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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

RECEIVED

AUG 06 2019

The Honorable Bentley Price, Circuit Court Judge

SC Court of Appeals

Case No. 2019-CP-10-00178

J. Daniel Mahoney.....Respondent,

v.

The Muhler Company, Inc. and Henry Hay III, in his individual capacity..... Appellants.

RESPONDENT'S MOTION TO DISMISS

Background

In 2008, Henry Hay, III ("Hay"), the owner of The Muhler Company, Inc. ("Muhler"), hired J. Daniel Mahoney ("Mahoney") to serve as CEO of Muhler. As further incentive for this job, Hay also provided Mahoney with a 25% ownership interest in Muhler.

On or about January 15, 2008, Mahoney and Hay entered into a Stockholders' Agreement (attached hereto as Exhibit 1) whereby the stockholders for Muhler were set out with Hay owning 1000 shares and Mahoney owning 333 1/3rd shares. The Stockholders' Agreement was executed by Hay and Mahoney. The ownership remains the same with Hay owning 1000 shares and Mahoney maintaining ownership of his 333 1/3rd shares. There are no other shareholders. Mahoney served as Chief Executive Officer for Muhler from 2008 until he was terminated by Hay on September 18, 2018.

TABLE OF AUTHORITIES

CASES

Bone v. United States Food Serv., 399 S.C. 566, 733 S.E.2d 200 (2012).....7

Breland v. Love Chevrolet Olds, Inc, 339 S.C. 89, 529 S.E.2d 11 (2000).....6

Good v. Hartford Acc. & Indem. Co., 201 S.C. 32, 42, 21 S.E.2d 209, 212 (1942).....5

Heffner v. Destiny, Inc., 321 S.C. 536, 537, 471 S.E.2d 135, 136 (1995).....5

Jefferson v. Gene's Used Cars, Inc., 295 S.C. 317, 318, 368 S.E.2d 456 (1988).....6, 7

Liberty Builders, Inc. v. Horton, 336 S.C. 658, 661, 521 S.E.2d 749, 771 (1999).....5

McLaughlin v. Strickland, 279 S.C. 513, 309 S.E.2d 787 (Ct. App. 1983).....6

Mid-State Distribs. v. Century Imps., 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993).....6

Pennsylvania Nat. Mut. Cas. Ins. Co. v. Parker, 282 S.C. 546, 320 S.E.2d 458 (Ct. App. 1984).....5

Shields v. Martin Marietta Corp., 303 S.C. 469, 402 S.E.2d 482 (1991).....6

Thornton v. S.C. Elec. & Gas Corp., 391 S.C. 297, 300, 705 S.E.2d 477 (Ct. App. 2011) (quoting Ex Parte Capital U-Drive-It, Inc., 369 S.C. 1, 6, 630 S.E.2d 464, 467 (2006).....5

STATUTES

S.C. Code Ann. §14-3-330.....5, 6,7

S.C. Code Ann. §15-48-10.....4

S.C. Code Ann. §15-48-20.....4

S.C. Code Ann. §15-48-200.....4, 5,7

Article 3 of the Stockholder's Agreement states:

Upon the death or termination of the employment of Mahoney, the remaining Stockholders shall have the option to buy from Mahoney, or his Estate, as the case may be, all of the stock in the Corporation owned by Mahoney at the time of his departure or death by giving notice of acceptance as described in Article 2, Section A above. Should the remaining Stockholders not elect to exercise this option, based on the pro rata formula described in Article 2, Section A above, then the Corporation shall purchase and the departing or deceased Stockholder shall sell all of the stock in the Corporation owned by the departing Stockholder at the time of his death or departure. The option granted to the remaining Stockholders as described above shall expire fifteen (15) days after the completion of the valuation being made pursuant to Article 5 below, if a stipulated price is not applicable, and if such option lapses, then the Corporation shall purchase such shares of the departing or deceased Stockholder within thirty (30) days after the expiration of such option. The purchase price and terms of sale shall be as specified in Article 5 of this Agreement. Notwithstanding the above, this Article shall not supersede the provisions of Article 2 above regarding the voluntary sale of stock by a Stockholder.

Since Mahoney was terminated, neither the Stockholders nor the Corporation have purchased Mahoney's stock as dictated by Article 3. Article 5 of the Stockholders' Agreement specifies the purchase price per share for the stock shall be the "greater of Thirty Dollars (\$30.00) per share or an amount equal to each share's Appraised Fair Market Value."

Article 5 further states that "Appraised Fair Market Value shall equal the greater of:

- a. Four times adjusted EBITDA, divided by the number of outstanding shares, or
 - b. The Corporation's Book Value (defined as the sum of the Corporation's retained earnings and paid in capital) divided by the number of outstanding shares of stock."
- Agreement at Article 5.

Muhler created its own financial statement dated August 31, 2018. This information was created and provided by Muhler, therefore, should be viewed as accurate. Based on Muhler's own valuation, the appraised value of Mahoney's twenty-five percent interest in the company was \$989,308.00. This was calculated using adjusted EBITDA times four as outlined in Article 5 of the Stockholders Agreement.

Despite having a clear directive pursuant to the Shareholders' Agreement that Hay or the Company shall purchase Mahoney's stock, and a clear valuation provided by Muhler for the value

of that stock, Appellants failed to live up to the terms of the Agreement and purchase the stock. As such, on January 14, 2019, Mahoney filed a lawsuit against Hay and Muhler in the Charleston County Court of Common Pleas. In turn, Hay and Muhler filed a motion to dismiss and compel arbitration.

The Stockholder's Agreement, at Paragraph 26 titled "Adjudication" states: "Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by a court of competent jurisdiction in the State of South Carolina, County of Charleston." Years after the Stockholder's Agreement was signed, Hay changed the Muhler Bylaws by inserting, for the first time, an arbitration provision. Mahoney voted against the bylaw amendment, however, was outvoted by Hay's majority interest in Muhler (Amendment to Bylaws attached hereto as Exhibit 2).

This new arbitration amendment called for any dispute to be adjudicated by three Certified Public Accountant (CPA) arbitrators. It also specified that each party selects an arbitrator, however, the third arbitrator "shall be an employee of the Corporation's accountant. This third arbitrator will be appointed even in the event that the corporation is a claimant or respondent." Amendment to Bylaws, Article 8.

This arbitration selection process is flawed for two primary reasons. First, it stacks the deck in favor of Muhler and against Mahoney 2 v. 1. Second, by specifying the arbitrators be CPAs, it focuses exclusively on a valuation of Mahoney's interest in Muhler. In fact, the lawsuit has other claims including Breach of Fiduciary Duty and a claim pursuant to the SC Statutory Close Corporation Act – protection of a minority shareholder suit. These claims should be considered by attorney arbitrators as they are detailed legal claims – not pure valuations.

The Defendants'/Appellants' motion to compel arbitration was heard by the Honorable

Bentley Price. Despite arguments from Mahoney that the provisions of the Stockholder's Agreement controlled the disputes resolution over the after-the-fact revision to the bylaws and the dispute should be settled in state court, Judge Price **granted** the motion and compelled arbitration. Judge Price's Order is attached hereto as Exhibit 3.

