THE STATE OF SOUTH CAROLINA
In the Supreme Court

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Unpublished Opinion No. 2019-UP-331 (S.C. Ct. App. filed Oct. 9, 2019)

Rajinder Parmar, ...Respondent,

v.

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

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS

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

ATTORNEYS FOR PETITIONERS

Other Counsel of Record:
Edward Wade Mullins, III
Bruner Powell Wall & Mullins, LLC
Post Office Box 61110
Columbia, South Carolina 29260
(803) 252-7693

ATTORNEYS FOR RESPONDENT

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CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the Petition for Rehearing was made and finally ruled upon on by the Court of Appeals on October 9, 2019.

QUESTIONS PRESENTED

1. The parties' agreements conclusively demonstrate that Parmar had no "compensation" claim, or any other claim, for any interest in the bank accounts or accounts receivable of MG or MEC.

2. The circuit court erred in compelling arbitration of Parmar's claim to an interest in the companies' accounts receivable and bank accounts, and the Court of Appeals erred in affirming the circuit court.

3. The arbitrator exceeded his power under S.C. Code Ann. § 15-48-130(a)(3) and the controlling arbitration rules by awarding Parmar an interest in the companies' corporate assets, *i.e.*, the companies' bank accounts and accounts receivable – the circuit court and the Court of Appeals erred in refusing to vacate the award.

4. Assuming Parmar's claim for an interest in the companies' corporate assets was arbitable, and further assuming the arbitrator did not exceed his power in awarding Parmar an interest in those corporate assets, the arbitrator's award included an impermissible "double recovery," and the Court of Appeals erred in failing to modify the award to eliminate the double recovery.

5. The circuit court erred in awarding prejudgment interest on the arbitrator's award, because the arbitrator denied prejudgment interest, and the Court of Appeals erred in affirming the circuit court.

6. The circuit erred in refusing to vacate the arbitrator's award, because the award was not timely issued, and the Court of Appeals erred in affirming the circuit court.

INTRODUCTION

This is an appeal from an arbitration award. It includes important, novel questions on judicial review of arbitration awards. For example, the award includes a double recovery. South Carolina's public policy prohibits a double recovery in any money judgment rendered by any court in this state. This public policy is so important and so strictly enforced that judges at any stage of any judicial proceeding are duty-bound to *sua sponte* strike the double recovery. But here, the Court of Appeals held that South Carolina courts are powerless to protect this public policy and must issue a judgment to enforce an arbitration award that violates this public policy. This is not and cannot be the law. At the very least, this Court should decide whether arbitration awards are exempt from the public policy against double recovery. (See Arg. IV, *infra*).

Another novel question is whether a circuit court may award prejudgment interest after an arbitrator denies it. Here, the circuit court relied on a 27-year old federal trial court case from Illinois that "predicted" South Carolina law. No South Carolina court cited this case before this case. The better rule is from North Carolina, which has jurisprudence that mirrors South Carolina's jurisprudence and would preclude the award. (See Arg. V, *infra*).

Yet another novel question is whether and to what extent courts should enforce the arbitration rules chosen by the parties in their contract. Here, the arbitration rules limited the arbitrator's power to relief authorized by the underlying contract. The arbitrator nevertheless exceeded his power and granted relief that violated the plain and express terms of the contract. (See Arg. III, *infra*). Another arbitration rule prohibits the arbitrator from issuing an award more than 30 days after the hearing unless the parties agree to it. The circuit court and the Court of Appeals found Minhas waived this rule by failing to object before receiving the award, thereby the parties' contract and the arbitration rules chosen by them in their contract. (See Arg. VI, *infra*).

STATEMENT OF THE CASE

This case arises from the termination of a contractual business relationship between two doctors. The fundamental question was the amount of money owed to Respondent (Parmar) upon the termination of his business relationship with Petitioners Minhas, Midlands Gastroenterology (MG), and Midlands Endoscopy Center (MEC).

The circuit court ordered this matter to arbitration over Petitioners' objection. (R. 27-29). The arbitrator issued an award in favor of Respondents. (R. 25-26). The circuit court granted Respondent's motion to confirm the arbitration award and denied Petitioners' motion to vacate, modify, or correct the arbitration award. (R. 2-24). Petitioners timely appealed to the Court of Appeals, and the Court affirmed in an unpublished opinion pursuant to Rule 220(b), SCACR. (Appx. 1-4). Petitioners filed a Petition for Rehearing (Appx. 5-10); Respondent filed a Return (Appx. 11-18); Petitioners filed a Reply (Appx. 19-21); and the Court of Appeals denied the Petition for Rehearing. (Appx. 22). Pursuant to Rule 242, SCACR, Petitioners respectfully petition this Court for the issuance of a writ of certiorari to the Court of Appeals and reverse the Court of Appeals. The relevant facts are largely undisputed.

