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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jean H. Toal, Circuit Court Judge
DeAndrea G. Benjamin, Circuit Court Judge
James P. Kelly, Arbitrator

Unpublished Opinion No. 2019-UP-331
Appellate Case No. 2017-000994
Case No. 2014-CP-40-06017

Rajinder Parmar, ... Respondent,

v.

Balbir S. Minhas, Midlands Gastroenterology, PC,
and Midlands Endoscopy Center, LLC,..... Appellants.

PETITION FOR REHEARING

Robert L. Widener
BURR & FORMAN, LLP
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

ATTORNEYS FOR APPELLANTS

Pursuant to Rules 221 and 240, SCACR, the Appellant (Minhas) respectfully submits this Petition for Rehearing. This Court issued its opinion under Rule 220(b), SCACR, using six numbered sections. For ease of reference, this Petition uses the same numbering system.

REHEARING GROUNDS

1. This ruling relates to Argument I in Minhas' Brief of Appellant. (App. Br. 5-7). This argument demonstrates that, under the plain and unambiguous termination terms of the parties' contract, the Respondent had no right to any interest in the companies' bank accounts or accounts receivable. The purpose of this argument was to demonstrate that, if this Court determined that the arbitrator's decision was reviewable under the other arguments set forth in the Brief of Appellant, then the arbitrator plainly erred in awarding the Respondent any interest in those accounts. This Court's opinion rules on the basis of the general rule that arbitration awards cannot be reviewed by the judiciary. (Op. at Ruling 1). As set forth below, the arbitrator's decision is subject to judicial review and, therefore, this Court should reach the merits of the arbitrator's ruling, which was in error for the reasons set forth in Minhas's brief, which is incorporated herein by reference. (See App. Br., Arg. I at 5-7).

2. This ruling relates to Argument II in Minhas' Brief of Appellant, to-wit: that the circuit court erred in compelling arbitration, because the parties consummated sales under the walkaway provisions of the parties' agreement, and these sales were made under other agreements that did not have an arbitration clause and specifically granted exclusive jurisdiction to the state and federal courts of South Carolina. (App. Br. 7). Therefore, any claim by the Respondent that he was entitled to further monies was not subject to arbitration. This Court's opinion does not address the argument made in Minhas' Argument II. Rather, it applies general rules on the scope of arbitration

clauses, but Minhas' argument is that the arbitration clauses are not operative here, because any claim for further monies must be made under the sales agreements, which have no arbitration clauses.

3. This ruling relates to Argument III in Minhas' Brief of Appellant and Argument II in his Reply Brief, both of which are incorporated herein. (App. Br. 8-9; Reply Br. 2-3). This Court's opinion cites two cases on the permissible scope of review of an arbitrator's award and one case on the appellate record.[1] Minhas argued two novel issues under South Carolina law, to-wit: (1) an arbitrator exceeds his power under § 15-48-130(a)(3) if he grants an award that fails to draw its essence from the parties' underlying agreement, manifestly disregards the plain and unambiguous terms of the agreement, is not based on a plausible interpretation of the agreement, and/or reaches an irrational result under the terms of the agreement; and (2) because the controlling AHLA Rule 7.5 limits the arbitrator's power to grant relief to that "any relief authorized by contract or law," and because the law and the parties' contracts plainly prohibit the Respondent from receiving any interest in the companies' accounts receivable or bank accounts, the arbitrator exceeded his power. This Court's opinion does not rule on these arguments, and the references to the general rules do not and cannot address the novel issues presented in these arguments.

4. This ruling relates to Argument IV in Minhas' Brief of Appellant and Argument IV in his Reply Brief, both of which are incorporated herein. (App. Br. 10; Reply Br. 3-4). The arbitrator's

[1] This Court cites the opinion in *Helms Realty*, 611 S.E.2d 485, 487-88, for the general proposition that the appellant has the burden of providing a sufficient record for appellate review. The opinion, however, does not mention how the record was insufficient and, therefore, it is impossible for Minhas to respond to this ruling. Accordingly, and assuming the absence of other relief on rehearing that would moot this issue, Minhas respectfully requests an amended opinion that explains the basis of this Court's ruling so that Minhas can respond to it with informed arguments for rehearing.

award manifestly gave the Respondent a "double recovery" of $41,000 because: (a) there was an $82,000 "variance" (*i.e.*, compensation) award to the Respondent, which manifestly had to be paid from the companies' accounts; and (b) the arbitrator thereafter awarded the Respondent one-half of the companies' accounts without first subtracting the $82,000 "variance" award from the value of those accounts. South Carolina has a long-standing public policy of preventing judgments that include a double recovery, and that public policy must be applied here to require an amendment of the arbitrator's award to reduce it by the $41,000 double recovery. This Court's opinion acknowledges this public policy but appears to reject it here under the view that the two awards were damages "for different losses." There are no such "different losses" here, and this Court's opinion does not identify how there are damages for different losses. More importantly, the "double recovery" at issue here is a pure question of "math," not recovery theory. The arbitrator awards the same dollars twice because of his failure to deduct the $82,000 "variance" award from the value of the companies' accounts before awarding the Respondent a 50% interest in those accounts. As a result, the Respondent received the same $41,000 twice, which is the definition of a "double recovery" and is prohibited by the public policy of South Carolina.