Judge Price modified Muhler's arbitration provision found in Article 8, Section 8 of the Amendment to Bylaws, which allowed each party to select a CPA arbitrator and the third arbitrator to be the Company's accountant. The court modified this provision to follow South Carolina Uniform Arbitration Act's default arbitrator selection rule, allowing each party to select an arbitrator and the third to be a selected by the neutrals. The court looked to S.C. Code Ann. § 15-48-10(a) (1978), which states that arbitration provisions exist within the law of contracts, and therefore can be revoked (or in this case modified, because of a severability clause (see Muhler Company Amendment to Bylaws Article 8, Section 10) if the provision is invalid, unenforceable or unconscionable.

Applicable Law

S.C. Code Ann. § 15-48-200(a) (1978) determines which arbitration matters can be appealed. Specifically,

(a) An appeal may be taken from:

- (1) An order denying an application to compel arbitration made under S.C. Code Ann. § 15-48-20 (1978);
- (2) An order granting an application to stay arbitration made under S.C. Code Ann. § 15-48-20(b) (1978);
- (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.

(b) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action

An interlocutory order not governed by a specialized appealability statute is not immediately appealable unless it fits into one of the categories listed in S.C. Code Ann. § 14-3-330 (1978) of the South Carolina Code. *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 300, 705 S.E.2d 477 (Ct. App. 2011) (quoting *Ex Parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 6, 630 S.E.2d 464, 467 (2006)). An order refusing to stay an action pending arbitration or compel arbitration is immediately appealable. *Liberty Builders, Inc. v. Horton*, 336 S.C. 658, 661, 521 S.E.2d 749, 771 (1999). This is because the order is considered “final” and disposes of the party’s rights. The South Carolina Supreme Court ruled that an order that “stayed an action and compelled arbitration could not be appealed because it was not expressly included in S.C. Code Ann. § 15-48-200 (1978).” *Heffner v. Destiny, Inc.*, 321 S.C. 536, 537, 471 S.E.2d 135, 136 (1995). The *Heffner* court stated that “by application of the rule of statutory construction “*expressio unius est exclusio alterius*” (the mention of one is the exclusion of another), all other orders related to arbitration are not immediately appealable.” (Citing *Pennsylvania Nat. Mut. Cas. Ins. Co. v. Parker*, 282 S.C. 546, 320 S.E.2d 458 (Ct. App. 1984)).

Final Orders and Judgements

Appeals from arbitration matters follow the same rules as other civil orders and judgements; the Court of Appeals and S.C. Supreme Court shall have appellate jurisdiction for final judgements. According to *Good v. Hartford Acc. & Indem. Co.*, 201 S.C. 32, 42, 21 S.E.2d 209, 212 (1942), “a final judgment is one which operates to divest some right in such a manner as to put it beyond the power of the Court making the order to place the parties in their original condition after the expiration of the term; that is, it must put the case out of Court, and must be final in all matters within the pleadings.”

Interlocutory Orders

Interlocutory orders are typically not immediately appealable because some further act must be done by the court to determine the rights of the parties. However, there are several exceptions within S.C. Code Ann § 14-3-330 (1991) that permit appeals from interlocutory orders, including orders “on the merits” and “orders affecting a substantial right”. An avoidance of trial is not considered a substantial right. *McLaughlin v. Strickland*, 279 S.C. 513, 309 S.E.2d 787 (Ct. App. 1983).

- a. **Orders on the merits:** According to *Mid-State Distribs. v. Century Imps.*, 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993), the precise meaning of the words “involving the merits” . . . has never been distinctly determined. An order which “involves the merits,” is now defined as an order which “must finally determine some substantial matter forming the whole or a part of some cause of action or defense...” *Jefferson v. Gene's Used Cars, Inc.*, 295 S.C. 317, 318, 368 S.E.2d 456, 456 (1988). If a substantial right could not be vindicated after the appeal of a case, it is considered immediately appealable.” *Breland v. Love Chevrolet Olds, Inc*, 339 S.C. 89, 529 S.E.2d 11 (2000).
- b. **Orders effecting a substantial right:** The *Mid-State Distribs.* case also states that an order affecting a substantial right is an order that “would discontinue an action, prevent an appeal, grant or refuse a new trial, or strike out an action or defense. The denial of a motion to dismiss for lack of jurisdiction does not impair a substantial right. Similarly, an avoidance of trial was not held as constituting a substantial right. *Shields v. Martin Marietta Corp.*, 303 S.C. 469, 402 S.E.2d 482 (1991).

Analysis

Judge Price's Order is not a final decision, does not fall within one of the classifications of S.C. Code Ann. §15-48-200 (1978) nor does it meet one of the interlocutory appeal exceptions. Because the matter is not disposed of in finality through this order – it only moves the case to arbitration, which was requested by the defendant – it is interlocutory, not final. *Bone v. United States Food Serv.*, 399 S.C. 566, 733 S.E.2d 200 (2012).

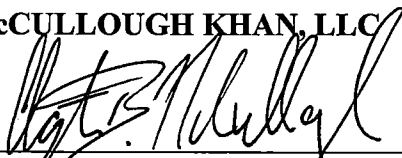
To determine an interlocutory order involves the merits of a case, it "must finally determine some substantial matter forming the whole or a part of some cause of action or defense..." *Jefferson v. Gene's Used Cars, Inc.*, 295 S.C. 317, 318, 368 S.E.2d 456 (1988). Although the judge modified the arbitrator selection method, the order did not impact any substantial matter within the case. By defaulting to the Uniform Arbitration Act's selection of a neutral third arbitrator, the arbitration process was made fairer to each party. No final decision in the case was made because of this modification – the court not only granted the motion to compel arbitration, but also made no decision as to Mr. Mahoney's rights to specified stock prices.

An order affecting a substantial right is one that "made in an action [and] . . . in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action. . . ." S.C. Code Ann. § 14-3-330(2)(a) (1991). Here no substantial right was impacted. By defaulting to the Uniform Arbitration Act, the Court protected all parties and made sure no substantial right, of any party, was impacted. Again, the Stockholder's Agreement specifies all disputes SHALL be "settled by a court of competent jurisdiction in the State of South Carolina, County of Charleston." That is what Mahoney agreed to. Later, against Mahoney's will, Hay changed the Muhler Bylaws and implemented the arbitration provisions. The Court sided with Hay and compelled the arbitration, however, deemed the arbitrator selection process as unfair

and defaulted to the S.C. Uniform Arbitration Act. Under these circumstances, this decision was interlocutory. As such, this appeal should be dismissed and the matter referred to arbitration as described in the Court's Order.

Respectfully Submitted,

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ATTORNEY FOR RESPONDENT

8.5, 2019

STOCKHOLDERS' AGREEMENT

THIS AGREEMENT is made and entered into by and among Henry M. Hay, III, and J. Daniel Mahoney, hereinafter referred to collectively as "Stockholders" and each individually as a "Stockholder," and The Muhler Company, Inc., a South Carolina corporation, having its principal place of business at Charleston, South Carolina, hereinafter referred to as "Corporation."

Background

The Stockholders own all the issued and outstanding capital stock of the Corporation as follows:

<u>NAME</u>	<u>NUMBER OF SHARES</u>
Henry M. Hay, III	1,000
Daniel Mahoney	333 1/3

The parties to this Agreement believe it to be in their mutual interests to provide for continuity in the management and policies of the Corporation by imposing certain restrictions and obligations on themselves and the outstanding capital stock of the Corporation. The Corporation and the Stockholders desire to facilitate liquidation of the stock of any retiring, deceased, disqualified or disabled Stockholder by the creation of a guaranteed market for his stock at a fair value. The Corporation and the Stockholders further desire to impose certain restrictions on the transfer of stock in the Corporation during the lifetime of the Stockholders;

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

ARTICLE 1.

