File No.: 00226-001

Dear Madame Clerk:

Enclosed for your records is a Notice of Appeal in the above-referenced case, Proof of Service of the Notice of Appeal on the Respondents, a copy of the two Orders to be challenged on Appeal.

With warm regards, I remain

Sincerely Yours,



Wesley D. Few

WDF/cgy

Enclosures

CC: South Carolina Court of Appeals (*Via U.S. Mail Only*)

RECEIVED
SEP 05 2018
SC Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP4002822

Palmetto Wildlife Extractors LLC et al
PLAINTIFF(S)

Justin Ludy et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

The Defendants' Motion to Reconsider 59(e) is Denied.

ORDER INFORMATION

This order ends does not end the case.

See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/23/2018 .

First Community Corporation
Patrick Charping

RECEIVED

SEP 05 2018

SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.



Richland Common Pleas

Case Caption: Palmetto Wildlife Extractors LLC , plaintiff, et al vs Justin Ludy ,
defendant, et al
Case Number: 2017CP4002822
Type: Order/Electronic Form 4

So Ordered

s/DeAndrea Gist Benjamin, #2161

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Palmetto Wildlife Extractors, LLC and)
 Patrick Charping,)
)
)
)
 Plaintiffs,)
 v.)
)
)
 Justin Ludy and First Community Bank)
 Corporation d/b/a First Community)
 Bank,)
)
)
 Defendants.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL
 CIRCUIT

C/A No. 2017-CP-40-2822

**ORDER GRANTING IN PART AND
 DENYING IN PART DEFENDANT
 JUSTIN LUDY'S MOTION TO
 DISMISS OR STAY AND COMPEL
 ARBITRATION**

RECEIVED
 SEP 05 2018
 SC Court of Appeals

This Court heard Defendant Justin Ludy's Motion to Dismiss or Stay and Compel Arbitration on March 1, 2018 in the Court of Common Pleas for Richland County, South Carolina. This Court issues the following order to grant in part and deny in part Defendant Ludy's motion.

First, this Court finds that Defendant Ludy did not waive the right to arbitrate. *See generally, Rich v. Walsh*, 357 S.C. 64, 590 S.E.2d 506 (Ct. App. 2003); *Rhodes v. Benson Chrysler-Plymouth, Inc.*, 374 S.C. 122, 647 S.E.2d 249 (Ct. App. 2007). Generally, the courts in South Carolina consider three factors to determine if a party waived its right to compel arbitration:

- (1) whether a substantial length of time transpired between the commencement of the action and the commencement of the motion to compel arbitration;
- (2) whether the party requesting arbitration engaged in extensive discovery before moving to compel arbitration; and
- (3) whether the non-moving party was prejudiced by the delay seeking arbitration.

Rhodes, 374 S.C. at 126, 647 S.E.2d at 250. To establish prejudice, the non-moving party must show something more than mere inconvenience. *Rhodes*, 374 S.C. at 126, 647 S.E.2d at 250. Further, neither delay nor the filing of pleadings by the party seeking a stay will suffice, without

much more, to establish waiver of arbitration. *Rich*, 357 S.C. at 71, 590 S.E.2d at 510. Material factors to consider when determining whether the non-moving party was prejudiced, are delay and whether the party requesting arbitration took advantage of the judicial system by engaging in discovery. *Rhodes*, 374 S.C. at 126, 647 S.E.2d at 250; *Rich*, 357 S.C. at 71, 590 S.E.2d at 510.

Defendant Ludy does not waive the right to arbitrate. Although Defendant Ludy filed a Complaint against Plaintiff Charping on April 25, 2017 in the Court of Common Pleas for Lexington County, South Carolina, this act in and of itself, is insufficient to waive Defendant Ludy's right to compel arbitration. On May 10, 2017, in response to Defendant Ludy's Lexington County Complaint, Plaintiffs initiated the instant action in the Court of Common Pleas for Richland County, South Carolina. On June 6, 2017, Defendant Ludy dismissed the Lexington County Complaint and responded to Plaintiffs' Richland County Complaint by filing a Motion to Dismiss or Stay and Compel Arbitration. In an abundance of caution, Defendant Ludy filed an Answer and Counterclaim on July 14, 2017 and noted in the pleading that the Court must decide his Motion to Dismiss or Stay and Compel Arbitration before considering his Answer and Counterclaim.