Minhas owned MG and MEC. He sold Parmar a 50% interest in each company under written agreements. The MG Shareholders Agreement specified that Minhas would repurchase these interests from Parmar under specified formulae if either party exercised his at will right to terminate their business relationship. (See R. at 89-91, §§ 3.8(i-iii) and 3.9(i-iii)). This Agreement also controlled the compensation to be paid Minhas and Parmar, setting forth specified formulae based on the respective "production" by each of them. (R. 92 at § 3.15).

The relationship between Parmar and Minhas declined. They were unable to resolve their differences, and Minhas exercised his contractual right to repurchase Parmar's interests in MG and

MEC under the formulae mandated in the MG Shareholders Agreement. The parties consumated these sales under new written contracts that paid the agreed-upon price of "original price plus 4% interest." (See 134 at ¶ 1; R. 137 at ¶ 1). The sales agreements specified that any dispute regarding the subject matter of the agreements would be in the "exclusive jurisdiction" of the state and federal courts in South Carolina. (R. 135 at § 10; R. 138 at § 8). Three months later, Parmar filed the instant arbitration action. He claimed and the arbitrator agreed that Parmar was owed additional employment "compensation" measured by one-half of the companies' bank accounts and accounts receivable. (R. 3-4; 25 at (A)(1)-(2)). As a result, Parmar bought his interest in the defendant companies for $350,000.00 and received $651,252.86 for surrendering that interest less than three years later. (*Id.*; R. 134-136; 137-139). The circuit court entered judgment based on this award.

ARGUMENTS

I. The parties' agreements conclusively demonstrate that Parmar did not have any claim for any interest in the bank accounts or accounts receivable of MG or MEC.

The arbitrator awarded Parmar one-half of the companies' bank accounts and accounts receivable as additional "compensation" owed to Parmar. (R. 25 at (A)(1)-(2)). The express terms of the parties' agreements, however, demonstrate that Parmar has no "compensation" claim or interest in these corporate assets, nor does he have any other claim to them.

On June 30, 2011, Parmar purchased a 50% interest in each company, paying $50,000.00 for MG, and $300,000.00 for MEC over a period of two and one-half years. As part of this sale, Parmar and Minhas agreed to a walkaway provision for resolving any future disputes between them. Either party could walk away at will and, once either elected to do so, Minhas was required to repurchase Parmar's interests in MG and MEC under the following prices: (i) if less than one year after Parmar's purchase, then Minhas would repurchase for the same prices paid by Parmar; (ii) if more than one year but less than three years after Parmar's purchase, then Minhas would

repurchase for the original prices plus 4% interest; and (iii) if more than three years after Parmar's purchase, then Minhas would repurchase for the "fair market value" of Parmar's interests in MG and MEC.[1] (R. at 89-91, §§ 3.8(i-iii) and 3.9(i-iii)). These provisions controlled despite any terms of any other agreement, including anything that conflicted with these provisions. (Id.).

The parties terminated their business relationship in May 2014, which was more than one year but less than three years from the date of Parmar's purchase of his interest in the companies. Thus, the re-purchase price was controlled by § 3.8(ii), *i.e.*, the original prices paid by Parmar plus 4% interest, which Minhas paid to Parmar under separate written agreements. (R. 134 at ¶ 1; R. 137 at ¶ 1). After closing these sales, Parmar filed the instant arbitration action, seeking an additional 50% interest in the companies' corporate assets, *i.e.*, the companies' bank accounts and accounts receivable. Parmar claimed this additional 50% interest as "compensation." The parties' agreement, however, established and controlled the parties' compensation as follows: (1) their compensation would be equal if their respective production numbers were within 10% of each other; (2) their compensation would be 50% equal plus 50% based on personal production if their respective production differed by greater than 10% but less than 20%; and (3) their compensation would be based solely (100%) on personal production, if there was a production difference greater than 20%. (MG Agreement at R. 92 at § 3.15). The foregoing is the only "compensation" provision in any of the agreements between any of the parties – nothing in any agreement permits or implies the use of corporate assets in establishing the parties' compensation.