Restrictions on Transfer of Stock

No Stockholder shall at any time during the existence of this Agreement directly or indirectly, voluntarily or involuntarily, sell, assign, transfer, mortgage, encumber, pledge, gift, or otherwise deal with or dispose of all or any part of the shares of stock in the Corporation now owned and hereafter acquired by him without first obtaining the written consent of the Corporation and the other Stockholders or, in the absence of such written consent, without first complying with the terms and conditions of this Agreement. Without limiting the above, under no circumstances shall any transfer be made to any transferee which jeopardizes the Subchapter S status, if applicable, of the Corporation without the prior written consent of all Stockholders. Upon a transfer of any shares to any permitted transferee, the shares shall continue to be subject to this Agreement, and as a condition to the transfer, each proposed transferee shall



execute this Agreement or other documents satisfactory to counsel for the Corporation pursuant to which such proposed transferee becomes bound by the terms and conditions of this Agreement. In the event a proposed transferee shall refuse to execute such documents, such transferee shall not become a stockholder of the Corporation. During the term of this Agreement any action of the Corporation not in the ordinary course of business including specifically but not limited to the incurring of additional debt of greater than \$50,000 or the sale of substantially all of the Corporations' assets shall be approved by a vote by the holders of one hundred (100%) percent of the common stock of the Corporation, unless a higher percentage vote is required in the Articles of the Corporation, the bylaws of the Corporation, this Agreement or the laws of the State of South Carolina.

ARTICLE 2.

Transfer of Stock During Lifetime

A. If a Stockholder desires to gift, transfer (except for estate planning purposes, and only to such Stockholder's spouse or issue), sell, or in any way encumber or dispose of all or any portion of his or her stock in the Corporation, such Stockholder shall first serve notice (hereinafter referred to as "Offer to Sell") to that effect upon the other parties hereto, stating the number of shares desired to be gifted, sold, encumbered, or otherwise disposed of and offering to sell such shares to the Corporation and the other Stockholders in accordance with the terms hereof. The non-selling Stockholders shall have the first right to purchase all or any part of the stock so offered by giving notice of acceptance (specifying the number of shares to be purchased) to the selling Stockholder and the Corporation within fifteen (15) days after completion of the valuation process described in Article 5 below. Each of the non-selling Stockholders shall have an individual pro rata right to purchase the shares of the selling Stockholder based on the following formula: each non-selling Stockholder may agree to purchase stock owned by the selling Stockholder in an amount equal to the total number of common shares of stock owned by the selling Stockholder multiplied by a fraction equal to the number of common shares of stock owned by that particular non-selling Stockholder divided by the total number of common shares of stock owned by all non-selling Stockholders. Should any non-selling Stockholder fail to give the notice of acceptance to the selling Stockholder and the Corporation as described above, then the non-selling Stockholders who have given notice of acceptance shall have the right but not the obligation to increase their purchase of stock of the selling Stockholder by adjusting the denominator of the fraction in the above-described formula to be the total common shares of stock owned by those non-selling Stockholders who desire to purchase the stock of the selling Stockholder. The purchase by any non-selling Stockholder shall occur within thirty (30) days following said fifteen (15) day period.

B. If the non-selling Stockholders shall fail to exercise their right to purchase all of the stock offered by the selling Stockholder, then the Corporation shall have the right to purchase such portion of the stock offered for sale which is not purchased by the non-selling

Stockholders by giving notice of acceptance (specifying the number of shares to be purchased) to the selling Stockholder and the non-selling Stockholders within fifteen (15) days following the close of the aforesaid fifteen (15) day period. The decision of whether or not the Corporation accepts such offer shall be made in the form of a resolution adopted by the Stockholders at a valid meeting. The resolution in favor of the Corporation accepting the offer to purchase such shares shall be adopted by a vote by the holders of sixty-seven (67%) percent of the outstanding shares of the Corporation. The Stockholder who made the Offer to Sell agrees that he or she will vote his or her shares in favor of the Corporation accepting the Offer to Sell. However, notwithstanding the foregoing, if the Corporation and the non-selling Stockholders have elected to purchase only a portion and not all of the stock offered for sale by the selling Stockholder, then the selling Stockholder may elect not to sell such portion to either the Corporation or the non-selling Stockholders but may elect to sell all of the stock included in the Offer to Sell in accordance with the provisions of Paragraph D of this Article. Any purchase by the Corporation hereunder shall occur within thirty (30) days following said fifteen (15) day period of acceptance for the Corporation.

C. In the event that any stock is to be purchased pursuant to the terms of this Article 2, the following provisions shall apply:

(1) Each share of stock to be purchased pursuant to the terms of this Article 2 shall be purchased at the price specified in Article 5 of this Agreement.

(2) The purchase price of each share of stock to be purchased pursuant to the terms of this Article 2 shall be paid in accordance with the provisions of Article 5 of this Agreement.

D. In the event that the Corporation and the non-selling Stockholders fail or refuse to purchase all of the stock offered for sale, the selling Stockholder shall be free to gift, sell, encumber, or otherwise dispose of the shares of stock in any manner and upon any terms and conditions; provided, however, that such selling Stockholder shall not in fact sell any stock to another person either for a price less than or on terms more favorable than the purchase price or the terms fixed by this Agreement without first offering the Corporation and the non-selling Stockholders the right to purchase at the same price and upon the same terms as such other person. In carrying out the intent of the immediately preceding sentence, the same procedure as specified in Paragraphs A, B, and C above shall again be followed except that the notice served upon the parties to this Agreement shall specify the name and address of the person to whom the selling Stockholder proposes to sell his or her stock and the price and terms of purchase offered by such person for such stock. In the event that the Corporation and the other Stockholders shall then fail or refuse to purchase all the stock offered for sale pursuant to this Agreement, the selling Stockholder shall then be free to sell the shares of unaccepted stock to such other person for the price and upon the terms set forth in such notice; provided, however, that any such sale shall take place within sixty (60) days following the last day that the non-selling Stockholders may give notice of acceptance as provided above, and upon the expiration of such sixty (60) day

period, the provisions of this Agreement shall reattach to all of the stock not sold during said sixty (60) day period.

E. In the event that any stock is not sold but is merely encumbered during the ninety (90) day period specified in Paragraph D above, then the transferee of such encumbered stock shall accept such stock subject to the terms and conditions of this Agreement, subject to any relevant provisions, if any, in the Corporation's Articles of Incorporation.

F. In the event that any stock be involuntarily transferred pursuant to a divorce decree or otherwise, this Article 2 will apply in creating options for the Corporation or the Stockholders to first purchase the stock before such involuntary transfer is deemed to be effective.

ARTICLE 3.

Purchase of Stock Upon the Death or Termination of Mahoney

Upon the death or termination of the employment of Mahoney, the remaining Stockholders shall have the option to buy from Mahoney, or his Estate, as the case may be, all of the stock in the Corporation owned by Mahoney at the time of his departure or death by giving notice of acceptance as described in Article 2, Section A above. Should the remaining Stockholders not elect to exercise this option, based on the pro rata formula described in Article 2, Section A above, then the Corporation shall purchase and the departing or deceased Stockholder shall sell all of the stock in the Corporation owned by the departing Stockholder at the time of his death or departure. The option granted to the remaining Stockholders as described above shall expire fifteen (15) days after the completion of the valuation being made pursuant to Article 5 below, if a stipulated price is not applicable, and if such option lapses, then the Corporation shall purchase such shares of the departing or deceased Stockholder within thirty (30) days after the expiration of such option. The purchase price and terms of sale shall be as specified in Article 5 of this Agreement. Notwithstanding the above, this Article 3 shall not supercede the provisions of Article 2 above regarding the voluntary sale of stock by a Stockholder.