5. This ruling relates to Argument V in Minhas' Brief of Appellant and Argument V in his Reply Brief, both of which are incorporated herein. (App. Br. 10-11; Reply Br. 4). The arbitrator specifically denied an award for prejudgment interest, but the circuit court nevertheless awarded prejudgment interest of $22,385.94. This Court affirmed based on an Illinois federal district court's 1992 interpretation (prediction) that the award by the circuit court in this case was permissible under South Carolina law. No South Carolina court has relied on this case or its ruling in the past 37 years until this Court's ruling, and there is no other South Carolina case on point.

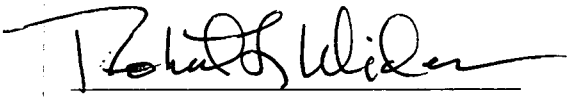
For the reasons set forth in Minhas' briefs, which are incorporated herein, Minhas submits that South Carolina should follow the rules established by North Carolina, to-wit: (1) a trial court cannot award prejudgment interest if it was denied by the arbitrator, or the arbitration award is silent on the issue; (2) a trial court may modify the arbitration award to include prejudgment interest if the arbitrator specifically reserved the issue for the trial court to determine; and (3) if the arbitrator made no determination on awarding prejudgment interest, then the court may award prejudgment interest from the date of the award. Here, the arbitrator specifically denied prejudgment interest and, therefore, the circuit court erred in awarding any prejudgment interest.

6. This ruling relates to Argument VI in Minhas' Brief of Appellant and Argument III in his Reply Brief, both of which are incorporated herein. (App. Br. 11-13; Reply Br. 3). This Court does not address Minhas' argument, to-wit: the courts must enforce and abide by the arbitration rules contractually chosen by the parties; here, the parties specified that any arbitration would be governed by the AHLA Rules and Rule 7.1 expressly provides that "[a]n arbitrator must issue an award within 30 days after the hearing is closed unless the arbitrator and all parties agree to extend this deadline"; it is undisputed that the arbitrator did not issue his award within this mandatory 30-day limit; it is also undisputed the arbitrator and parties never agreed to extend this deadline; and, therefore, the circuit court erred in refusing to vacate the arbitrator's award. Moreover, the waiver rules in § 15-48-90(b) and other authorities are not determinative here, because the arbitration rules chosen by the parties in the arbitration agreement have a contrary rule, and that contrary rule is binding on the courts.

CONCLUSION

For all of the foregoing reasons, and for the reasons set forth in the Appellant's Brief of Appellant and Reply Brief, which are incorporated herein as grounds for rehearing, it is respectfully submitted that this Court should grant rehearing and issue an amended opinion that vacates the arbitration award in its entirety or, in the alternative, grants the other lesser relief requested by the Appellant.

Respectfully Submitted,



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November 4, 2019
Columbia, SC

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APPEAL FROM RICHLAND COUNTY
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Jean H. Toal, Circuit Court Judge
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Balbir S. Minhas; Midlands Gastroenterology, PC;
and Midlands Endoscopy Center, LLC,..... Appellants.

CERTIFICATE OF SERVICE

I, Ann Shuler, an employee of Burr Forman McNair, hereby certify that a true and correct copy of the Petition for Rehearing was served upon counsel for the Respondent in the above-captioned matter, by causing a copies of same to be deposited in the United States Mail, first class postage prepaid, this 4th day of November, 2019, addressed as follows:

E. Wade Mullins, III, Esq.
Caitlin C. Heyward, Esq.
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Ann Shuler

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November 4, 2019

VIA COURIER

Honorable Jenny Abbott Kitchings
Clerk of Court
S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Rajinder Parmar v. Balbir S. Minhas, et al.
Unpublished Opinion No. 2019-UP-331
Appellate Case No. 2017-000994

Dear Ms. Kitchings:

Enclosed for filing please find the original and seven copies of Balbir S. Minhas' Petition for Rehearing regardin the above referenced case. Also enclosed are the Certificate of Service and our firm's check in the amount of $50.00. Please file the Petition in your office and return the file stamped extra copy to me via our courier. By copy of this letter, we are serving counsel for the Respondent with a copy of the Petition.

Respectfully yours,

Burr Forman McNair

Robert L. Widener

RLW/as
Enclosures
cc: E. Wade Mullins III, Esq.
Caitlin C. Heyward, Esq.