The cardinal rule of contract law is that court enforce contracts as written, regardless of the wisdom, folly, or apparent unreasonableness of the contract, regardless of any failure by a party to

[1] It is undisputed that accounts receivable and bank accounts are corporate assets. It is undisputed that determining the "fair market value" price for any sale would capture the value of these corporate assets.

protect his rights, and regardless of whether the contract proves less favorable than anticipated by a party. *E.g., Jordan v. Security Group, Inc.*, 428 S.E.2d 705, 707 (S.C. 1993). Courts cannot ignore or rewrite contract provisions to grant rights or relief not in the contract. *Id.*

Here, a cursory reading of the MG and MEC agreements reveals one undisputed and controlling fact: nothing in any of the agreements gave Parmar any right to any interest in the companies' corporate assets until he had held his ownership interest in the companies for more than three years. It is undisputed that this right sprang into existence after three years, because the agreements established a re-purchase price based on fair market value, which would include these corporate assets. To avoid this, Parmar constructed the following argument: (1) the agreements were silent on his claimed right to additional compensation prior to this three-year period; (2) this silence created an ambiguity on whether he had any such right; and (3) he was therefore entitled to such interest as "compensation." This "silence / compensation" argument is manifestly without merit under the plain and unambiguous terms of the parties' written agreements.

Silence alone does not and cannot create an ambiguity in a written contract, particularly a contract (like here) with a merger clause. *Jordan*, 428 S.E.2d at 707; *accord Abu-Shawareb v. South Carolina State University*, 613 S.E.2d 757, 760 (S.C. App. 2005), *citing and applying Jordan, supra.* Moreover, the agreements were not silent. The MG Shareholders' Agreement plainly established that Parmar had no interest in these corporate assets until after he owned MG and MEC for more than three years. (R. 89-90 at § 3.8 and R. 90-91 at §3.9). The MG Shareholders' Agreement also plainly established that Parmar's "compensation" rights were limited to calculations based on "production." (R. 92 at § 3.15).

Finally, Parmar's "silence" theory is absurd. He agrees that any claim to an interest in the companies' accounts receivables and bank accounts after three years arises under the "fair market

value" pricing directive of § 3.8(iii). He posits, however, that he gets this same interest under an unwritten "compensation" theory at any time before the end of that three-year period. He makes this argument despite the provision for 4% interest being added to the price under § 3.8(ii), which he received here and can only be viewed as a substitute for not having any interest in the corporate assets before the end of the three-year period triggering "fair market value" pricing under § 3.8(iii).

The Court of Appeals rejected the foregoing arguments based on the general rule that arbitration awards are not subject to judicial review. (Appx. at 2, Ruling 1). The purpose of this argument was to demonstrate that, if the arbitrator's decision was reviewable under Minhas' other appellate arguments, then the arbitrator plainly erred in awarding the Respondent any interest in those accounts. As set forth below, the arbitrator's decision is subject to judicial review and, therefore, the Court of Appeals erred in affirming the arbitration award.

II. The circuit court erred in compelling arbitration of Parmar's claim to an interest in the companies' accounts receivable and bank accounts, and the Court of Appeals erred in affirming the circuit court.

Minhas purchased Parmar's interest in MG and MEC under written contracts. Both sales agreements specified that any dispute regarding the subject matter of the agreements would be in the "exclusive jurisdiction" of the state and federal courts in South Carolina. (R. 135 at § 10; R. 138 at § 8). Parmar nevertheless pursued his "additional compensation" claim in arbitration, filing a declaratory judgment action that sought an order compelling arbitration from the circuit court. (R. 4). Minhas responded that the sales agreements were controlling, and these agreements were not subject to arbitration. (R. 4). The circuit court ruled that the arbitration provisions in the MG and MEC agreements required arbitration of Parmar's claims. (R. 27-29).

The MG Shareholders' Agreement controlled any claim that Parmar had to any interest in the companies' accounts receivable and bank accounts. There could be no "compensation" claim,

because the agreement expressly limited compensation to "production." The only treatment of these corporate assets was in the walkaway provisions discussed earlier and, therefore, any claim for an interest in these assets arose (if at all) under these provisions.