ARTICLE 4.

Reserved

ARTICLE 5.

Purchase Price of Stock

A. The purchase price per share for stock purchased pursuant to this Agreement is hereby stipulated to be the greater of Thirty Dollars (\$30.00) per share or an amount equal to each share's Appraised Fair Market Value. To determine Appraised Fair Market Value, the accountant for the Corporation shall first calculate the total of the Corporation's earnings before interest, taxes, depreciation, amortization, and Stockholders salaries, dividends, bonuses, and benefits (the "Adjusted EBITDA"). Appraised Fair Market Value shall equal the greater of: (i) four times Adjusted EBITDA, divided by the number of outstanding shares, or (ii) the Corporation's Book Value (defined as the sum of the Corporation's retained earnings and paid in capital) divided by the number of outstanding shares of stock. There shall be no reduction in the valuation of stock purchased pursuant to this Agreement for minority interests, lack of control, or any other reason. The purchasing Stockholders, or, if the Corporation is purchasing, the board of directors of the Corporation or the Corporation's authorized representative(s) shall thereupon fix a date, hour and place for the closing, which shall be made known to the selling or disassociated Stockholder. At the closing, such Stockholder shall deliver to the Corporation the certificate or certificates representing all of the common shares of stock of the Corporation held by such Stockholder, regardless of whether or not some part of the purchase price is deferred as hereinafter provided, with the certificates being duly endorsed, and the Corporation shall, upon delivery of the certificate or certificates, pay to such Stockholder the purchase price for such stock as described in Section B below. **Notwithstanding the above, EBITDA shall not include any income derived from the Settlement Agreement between the Corporation and Silverline dated _____, 2008.**

B. The purchase price of stock subject to this Agreement shall be in cash at closing. In the event the Stockholder or Corporation lacks sufficient cash to purchase the stock, the unpaid balance of the purchase price shall be evidenced by a negotiable promissory note payable in equal monthly installments of principal and interest with simple interest at the rate of the then applicable prime rate plus three percent (3%) interest rate per annum, with the first payment due and payable on the 30th day following the closing, and the subsequent payments due and payable at similar time frames thereafter with a final payment of all unpaid interest and principal due on the first anniversary date of the closing. Said note shall be in the form attached hereto as Exhibit B. All of the stock in the Corporation being purchased shall be pledged as collateral security to the Stockholder from whom it was purchased to secure the full payment of the principal and interest on the negotiable promissory note. The form of the stock pledge to be used is attached hereto as Exhibit C.

ARTICLE 6.

Insurance

A. The Corporation or the Stockholders may be the owner of policies of insurance on the lives of the Stockholders as listed in Exhibit A attached hereto and made a part hereof.

B. The Corporation or the Stockholders are or will be the beneficiary of the policies listed in Exhibit A and of any additional policies which may become subject to the terms hereof; and during the continuance of this Agreement, the proceeds of all policies listed on Exhibit A and of all such additional policies shall be payable to the Corporation or the Stockholders in lump sums upon the death of the insureds.

C. The Corporation shall have the right to purchase additional policies of insurance on the lives of any or all of the Stockholders, who are parties hereto, whenever it deems it reasonably necessary to acquire such additional insurance in order to meet its obligations hereunder; and, the Stockholders agree to cooperate in the acquisition of such additional insurance and to perform all acts reasonably necessary and proper in connection therewith, including the submission to such medical examinations as may be required. Any such additional policies of insurance shall become subject to the terms of this Agreement and shall be listed in Exhibit A.

D. The Corporation or the Stockholders shall pay the premiums on all of the insurance policies at any time listed in Exhibit A and shall, if requested in writing, give written proof of such payment to the insured Stockholder within fifteen (15) days after the due date of each premium. If any premium is not paid within fifteen (15) days after its due date, the insured Stockholder shall have the right to pay the premium and be reimbursed therefor by the Corporation or the Stockholders.

E. During the continuance of this Agreement, the Corporation or the Stockholders shall own all the policies at any time listed in Exhibit A and shall have the right to apply the dividends on such policies to the payment of the premiums thereof; however, the Corporation or the Stockholders shall not exercise any of the other rights, powers, or privileges in or under any of the said policies without first obtaining the written consent of the Stockholders who are then parties hereto, except that the consent of the Stockholder whose life is insured by the policy with respect to which the Corporation or the Stockholders seeks to exercise any rights, powers, or privileges shall not be required to consent to such exercise.

F. The Corporation or the Stockholders may, at any time and from time to time, with the written consent of the Stockholders who are then parties hereto, withdraw a policy or policies listed in Exhibit A from the terms hereof or substitute a policy or policies for any policy or policies listed in Exhibit A.

G. No insurance company which has issued a policy of life insurance subject to the terms of this Agreement shall have any obligation to inquire into the terms hereof or to see to the application of the proceeds and benefits of such policy, and a receipt of the Corporation or

the Stockholders to any such insurance company shall be effective to release such company from any liability as a result of such policy, and such release shall be binding upon all the parties hereto.

H. Except as provided in the Agreement, no Stockholder shall have any right, title, or interest in or to any of the policies of insurance on his or her life at any time listed in Exhibit A.

I. Any insurance company that has issued a policy subject to the terms hereof is hereby authorized to provide a Stockholder, upon written request, with any information regarding a policy or policies on his or her life.

J. For the purposes of this Agreement, the term "proceeds" shall include all payments paid on a policy as a result of the death of the insured, including, but not limited to, the face amount of the policy, dividends, and any accidental death benefits.

ARTICLE 7.

Purchase of Insurance Policies

Upon the purchase of his or her entire stock interest in the Corporation as herein provided under this Agreement, whether due to termination of employment or otherwise or upon termination of this Agreement, a selling Stockholder, if living, shall have the right to purchase from the Corporation or non-selling Stockholders all life insurance contracts on his or her life owned by the Corporation or the non-selling Stockholders that are subject to this Agreement for a purchase price equal to the amount of:

(a) The cash surrender value thereof, if any, calculated on a prorated basis to the date of the transaction, exclusive of any dividend, dividend accumulations, or policy loans, but inclusive of the cash value of any paid-up insurance additions, plus

(b) The pro rata portion of any premium paid prior to such date which covers a period extending beyond the date of the transaction, plus

(c) Any dividends or dividend accumulations, and less

(d) Any policy loan plus interest then due. The rights granted in this Article 7 shall lapse unless the selling Stockholder notifies the Corporation or the non-selling Stockholders in writing within thirty (30) days of the termination of his or her employment of his or her desire to purchase all or some of the life insurance contracts on his or her life owned by the Corporation. Any policy or policies not purchased within such thirty (30) day period may be disposed of or otherwise dealt with by the Corporation or the non-selling Stockholders in any

manner they desire; and, the Stockholders agree to execute and deliver such instruments as may be required by the Corporation to dispose of or otherwise deal with such policy or policies. In the event of a sale of a policy or policies pursuant to the terms of this Article, the Corporation or Stockholders shall execute and deliver to the purchaser such instruments as are necessary and proper to transfer full and complete title to such policy or policies.