The Court considered many factors to determine Defendant Ludy has not waived the right to compel arbitration. This lawsuit commenced in May 2017 and Defendant Ludy filed the motion to compel arbitration on June 6, 2017. Between the commencement of the lawsuit and the request for arbitration, the parties engaged in minimal discovery. Further, Defendant Ludy has not utilized the judicial system to his advantage by filing extensive discovery requests or by engaging in discovery. On the contrary, Defendant Ludy filed a Motion to Limit and Stop Discovery on May 30, 2018, so that the Court may first determine whether this case is subject to arbitration. Such a filing is consistent with his request to compel arbitration. Last, Plaintiffs present no arguments as

to how Defendant Ludy's motion to compel arbitration prejudices them. Taken as a whole, the actions of Defendant Ludy do not prejudice Plaintiffs and are consistent with the request to compel arbitration.

Second, this Court finds that Plaintiffs' causes of action numbers one and two are subject to arbitration. The Plaintiffs' first cause of action is Palmetto Wildlife Extractors' Derivative Claim for Breach of Fiduciary Duty. The Plaintiffs' second cause of action is Palmetto Wildlife Extractors' Derivative Claim for Aiding and Abetting Breach of Fiduciary Duty. With regard to Plaintiffs' first two causes of action, Plaintiffs claim that Defendant Ludy misappropriated company funds in a manner inconsistent with the best interests of the company and utilized company funds for personal use. Plaintiffs additionally claim that Defendants removed Plaintiffs from the company's bank accounts. Plaintiffs and Defendant Justin Ludy entered into an Amended Operating Agreement for Palmetto Wildlife Extractor's, LLC. By virtue of the contract, the Plaintiffs and Justin Ludy are ascribed certain fiduciary duties. An alleged violation of a fiduciary duty falls under the scope of the parties' operating agreement, which requires that disputes relating to, or arising out of the contract, are subject to arbitration.

Third, this Court finds that Plaintiffs' causes of action numbers three through five are not subject to arbitration. The Plaintiffs' third cause of action is for Civil Conspiracy. The Plaintiffs' fourth cause of action is for Defamation. The Plaintiffs' fifth cause of action is for Appointment of Receiver, Accounting, and Judicial Dissolution. Plaintiffs' claims for civil conspiracy and defamation are tort claims that do not implicate the parties' contractual agreement and are not subject to arbitration. According to Section 11.1.3 of the parties' agreement, a court must enter a judicial decree dissolving the company pursuant to S.C. Code Ann. § 33-44-801. Thus, Plaintiffs'

claim for appointment of receiver, accounting, and judicial dissolution is not subject to arbitration as Section 11.1.3 specifically requires a finding by a court.

IT IS HEREBY ORDERED

Defendant Ludy's motion is GRANTED as to Plaintiffs' causes of action for breach of fiduciary duty and aiding and abetting breach of fiduciary duty. Those causes of action are dismissed and subject to arbitration. Defendant First Community Bank Corporation will follow the parties to arbitration.

Defendant Ludy's motion is DENIED as to Plaintiffs' claims for civil conspiracy; defamation; and appointment of receiver, accounting, and judicial dissolution. These causes of action are stayed.

The Honorable DeAndrea G. Benjamin
Judge of the Fifth Judicial Circuit

June _____, 2018
Columbia, South Carolina



Richland Common Pleas

Case Caption: Palmetto Wildlife Extractors LLC , plaintiff, et al vs Justin Ludy ,
defendant, et al
Case Number: 2017CP4002822
Type: Order/Other

So Ordered

s/DeAndrea Gist Benjamin, #2161

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea Gist Benjamin, Circuit Court Judge

Case No. 2017-CP-40-02822

Palmetto Wildlife Extractors, LLC,
And Patrick Charping,

Respondents,

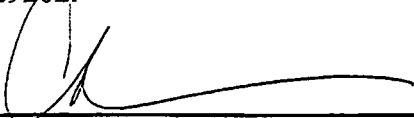
v.

Justin Ludy and First Community Corporation d/b/a,
First Community Bank,

Appellant (Justin Ludy).

PROOF OF SERVICE

I certify that I have served a copy of the Notice of Appeal on counsel for the Respondent, James M. Griffin and Margaret Fox, by depositing a copy of it in the United States Mail, postage prepaid, on August 15, 2018, addressed to James M. Griffin and Margaret Fox, P.O. Box 999, Columbia, SC 29202.


Cassy G. Young
Paralegal to Wesley D. Few, Esq.

August 15, 2018
Columbia, South Carolina

RECEIVED
SEP 05 2018
SC Court of Appeals