The parties, however, consummated the sales under these walkaway provisions in written agreements that did not have an arbitration clause and expressly granted exclusive jurisdiction to the state and federal courts in South Carolina. Thus, assuming Parmar had any claim to any interest in these corporate assets, he had to pursue it in court, not arbitration. The circuit court therefore erred in compelling arbitration of this claim, and the Court of Appeals erred in affirming the circuit court. *MNBA Am. Bank, N.A. v. Christianson*, 659 S.E.2d 209, 212 (S.C. App. 2008) (it is for the court to decide whether an agreement to arbitrate exists and, if so, when an issue or claim comes within any agreement to arbitrate).[2] Reversal on this basis moots all other issues in this case.

III. The circuit court erred in failing to vacate the arbitrator's award of an interest in the defendant companies' accounts receivable and bank account, and the Court of Appeals erred in affirming the circuit court.

A. The arbitrator exceeded his power under S.C. Code Ann. § 15-48-130(a)(3).

The South Carolina Arbitration Act specifies that "the court *shall vacate* an award where . . . [t]he arbitrator[] exceeded [his] powers." S.C. Code § 15-48-130(a)(3) (emphasis added). Here, the arbitrator exceeded his power under § 15-48-130(a)(3) in three ways.

First, as set forth above in Argument II, the circuit court erred in compelling arbitration of Parmar's claim to an interest in the companies' accounts receivable and bank accounts, because this claim was not subject to arbitration. For these same reasons, the arbitrator exceeded his power by arbitrating these issues.

[2] The Court of Appeals did not address this argument. Rather, the Court applied general rules on the scope of arbitration clauses. (Appx. at 1, ¶ 2). Minhas' sought a ruling on his actual argument but the Court of Appeals denied that request. (Appx. 6-7, Ground 2; Appx. 22).

Second, the arbitrator's award of a 50% interest in these corporate assets establishes a manifest disregard of the plain and unambiguous terms of the parties' agreements (see discussion above). No South Carolina case is directly on point. Minhas submits this Court should hold that an arbitrator exceeds his power under § 15-48-130(a)(3) if he grants an award that: (a) fails to draw its essence from the parties' underlying agreement; (b) manifestly disregards the plain and unambiguous terms of the agreement; (c) is not based on a plausible interpretation of the agreement; and/or (4) reaches an irrational result under the terms of the agreement. See, *e.g.*, *Nappa Constr. Mgmt., LLC v. Flynn*, 152 A.3d 1128, 1132-1135 (RI 2017) (arbitrator exceeds his power if the award fails to draw its essence from the parties' underlying contract, is not based on a plausible interpretation of the agreement, manifestly disregards contractual provisions, or reaches an irrational result); *Patten v. Signator Ins. Agency, Inc.*, 441 F.3d 230, 235-237 (4th Cir. 2006) (arbitrator exceeds his power if his award does not draw its essence from the agreement, is not rationally inferable from the terms of the agreement, and disregards and contravenes the plain and unambiguous terms of the agreement); *Missouri River Servs. v. Omaha Tribe of Nebraska*, 267 F.3d 848, 854-855 (8th Cir. 2001) (arbitrator exceeds his power when award does not draw its essence from the agreement, disregards or modifies the plain meaning of unambiguous contract provisions, and where contract cannot be reasonably construed to afford the relief granted).

Third, as explained below, the arbitrator granted relief that contravened a controlling arbitration rule chosen by the parties. He therefore exceeded his power under § 15-48-130(a)(3), because the rules chosen by the parties are binding on the arbitrator and the courts, and those rules must be strictly enforced. (See Arg. III(B), *infra*).

B. The arbitrator exceeded his power, because he failed to obey the AHLA Rules specifically chosen by the parties as governing any arbitration between them.

The parties agreed the American Health Lawyers Association (AHLA) arbitration rules would control any arbitration. (R. 102 at § 8.11; R. 71 at § 12.6). The AHLA Rules were therefore binding and to be strictly enforced by the courts. *Grant v. Magnolia Manor-Greenwood, Inc.*, 678 S.E.2d 435, 438-439 (S.C. 2009) (requiring strict adherence to AHLA Rules chosen by parties).

AHLA Rule 7.5 specifically limits the scope of relief available to "any relief authorized by contract or applicable law." As shown earlier, nothing in the law or the parties' contracts permitted the arbitrator to award Parmar any interest in the companies' accounts receivable or bank accounts. (See Arg. I, *supra*). The arbitrator's award was therefore in manifest disregard of and contrary to the plain terms of the parties' agreements, as well as in manifest disregard of and contrary to long-standing and fundamental principles of contract law. Thus, the arbitrator exceeded his power by granting relief prohibited by AHLA Rule 7.5, even if it be assumed that the arbitrator otherwise had the power under § 15-48-130(a)(3) to grant the relief awarded.