ARTICLE 8

Corporate Inability to Purchase Stock

If for any reason the Corporation is unable to purchase all or any part of the stock from a Stockholder or a Stockholder's estate, when the Corporation is obligated to make such a purchase pursuant to this Agreement, because of a limitation or restriction imposed by statute, charter, or bylaws, the Corporation shall take, as soon as possible after the acceptance of an offer to sell or the Stockholder's disability or death, such action as may be necessary to permit the Corporation to make the purchase, including, but not limited to, a reorganization of the Corporation and the contribution by the remaining Stockholders of additional assets to the capital of the Corporation. If, notwithstanding the action of the Corporation and the remaining Stockholders, the Corporation is still unable legally to purchase all of a Stockholder's stock when the Corporation is obligated to make such a purchase pursuant to this Agreement, then the remaining Stockholders shall purchase such portion of the stock of the selling Stockholder not purchased by the Corporation.

ARTICLE 9

Reserved

ARTICLE 10.

Mandatory Dividends if an S Corporation

(a) If the corporation elects to be an S corporation and while any Subchapter S election is in effect, the corporation shall make the pro rata distributions to the Stockholders at least equal to the estimated federal and state income taxes attributable to their pro rata share of the corporation's net long-term and Section 1231 capital gains and nonseparately computed income pursuant to Section 1366(a) of the Internal Revenue Code. This estimated tax liability, which shall be computed by the accountant who regularly prepares the corporation's tax returns, shall be computed on the basis of the highest marginal rate applicable to individuals on capital gains and other taxable income for the tax year in question. Unless prevented from making any distributions under applicable state law, or the Stockholders unanimously otherwise agree, these

minimum mandatory distributions shall be declared and paid on a quarterly basis beginning no later than the last day of the third month of a taxable year and shall be based on one fourth of the estimated tax liability for the full taxable year computed as of the declaration date. Any pro rata distributions made during the taxable year in question to Stockholders in excess of the minimum mandatory dividends required by this section can be taken into account in determining the extent of any future minimum mandatory dividends for that particular taxable year.

(b) If any Subchapter S election is revoked or terminated, the corporation shall, except to the extent the Stockholders unanimously agree to the election authorized by Section 1371(e)(2) of the Internal Revenue Code, or unless prevented from doing so by applicable state law, declare and pay pro rata cash distributions during the post-termination transition period equal to the corporation's accumulated adjustments account.

ARTICLE 11.

Specific Performance

The parties hereby declare that it is impossible to measure in money the damages which will accrue to a party hereto, or his or her heirs and assigns or to the personal representative of a deceased or disabled Stockholder by reason of another party's failure to perform any of the obligations under this Agreement. Therefore, if any party hereto or the personal representative shall institute any action or proceeding to enforce the provisions hereof, any person (including the Corporation) against whom such action or proceeding is brought hereby waives the claim or defense therein that such party or such personal representative has or have an adequate remedy at law, and such person shall not urge in any such action or proceeding the claim or defense that such remedy at law exists, and any party hereto may maintain a proceeding despite the claim or defense that such remedy at law exists, and any party hereto may maintain a proceeding to compel the specific performance of the terms and conditions set forth in this Agreement or any other applicable equitable relief.

ARTICLE 12.

Health Insurance

Following the Disassociation of a Stockholder, except for "cause" (which shall be defined as conviction of a felony), such Stockholder shall have the option to continue as a covered member of the Corporation's health insurance plan, if any, to the extent allowed by applicable rules, regulations and laws, by the timely payment to the Corporation of the applicable premiums due on behalf of such Stockholder, with the amount and the timing of such premium payments to be as set by the Corporation's health insurance plan company.

ARTICLE 13.

Invalid Provision

The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions of this Agreement and the Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

ARTICLE 14.

Reserved

ARTICLE 15.

Endorsement of Stock Certificates

Simultaneously with the execution of this Agreement, the Stockholders shall surrender the stock certificates subject hereto to the Corporation and the following endorsement shall be placed on the face of each certificate:

"The sale, encumbrance or other disposition of the shares issued by this corporation may be subject to the terms and conditions of a shareholders agreement, by and among the shareholders of this corporation, with a copy of such an agreement, if it exists, being on file in the office of this corporation and to be furnished without charge to any shareholder upon written request."

After such endorsement, the certificates shall be returned to their respective owners who shall be entitled, subject to the terms hereof, to exercise all rights and interest therein. All stock hereafter issued shall bear the same endorsement. Upon the termination of this Agreement, such certificates shall be surrendered to the Corporation and new certificates without the foregoing endorsement shall be issued in lieu thereof.

ARTICLE 16.

Amendment

This Agreement may be amended, altered, or revoked at any time upon the mutual agreement of the Corporation and all of the Stockholders.

ARTICLE 17.

Termination of Agreement

This Agreement shall terminate upon the occurrence of any one of the following events:

- A. The written agreement of the parties hereto or their successors in interest to that effect;
- B. The bankruptcy, receivership, or dissolution of the Corporation;
- C. The complete fulfillment of this Agreement according to its terms upon the happening of whichever of the following events shall first occur:

(1) The disposal of all the stock of any Stockholder during his or her lifetime shall terminate this Agreement as to such Stockholder;

(2) The sale of the stock upon the disability or death of any Stockholder shall terminate this Agreement as to such disabled or deceased Stockholder and his or her estate; provided, however, that whether or not such stock is sold upon the disability or death of a Stockholder, such Stockholder's estate or other successor in interest to the stock shall be bound by this Agreement.

- D. The death of all Stockholders parties hereto, within thirty (30) days of each other.

ARTICLE 18.

Governing Law

This Agreement shall be subject to and governed by the laws and courts of the State of South Carolina.

ARTICLE 19.

Notice

Any notice required hereunder shall be given in writing and shall be sent by registered or certified mail, return receipt requested, to the parties hereto at the following addresses:

<u>Name</u>	<u>Address</u>
Henry M. Hay, III	_____
Daniel Mahoney	3910 Colonel Vanderhorst Circle Mt. Pleasant, SC 29464

Any notice required to be given hereunder to the estate of a disabled or deceased Stockholder shall be sent to the personal representative at his or her address or, if no personal representative is appointed, to the disabled or deceased Stockholder at his or her last designated address. As soon as practical after being appointed, the personal representative shall notify the other parties hereto of his or her address by notice sent in conformity with the foregoing requirements. Any party from time to time may change his or her address to which notice is to be sent pursuant hereto by sending a notice of such change in conformity with the foregoing requirements to the other parties or the personal representative.

ARTICLE 20.

Indebtedness of Stockholder

In the event that there is a purchase and sale of stock pursuant to the provisions of this Agreement and there is any indebtedness owed by the selling Stockholder or his or her estate to any party to this Agreement, then, notwithstanding the provisions of Articles 2, 3, and 5 hereof relating to the payment of the purchase price for such stock, any amount to be paid for the stock being purchased shall be applied first to reduce any indebtedness owed by the selling Stockholder or his or her estate to any party under this Agreement. If the indebtedness exceeds the total purchase price, then no payment shall be made for the stock and the excess of the indebtedness over the purchase price shall be immediately paid to such party by the selling Stockholder or his or her estate.

