

ATTACHMENT A

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 P. JEFFREY GILSTRAP, *Individually and in*)
a Derivative Capacity as a Member of)
 SOUTHPAW ENTERPRISES, LLC,)
)
 Plaintiff,)
)
 v.)
)
 DANIEL P. SCHAAF,)
)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT

C/A No.: 2018-CP-23-01005

**ORDER GRANTING DEFENDANT'S
 MOTION TO STAY AND COMPEL
 ARBITRATION**

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SC Court of Appeals

This matter came before the Court on July 18, 2018 upon the Defendant's Motion to Dismiss and Compel Arbitration, or Alternatively, Stay and Compel Arbitration, pursuant to Rules 12(b)(1), 12(b)(3), and 12(b)(6) of the South Carolina Rules of Civil Procedure and S.C. Code Ann. § 15-48-20. For the foregoing reasons, the Court **GRANTS** the Defendant's Motion to Stay and Compel Arbitration and **DENIES** the Defendant's Motion to Dismiss pursuant to South Carolina Rules of Civil Procedure 12(b)(1), 12(b)(3), and 12(b)(6).

FACTUAL AND PROCEDURAL HISTORY

The plaintiff, P. Jeffrey Gilstrap, Individually and in a Derivative Capacity as a Member of Southpaw Enterprises, LLC ("Gilstrap"), and the defendant, Daniel P. Schaaf ("Schaaf"), are the only two members of Southpaw Enterprises, LLC ("Southpaw"). Southpaw is a South Carolina limited liability company. On January 1, 2003, Schaaf and Gilstrap executed an operating agreement for Southpaw ("Operating Agreement"). The Operating Agreement states in pertinent part, "any dispute or controversy arising under or in connection with the Agreement shall be submitted to binding arbitration in accordance with the requirements of the South Carolina Uniform Arbitration Act as then in effect ('SCUAA')." Gilstrap brought the current

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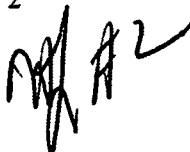
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action for judicial expulsion pursuant to S.C. Code Ann. §33-44-601(6). Schaaf filed a motion to dismiss pursuant to South Carolina Rules of Civil Procedure 12(b)(1), 12(b)(3), and 12(b)(6) or in the alternative to stay the proceedings and compel arbitration.

STANDARD

South Carolina public policy favors arbitration of disputes. The presumption of arbitrability requires that when the “scope of an arbitration is open to question, a court must decide the question in favor of arbitration.” *Wilson v. Willis*, 416 S.C. 395, 413 (Ct. App. 2016)(citations omitted). “Arbitration is a matter of contract, and a party cannot be required to submit to arbitration any dispute which he has not agreed to submit.” *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596 (2001)(citations omitted). “Arbitration rests on the agreement of the parties, and the range of issues that can be arbitrated is restricted by the terms of the agreement.” *Id.* (citing *Simmons v. Lucas & Stubbs Assocs., Ltd.*, 283 S.C. 326 (Ct. App. 1984)). “To decide whether an arbitration agreement encompasses a dispute, a court must determine whether the factual allegations underlying the claim are within the scope of the broad arbitration clause, regardless of the label assigned to the claim.” *Id.* at 597 (citations omitted). “Any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration.” *Id.* (citations omitted). “Furthermore, unless the court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered.” *Id.* A motion to compel an arbitration clause in a written contract should only be denied if “the clause is not susceptible to any interpretation which would cover the asserted dispute.” *Id.*

ANALYSIS

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Pursuant to South Carolina Code Ann. § 33-44-103(b)(5), an operating agreement may not “vary the right to expel a member in an event specified in Section 33-44-601(6). South Carolina Code Ann. § 33-44-601(6) states:

On application by the company or another member, the member’s expulsion by judicial determination because the member:

- (i) engaged in wrongful conduct that adversely and materially affected the company’s business;
- (ii) wilfully or persistently committed a material breach of the operating agreement or of a duty owed to the company or the other members under Section 33-44-409; or
- (iii) engaged in conduct relating to the company’s business which makes it not reasonably practicable to carry on the business with the member.

The issue is whether an operating agreement that allows determination of the expulsion of a member by arbitration varies the right to expel a member based on S.C Code Ann. 33-44-601(6).

The Court finds that the parties freely entered into the arbitration clause and that the arbitration clause broadly covered all disputes arising out of the operating agreement. The Court further finds that the operating agreement does not prejudice that parties’ ability to expel a member of the LLC for the reasons listed in § 33-44-601(6), it merely shifts the forum in which the rights are adjudicated. Given the state’s public policy in favor of arbitration, the requirement that any interpretation suggesting arbitrability must be decided in finding in favor arbitration, the broad scope of the parties’ arbitration clause, and the lack of prejudice against Gilstrap, the Court **GRANTS** Defendant’s Motion to Stay and Compel Arbitration and, **DENIES** Defendant’s Motion to Dismiss.

CONCLUSION

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Motion to Stay and Compel Arbitration is **GRANTED**. The parties are ordered to proceed with arbitration of all

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issues raised, or which could have been raised in the above-captioned matter. The parties will proceed with arbitration in accordance with the terms set forth in the arbitration agreement entered into by and between the parties. This proceeding shall be stayed until such time as the arbitration is concluded, at which time, upon motion of either party, the final decision of the arbitrator(s) shall be adopted as an order of this Court.

IT IS FURTHER ORDERED that Defendant's Motion to Dismiss is **DENIED**.

IT IS SO ORDERED.



Hon. Alex Kinlaw
Judge, Thirteen Judicial Circuit

9/28/18
Greenville, South Carolina