C. The Court of Appeals erred in affirming the circuit court.

The foregoing arguments present novel questions of South Carolina law on the permissible scope of an arbitrator's power. The Court of Appeals did not address these novel questions – it relied on general rules regarding the scope of judicial review.[3] These general rules, however, do not address the novel questions presented by Minhas. Accordingly, Minhas respectfully submits that this Court should rule on these questions and reverse the Court of Appeals.

[3] The Court of Appeals also ruled that the record was insufficient for appellate review of these questions, citing *Helms Realty*, 611 S.E.2d 485, 487-88 (S.C. 2005) for the general proposition that the appellant has the burden of providing a sufficient record for appellate review. (Appx. at 2-3, Ruling 3). The Court, however, never explained how the record was insufficient, thereby making it impossible for Minhas to respond to this ruling. Minhas sought an explanation so that he could respond, but the Court of Appeals denied rehearing. (Appx. at 7, Ground 3 and fn. 1).

IV. Assuming that Parmar's claims were subject to arbitration, and further assuming that the arbitrator did not exceed his power in awarding Parmar an interest in those corporate assets, the arbitrator's award of "variances" in compensation must be reduced by one-half to avoid double recovery, and the Court of Appeals erred in denying this relief.

The arbitrator's award included $82,000.00 for "variances," *i.e.*, Parmar claimed and the arbitrator agreed that Parmar was entitled to $82,000.00 in additional compensations for years 2013 and 2014 under the compensation provision of the MG Shareholders' Agreement. (R. 25 at (A)(3)-(4)). The arbitrator, however, failed to deduct this amount from the accounts receivable and bank accounts before awarding Parmar one-half of those accounts. Thus, $41,000.00 of the total $82,000.00 "variance" award is an impermissible double recovery.

South Carolina has an ironclad public policy against a party receiving a double recovery in a money judgment. Parties can raise it at any time, and courts have a duty to raise the issue *sua sponte* whenever the problem presents itself, either at trial or on appeal. *E.g.*, *Inman v. Imperial Chrysler-Plymouth, Inc.*, 397 S.E.2d 774, 776-777 (S.C. App. 1990). By awarding a double recovery, the arbitrator manifestly exceeded his power under S.C. Code Ann. § 15-48-130(a)(3), AHLA Rule 7.5, violated the common law rule that an arbitrator cannot act in manifest disregard of the law, and violated South Carolina's public policy.

The Court of Appeals acknowledged this public policy but rejected it under the view that the two awards were damages "for different losses." There are no such "different losses" here, and the Court did not identify how there are damages for different losses. (Appx. at 3, Ruling 4).

In any event, the "double recovery" at issue here is a pure question of "math," not recovery theory. The arbitrator awarded the same dollars twice by failing to deduct the $82,000 "variance" award from the value of the corporate assets before awarding the Respondent a 50% interest in those assets. As a result, Parmar received the same $41,000 twice, which is a "double recovery"

prohibited by South Carolina's public policy. Accordingly, this Court should reverse the Court of Appeals and, absent the granting of other relief that moots this question, this Court should modify the award and judgment to eliminate the double recovery and any related prejudgment interest.

V. The circuit court erred in awarding prejudgment interest after the arbitrator denied it, and the Court of Appeals erred in affirming the circuit court.

The arbitrator denied Parmar's request for prejudgment interest. (R. 25 at (B)(4)). Parmar never made a motion to modify the award and challenge the arbitrator's decision to deny prejudgment interest, but his motion to confirm the award included a request for prejudgment interest. The circuit court awarded $22,385.94 in prejudgment interest, and the Court of Appeals affirmed. Both courts relied on the Illinois federal district court decision in *Fitigues, Inc. v. Varat Enters.*, 813 F. Supp. 1336 (N.D. Ill. 1992). (R. at 24 & n.9). This federal trial court case "predicted" South Carolina law, but no South Carolina court had cited it before this case.