ARTICLE 21.

Binding Effect

This Agreement shall be binding upon the parties, their heirs, legal representatives, successors and assigns. In furtherance hereof, each Stockholder may need to execute a will, or codicil to such, directing his or her personal representative to perform this Agreement and to do any and all things necessary to effectuate the Agreement and the purposes hereof, but the failure to execute such will or codicil shall not affect the rights or the obligations of the Stockholders or their respective estates hereunder.

ARTICLE 22.

Gender

All pronouns used herein shall be deemed to include the masculine, the feminine and the neuter, and the singular shall include the plural and vice-versa, whenever the context requires or permits.

ARTICLE 23.

Counsel

Each party hereto agrees and acknowledges that he or she has had ample opportunity and time prior to the execution of this Agreement to seek advice concerning the terms, conditions and effect of this Agreement from independent tax and/or legal advisors.

ARTICLE 24.

Counterparts

This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

ARTICLE 25.

Severability

If any clause or provision herein shall be adjudged invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it shall not affect the validity of any other clause or provision which shall remain in full force and effect.

ARTICLE 26.

Adjudication

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by a court of competent jurisdiction in the State of South Carolina, County of Charleston.

ARTICLE 27.

Waiver

The waiver by either party of a breach of any provision of this Agreement by either party shall not operate or be construed as a waiver of any subsequent breach.

ARTICLE 28.

Entire Agreement

This Agreement constitutes the entire agreement among the parties hereto and supersedes all prior agreements, understandings and negotiations, both written and oral, among and between the parties with respect thereto.

ARTICLE 29.

Headings

The headings or titles of articles, sections and subsections contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

ARTICLE 30.

Nonpresumption

Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved using any presumption against any party hereto, whether under any rule of

construction or otherwise. On the contrary, this Agreement has been reviewed by the parties and their counsel and, in the case of any ambiguity or uncertainty, shall be construed according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties hereto, and not against the party who drafted or had its counsel draft this Agreement or any section herein.

ARTICLE 31.

Prevailing Party

The parties hereto agree that should any party hereto prevail in a lawsuit, action or proceeding enforcing any of the terms, covenants or conditions contained herein, said prevailing party shall be reimbursed by the losing party, in addition to any damages that a court of competent jurisdiction may award, for the prevailing party's costs and expenses, including reasonable attorney's fees, associated with such lawsuit, action or proceeding.

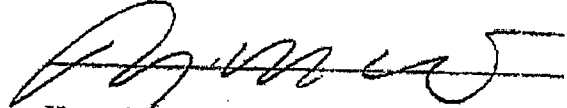
IN WITNESS WHEREOF, the parties executed this agreement effective January 15, 2008.

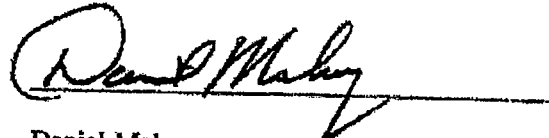
WITNESSES:

Attest:

Secretary
(Corporate Seal)

STOCKHOLDER:

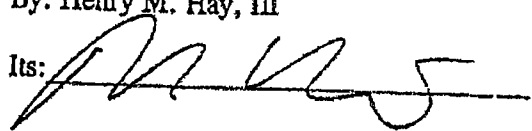

Henry M. Hay, III


Daniel Mahoney

CORPORATION:

The Muhler Company, Inc.

By: Henry M. Hay, III

Its: 

THE MUHLER COMPANY, INC.

STOCKHOLDERS' AGREEMENT

EXHIBIT A

Policy Name

Insured

Policy Number

EXHIBIT B

SOUTH CAROLINA

\$ _____, 20 _____

FOR VALUE RECEIVED, the undersigned Maker promise(s) to pay to the order of _____ at Charleston, South Carolina, in lawful money of the United States of America, the principal sum of _____ (\$ _____) DOLLARS plus simple interest from date at the rate of _____ (%) Percent per annum, with a payment of \$ _____ due on _____ and a second and final payment of \$ _____ due on _____.

Provided, however, that the Maker shall have the right to prepay the within obligation in whole or in part at any time or times without penalty.

If default be made and be continuing for a period of ten (10) days in the performance of or compliance with any of the covenants and conditions of this note, then in any of said events, said principal sum with all accrued interest thereon shall become at once due and payable at the option of the Holder thereof and be collectible without further notice. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

If this note be placed in the hands of an attorney for collection after the same shall for any reason become due, or if collected by legal proceedings or through the probate or bankruptcy courts, then all costs of collection, including a reasonable sum for attorney's fees shall be added hereto as attorney's fees secured and collectible as the principal hereof.

The undersigned expressly agrees to remain and continue bound for the payment of the principal and interest provided for by the terms of this note notwithstanding any extension or extensions of the time of, or for the payment of said principal or interest, or any change or changes in the amount or amounts agreed to be paid under and by virtue of the obligation to pay provided for in this note, or any change or changes by way of release or surrender of any collateral held as security for this note and waive all and every kind of notice of such extension or extensions, change or changes and agree that the same may be made without the joinder of the undersigned.

Presentment, protest, and notice are hereby waived.

Witness the hand and seal of each of the signers hereof.

WITNESS:

(Maker)

By: _____

Its: _____

By: _____

Its: _____

6. On any default hereunder by Pledgor and if any default hereunder has not been cured within five (5) business days following written notice of default from Pledgor to Pledgee, all indebtedness owed by Pledgor to Pledgee shall, at the option of Pledgee, become immediately due and payable, and Pledgee shall have all the rights and remedies of a secured party under Section 36-9-101, et. seq., of the Code of Laws of South Carolina, 1976, as amended, and any other laws of the State of South Carolina. Without limiting any of the foregoing, upon a default continuing by Pledgor after the above-mentioned five (5) day cure period, Pledgee is entitled to arrange for the transfer of the Security on the books of the issuing corporation to the name of the Pledgee and may thereafter exercise all rights and privileges in connection with the Security to which a transferee may be entitled as the record owner, including selling, without any previous demand for performance on, or notice to, Pledgor. Upon such a sale of all or any part of the Security, after deducting all legal and other costs, expenses, and charges, including reasonable attorneys' fees, incurred in the collection, sale, delivery, or preservation of the Security, or any part thereof, Pledgee shall apply the residue of such sale proceeds to the payment of the indebtedness of Pledgor to Pledgee hereunder and the interest thereon. Should there be any surplus of such proceeds, such surplus shall be paid to Pledgor.
7. Upon full repayment of all amounts owed to Pledgee by Pledgor under the Note, Pledgee agrees to return the Security and the executed blank stock power/assignment immediately to Pledgor.
8. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by a court of competent jurisdiction in the State of South Carolina, County of Charleston.
9. If any clause or provision herein shall be adjudged invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it shall not affect the validity of any other clause or provision which shall remain in full force and effect.
10. This Agreement shall be governed by the laws of the State of South Carolina.
11. The waiver by either party of a breach of any provision of this Agreement by either party shall not operate or be construed as a waiver of any subsequent breach.
12. This Agreement, together with any amendments hereto, shall be binding upon the parties hereto, their heirs, successors and assigns.
13. The headings or titles of articles, sections and subsections contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.
14. This Agreement may not be altered or amended except in writing signed by all parties hereto.

15. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved using any presumption against any party hereto, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by the parties and their counsel and, in the case of any ambiguity or uncertainty, shall be construed according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties hereto, and not against the party who drafted or had its counsel draft this Agreement or any section herein.

16. The parties hereto agree that should any party hereto prevail in a lawsuit, action or proceeding enforcing any of the terms, covenants or conditions contained herein, said prevailing party shall be reimbursed by the losing party, in addition to any damages that a court of competent jurisdiction may award, for the prevailing party's costs and expenses, including reasonable attorney's fees, associated with such lawsuit, action or proceeding.

17. Each party hereto acknowledges that he or she has received, or has had adequate opportunity to receive, the advice of his or her respective tax and legal counsel regarding the transactions contemplated or referenced herein and all related documents.

18. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

WITNESS our hands and seals this _____ day of _____, 20__.

IN THE PRESENCE OF:

PLEDGEE:

By: _____

Its: _____

PLEDGOR:

By: _____

Its: _____

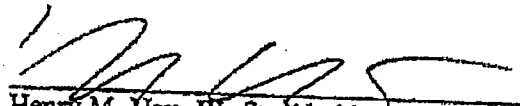
**ACTION OF
THE STOCKHOLDERS
OF
THE MUHLER COMPANY, INC.
WITHOUT A MEETING**

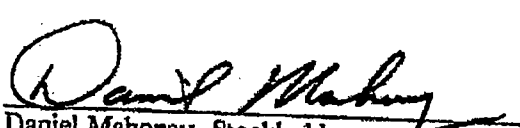
The undersigned, being all of the stockholders of The Muhler Company, Inc. (the "Corporation"), do hereby consent to the following action on behalf of the Corporation pursuant to S.C. Code Ann. §33-7-104 (Law. Co-op. 1990), to the same effect as if said action were taken at a meeting of the stockholders duly called and held for such purpose and at which the following resolution was unanimously adopted:

RESOLVED, that the Corporation enter into the Stockholders' Agreement with its Stockholders and that any one Officer of the Corporation is authorized to execute the Stockholder's Agreement and carry out the obligations of the Corporation contained therein.

No further action was taken on this date.

Dated this 4th day of NOVEMBER, 2008.


Henry M. Hay, III, Stockholder


Daniel Mahoney, Stockholder

_____, Stockholder

THE MUHLER COMPANY, INC.
Stock Ledger

COMMON STOCK
Authorized and Issued Number of Shares as of January 15, 2008

* = Original Issue

<u>Certificate Number</u>	<u>Name of Shareholder</u>	<u>Date of Issue</u>	<u>Number of Shares</u>	<u>Cancellations, Transfers, etc.</u>
*1	Henry M. Hay, III	05/31/96	650	Issued and Outstanding
*2	Henry M. Hay, III	05/31/96	350	Lost and Replaced by Cert #3
*3	Henry M. Hay, III	05/09/01	350	Reissue of Lost Cert #3
4	Daniel Mahoney	10/17/08	333 1/3	Issued and Outstanding

ACTION
OF
THE SHAREHOLDERS
OF
THE MUHLER COMPANY, INC.
WITHOUT A MEETING

Charleston, South Carolina

The undersigned, being all of the shareholders of The Muhler Company, Inc. (the "Corporation"), do hereby consent to the following action on behalf of the Corporation pursuant to S.C. Code Ann. §33-7-104 (Law. Co-op. 1990), to the same effect as if said action were taken at a meeting of the shareholders duly called and held for such purpose and at which the following resolutions were unanimously adopted:

RESOLVED, that the number of authorized shares of the corporation shall be increased from 1,000 to 1,333 1/3; and

FURTHER RESOLVED, that amendment of the Articles of Incorporation shall require the vote of the holders of at least One Hundred (100%) percent of the issued and outstanding shares entitled to vote; and

FURTHER RESOLVED, that Henry M. Hay, III, as President of the Corporation, is hereby authorized to execute and deliver the Articles of Amendment and any other documents necessary, incidental or desirable thereto.

No further action was taken on this date.

Dated effective this 15th day of January, 2008.


Henry M. Hay, III, Shareholder

~~Notice of Annual Shareholders' Meeting~~
of The Muhler Company, Inc. for Fiscal Year 2017

To: The Muhler Company Inc.; The Stockholders

Notice

You are hereby notified that the annual meeting of the shareholders of The Muhler Company, Inc. (hereinafter "Muhler") for fiscal year 2017 will be held on Tuesday, October 25, 2016, at 5:00 p.m. at 630 Skylark Drive, Suite U, Charleston, SC 29407. This meeting is requested by Henry M. Hay, III, 75% stockholder.

Notice is provided this 14th day of October, 2016.

Agenda

The meeting will be held for the purpose of a shareholders' vote on (i) the election of Muhler corporate officers, and (ii) a proposed amendment to the Muhler bylaws.

The order of business will be as follows:

1. Proof of notice of meeting;
2. Calling of roll;
3. Reading and disposal of any unapproved minutes;
4. Reading of any annual reports of officers and committees;
5. Unfinished business;
6. New business;
 - a. Election of Corporate Officers
 - i. Nomination of corporate officers;
 - ii. Shareholders' vote to elect corporate officers;
 - b. Amendment of Bylaws
 - i. Reading of proposed amendment to Muhler's bylaws by requiring arbitration of claims;
 - ii. Shareholders' vote on adoption of amendment;
7. Adjournment.


Henry M. Hay, III

EXHIBIT

2

**AMENDMENT TO BYLAWS
THE MUHLER COMPANY, INC.**

October 14, 2016

The following is hereby added to the Bylaws of The Muhler Company, Inc. dated May 31, 1996.

ARTICLE XIII - ARBITRATION

1. Procedures for Arbitration of Disputes. Any and all disputes, claims, or controversies (i) relating to the Corporation, (ii) brought against the Corporation by or on behalf of any third party or any shareholder of the Corporation, or (iii) between shareholders of the Corporation (hereinafter "Disputes"), shall, upon the demand of any party to such Dispute, be resolved via binding and final arbitration in accordance with the South Carolina Uniform Arbitration Act, S.C. Code §§ 15-48-10 et seq. (the "UAA").

For purposes of this Article, "shareholder" shall mean any shareholder of record, any beneficial owner of shares of the Corporation, or any former shareholder of record or beneficial owner of shares of the Corporation.

This provision applies, regardless of whether the Dispute is brought on the shareholder's own behalf, on behalf of the Corporation, or on behalf of any series or class of shares of the Corporation or shareholders of the Corporation against the Corporation or any Director, officer, manager, agent, or employee of the Corporation, including Disputes relating to the meaning, interpretation, effect, validity, performance, or enforcement of the Articles of Incorporation or these bylaws or relating in any way to such a Dispute or Disputes. For the avoidance of doubt, and not as a limitation, Disputes are intended to include derivative actions against the Corporation or its Directors, officers, or managers and class actions by shareholders against those individuals or entities and the Corporation. For the avoidance of doubt, a Dispute shall include a Dispute made derivatively on behalf of one party against another party.

2. Arbitrators. There shall be three arbitrators, each of whom shall be a Certified Public Accountant ("CPA") licensed in the State of South Carolina.

The claimant or claimants shall select one arbitrator within fifteen (15) days following notice of the demand for arbitration; provided, that, if there is more than one claimant, such arbitrator shall be selected by the majority vote of the claimants.