Research reveals no South Carolina authority on whether a court may award prejudgment interest after the arbitrator denies it. Minhas respectfully submits that this Court should adopt the following approach. First, a trial court cannot award prejudgment interest if the arbitrator denied it or did not address it. See *Blanton v.Isenhower,* 674 S.E.2d 694, 695-696 (N.C. App. 2009); *Eisinger v. Robinson*, 596 S.E.2d 831, 833-834 (N.C. App. 2004); *Palmer v. Duke Power Co.*, 499 S.E.2d 801, 806-808 (N.C. App. 1998). Second, a trial court may modify the arbitration award to include prejudgment interest as follows: (a) if the arbitrator specifically reserved the issue for the court to determine; or (b) if the arbitrator made no determination on awarding prejudgment interest, then the court may award prejudgment interest from the date of the award. See *Thompson v. Seller*, 808 S.E.2d 608, 612 (N.C. App. 2017); *Blanton*, 674 S.E.2d at 695-696. Under these rules, the Court of Appeals erred in affirming the circuit court's award of prejudgment interest, and this Court should reverse the Court of Appeals.

VI. The circuit erred in refusing to vacate the arbitrator's award, because the award was not timely issued, and the Court of Appeals erred in affirming the circuit court.

When the parties select a particular set of arbitration rules, the courts must strictly adhere to and enforce those rules. See *Grant*, 678 S.E.2d at 438-439 (requiring strict adherence to AHLA Rules chosen by parties). Here, the parties specified that any arbitration would be governed by the AHLA Rules. AHLA 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." (R. 224 (emphasis added)). 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. Accordingly, the arbitrator exceeded his powers.

The circuit court refused to set aside the award on two grounds. First, the circuit court held that the arbitrator did not exceed his power, because AHLA Rule 7.1 was merely a procedural rule that did not impact the issue of arbitrability and enforcing it would unfairly prejudice Parmar. The circuit court, however, was bound by law to enforce the AHLA Rules strictly, because the parties' specified that those rules would govern any arbitration. *Grant*, 678 S.E.2d at 438-439 (requiring strict adherence to AHLA Rules chosen by parties); *Jordan*, 428 S.E.2d at 707 (courts enforce contracts as written, regardless of their wisdom or folly).

Second, the circuit court held that Minhas waived any right to contest the timeliness of the award by not objecting until after receiving the award, relying on S.C. Code § 15-48-90(b) to justify this ruling. The circuit court erred because: (1) the AHLA rule specified the time limit, and it must be strictly enforced; (2) the AHLA was not silent on how or when to change the time limit – it could be changed by agreement – and nothing in the AHLA provided for a waiver of the time limit in any other manner; and (3) it is impermissible to use § 15-48-90(b) or any other authority to rewrite the AHLA Rules or the parties' contract, because courts must enforce the arbitration

rules selected by the parties and the contract provisions agreed to by the parties. *Grant*, 678 S.E.2d at 438-439 (requiring strict adherence to AHLA Rules chosen by parties). By imposing a waiver based *inter alia* on §15-48-90(b), the circuit court and the Court of Appeals impermissibly rewrote the parties' arbitration agreement and AHLA Rule 7.5, rather than enforcing that agreement and rule as required by law. *Id.*; *Jordan*, 428 S.E.2d at 707 (courts enforce contracts as written, regardless of their wisdom or folly).

Here again, as with the contractual provisions on the re-purchase of Parmar's interests in the companies, courts are bound to enforce the parties' contract as written, regardless of their wisdom, folly, or failure to protect a party's rights or interests. Here, the parties' contract made the AHLA Rules controlling in any aribtration, and Rule 7.1 mandated the time limit for the award, which the arbitrator failed to satisfy despite the absence of any extension as also mandated in Rule 7.1. Accordingly, the circuit court and the Court of Appeals erred in failing to vacate the arbitrator's award. Reversal on this basis moots all other issues in this case.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that this Court should issue a writ of certiorari to the Court of Appeals, review the Court of Appeals's decision, reverse the Court of Appeals, and grant the relief requested herein.

Respectfully Submitted,

Robert L. Widener
by Jane W Trevilley with permission

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

ATTORNEYS FOR PETITIONERS

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Columbia, SC

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CERTIFICATE OF SERVICE

I, Ann Shuler, an employee of Burr Forman McNair, hereby certify that true and correct copies of the Petitioners' Petition for Writ of Certiorari and Appendix were served upon counsel for the Respondent in the above-captioned matter, by causing a copy of same to be deposited in the United States Mail, first class postage prepaid, this 9th day of March, 2020, addressed as follows:

E. Wade Mullins, III, Esq.
Bruner, Powell, Wall & Mullins, LLC
P. O. Box 61110
Columbia, SC 29260

Columbia, SC

Ann Shuler