The respondent or respondents shall select one arbitrator within fifteen (15) days following notice of the demand for arbitration; provided, that, if there is more than one respondent, such arbitrator shall be selected by the majority vote of the respondents.

The third arbitrator shall be an employee of the Corporation's accountant. This third arbitrator will be appointed even in the event that the corporation is a claimant or respondent.

3. Place of Arbitration. The place of arbitration shall be Charleston, South Carolina.

4. Discovery. There shall be only limited documentary discovery of documents directly related to the issues in dispute, as may be ordered by the arbitrators.
5. Awards. All matters shall proceed under South Carolina law. Any arbitration proceedings or award rendered hereunder and the validity, effect and interpretation of this arbitration agreement shall be governed by the UAA; provided, however, that, if the UAA should be held inapplicable for any reason, then the Federal Arbitration Act, 9 U.S.C. §1 et seq. shall govern with respect to the foregoing. The Award shall be in writing and may, but shall not be required to, briefly state the findings of fact and conclusions of law on which it is based. Any monetary award shall be made and payable in U.S. dollars free of any tax, deduction or offset. The party or parties to the Dispute shall direct the arbitrators to issue the Award within thirty (30) days of the completion of the arbitration proceedings (subject to payment of the arbitrators as set forth below in Section 6 of this Article X). The party against which the Award assesses a monetary obligation shall pay that obligation on or before the thirtieth (30th) day following the date of the Award or such other date as the Award may provide. Costs and expenses shall be paid equally during the conduct of the proceeding, but shall be allocated by the panel in favor of the prevailing party.
6. Final and Binding. An Award shall be final and binding upon the parties thereto and shall be the sole and exclusive remedy between such parties relating to the Dispute, including any claims, counterclaims, issues, or accounting presented to the arbitrators. Judgment upon the Award may be entered in any court having jurisdiction. To the fullest extent permitted by law, no application or appeal to any court of competent jurisdiction may be made in connection with any question of law arising in the course of arbitration or with respect to any award made except for actions relating to enforcement of this agreement to arbitrate or any arbitral award issued hereunder and except for actions seeking interim or other provisional relief in aid of arbitration proceedings in any court of competent jurisdiction.
7. Beneficiaries. This Article is intended to benefit and be enforceable by the shareholders, Directors, officers, managers, agents or employees of the Corporation and the Corporation and shall be binding on the shareholders of the Corporation and the Corporation, as applicable, and shall be in addition to, and not in substitution for, any other rights to indemnification or contribution that such individuals or entities may have by contract or otherwise.
8. Severability. If any of the provisions, terms or clauses of this Article is declared illegal, unenforceable, or ineffective in a legal forum, those provisions, terms and clauses shall be deemed severable, such that all other provisions, terms, and clauses of this Article shall remain valid and binding upon the applicable parties.

Adopted by vote of the shareholders this 25 day of October, 2016.

Attested to by Henry M. Hay, III, 75% stockholder:


Henry M. Hay, III

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

J. DANIEL MAHONEY,

Plaintiff,

v.

THE MUHLER COMPANY, INC. and
HENRY HAY, SR., in his individual
capacity,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR CHARLESTON COUNTY

CASE NO.: 2019-CP-10-178

ORDER GRANTING DEFENDANTS'
MOTION TO STAY AND COMPEL
ARBITRATION

FILED
2019 JUN 24 PM 3:33
JULIE J. ARMSTRONG
CLERK OF COURT

Before the Court is a Motion to Stay the Case and Compel Arbitration filed by Defendants. Having had the benefit of oral argument on May 31, 2019, as well as after reviewing materials provided by all parties at the hearing, the Court rules as follows:

1. Defendants' Motion is granted, and arbitration is compelled.
2. Based on the facts and circumstances of this dispute, I find Article XIII, Section 2 of the Amended Bylaws to the Muhler Company, Inc. regarding the selection of the arbitrators to be inequitable and therefore unenforceable. S.C. Code Ann. Section 15-48-10(a) ("A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract.") I find Section 2 should be stricken.
3. Further, Article XIII, Section 8 contains a Severability clause meaning the remainder of the arbitration provision is valid and binding.
4. Having struck Article XIII, Section 2, the default arbitrator selection language of the South Carolina Uniform Arbitration Act applies: "If the arbitration agreement provides a method of appointment of arbitrators, this method is followed. In the absence thereof, there shall be three arbitrators with one chosen by the party making the demand for

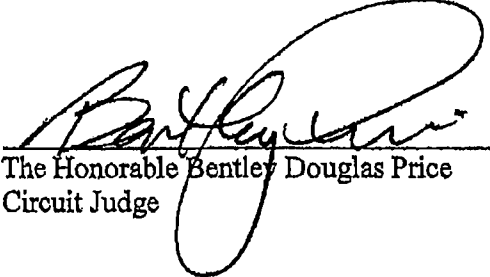


arbitration, one chosen by the party against whom demand is made and the third being chosen by those two chosen by the parties." S.C. Code Ann. Section 15-48-40.

5. I will retain jurisdiction of this case to hear all matters once the arbitration is concluded.

IT IS SO ORDERED.

This 24th day of June, 2019


The Honorable Bentley Douglas Price
Circuit Judge

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley Price, Circuit Court Judge

Case No. 2019-CP-10-00178

RECEIVED

AUG 06 2019

SC Court of Appeals

J. Daniel Mahoney.....Respondent,


v.

The Muhler Company, Inc. and Henry Hay III, in his individual capacity..... Appellants.

PROOF OF SERVICE

I hereby certify that a true and correct copy of *Respondent's Motion to Dismiss* has been served upon the following by mailing a copy, properly addressed and with sufficient postage affixed thereto, on this 5th day of August, 2019.

Andrew K. Epting, Jr., Esq.
Jaan G. Rannik, Esq.
Andrew K. Epting, Jr., LLC
46A State Street
Charleston, SC 29401


Katie B. Nancy, Paralegal
McCULLOUGH KHAN, LLC
359 King Street, Suite 200
Charleston, SC 29401



McCULLOUGH • KHAN, LLC
ATTORNEYS AT LAW

Clayton B. McCullough
Phone: (843) 937-0400
Fax: (843) 937-0706
Clay@mklawsc.com

August 5, 2019

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RECEIVED
AUG 06 2019
SC Court of Appeals

Re: **J. Daniel Mahoney v. The Muhler Company, Inc.**
Appellate Case No.: 2019-001237

Dear Ms. Kitchings:

I hope this finds you well. Enclosed for filing in the above-referenced matter, please find the original and seven (7) copies of Respondent's Motion to Dismiss and Proof of Service. Also enclosed, please find our firm's check in the amount of \$50.00 to cover the filing fee. Please file the original and return the extra clocked copy to our office in the enclosed, self-addressed, stamped envelope. By copy of this correspondence to counsel for the Appellants, I am serving them with the same.

Thanks in advance for your assistance with this matter and please do not hesitate to contact me if you have any questions or need anything further. With kind regards, I remain

Sincerely yours,

McCULLOUGH KHAN, LLC

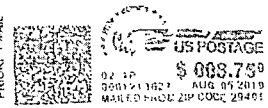
Clayton B. McCullough

CBM:kbn

Enclosures

cc: Andrew K. Epting, Jr., Esq. (via e-mail & U.S. mail)
Jaan G. Rannik, Esq. (via e-mail & U.S. mail)

PRIORITY MAIL



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The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
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RECEIVED
AUG 06 2019
SC Court of Appeals