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S.C. SUPREME COURT

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

Appellate Case No. 2017-000994
Unpublished Opinion No. 2019-UP-331
Heard September 10, 2019 - Filed October 9, 2019

Rajinder Parmar,Respondent,

v.

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

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

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INDEX

DECISION BY COURT OF APPEALS 1

PETITION FOR REHEARING..... 5

RETURN TO PETITION FOR REHEARING 11

REPLY TO RETURN TO PETITION FOR REHEARING..... 19

ORDER DENYING PETITION FOR REHEARING 22

RECORD ON APPEAL..... FILED SEPARATELY

FINAL BRIEF OF APPELLANT..... FILED SEPARATELY

FINAL BRIEF OF RESPONDENT FILED SEPARATELY

FINAL REPLY BRIEF OF APPELLANT..... FILED SEPARATELY

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Rajinder Parmar, Respondent,

v.

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

Appellate Case No. 2017-000994

Appeal From Richland County
DeAndrea G. Benjamin, Circuit Court Judge
Jean Hoefler Toal, Circuit Court Judge

Unpublished Opinion No. 2019-UP-331
Heard September 10, 2019 – Filed October 9, 2019

AFFIRMED

Robert L. Widener, of Burr & Forman, LLP, of
Columbia, for Appellants.

Edward Wade Mullins, III, of Bruner Powell Wall &
Mullins, LLC, of Columbia, for Respondent.

PER CURIAM: Balbir S. Minhas, Midlands Gastroenterology, PC, and Midlands
Endoscopy Center, LLC (collectively, Appellants) appeal the circuit court's order
granting Rajinder Parmar's motion to confirm an arbitration award. Appellants

argue the circuit court erred in (1) failing to find the shareholders' agreements precluded Parmar from recovery; (2) compelling arbitration; (3) failing to vacate the arbitrator's award; (4) failing to reduce the arbitrator's award to avoid double recovery; (5) awarding prejudgment interest; and (6) confirming the arbitrator's award although it was not timely issued. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the circuit court erred in failing to find the shareholders' agreements precluded Parmar from recovery: *Gissel v. Hart*, 382 S.C. 235, 241, 676 S.E.2d 320, 323 (2009) ("When a dispute is submitted to arbitration, the arbitrator determines questions of both law and fact."); *C-Sculptures, LLC v. Brown*, 403 S.C. 53, 56, 742 S.E.2d 359, 360 (2013) ("Generally, an arbitration award is conclusive and courts will refuse to review the merits of an award." (quoting *Gissel*, 382 S.C. at 241, 676 S.E.2d at 323)); *Gissel*, 382 S.C. at 241, 676 S.E.2d at 323 ("Case law [to vacate an arbitration award] presupposes something beyond a mere error in construing or applying the law. Even a 'clearly erroneous interpretation of the contract' cannot be disturbed." (quoting *Trident Tech. Coll. v. Lucas & Stubbs, Ltd.*, 286 S.C. 98, 108, 333 S.E.2d 781, 787 (1985))).

2. As to whether the circuit court erred in compelling arbitration: *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 597, 553 S.E.2d 110, 118 (2001) ("To decide whether an arbitration agreement encompasses a dispute, a court must determine whether the factual allegations underlying the claim are within the scope of the broad arbitration clause, regardless of the label assigned to the claim. Any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." (internal citations omitted)); *id.* at 598, 553 S.E.2d at 119 ("A broadly-worded arbitration clause applies to disputes that do not arise under the governing contract when a 'significant relationship' exists between the asserted claims and the contract in which the arbitration clause is contained."); *id.* at 597, 553 S.E.2d at 118 ("[U]nless the court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered.").

3. As to whether the circuit court erred in failing to vacate the arbitrator's award based on the arbitrator's authority and Rule 7.5 of the American Health Lawyers Association Rules: S.C. Code Ann. § 15-48-130(a)(3) (2005) (providing a court shall vacate an arbitration award if the arbitrator exceeded his powers); *id.* at § 15-48-130(a) ("[T]he fact that the [arbitrator's] relief was such that it could not or would not be granted by a court of law or equity is not [a] ground for vacating or refusing to confirm the award."); *Gissel*, 382 S.C. at 241, 676 S.E.2d at 323

(stating to vacate an arbitrator's award, the "governing law ignored by the arbitrator must be well defined, explicit, and clearly applicable"); *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 339, 611 S.E.2d 485, 487–88 (2005) (holding the appellant has the burden of providing a record sufficient for the appellate court to review).

4. As to whether the circuit court erred in failing to reduce the arbitrator's award to avoid double recovery: *Inman v. Imperial Chrysler-Plymouth, Inc.*, 303 S.C. 10, 13, 397 S.E.2d 774, 776 (Ct. App. 1990) (defining election of remedies as "the act of choosing between different remedies allowed by law" based on the same facts); *id.* at 15, 397 S.E.2d at 777 (noting the defendant could raise an election of remedies issue at any stage of the case); *Oaks at Rivers Edge Prop. Owners Ass'n v. Daniel Island Riverside Developers, LLC*, 420 S.C. 424, 443–44, 803 S.E.2d 475, 485–86 (Ct. App. 2017) (finding there was no double recovery for the award of damages where the alleged damages were for different losses).

5. As to whether the circuit court erred in awarding prejudgment interest: *Fitigues, Inc. v. Varat Enters.*, 813 F.Supp. 1336, 1340 n.1 (N.D. Ill. 1992) (interpreting South Carolina law as permitting the district court to award prejudgment interest despite the arbitrator's failure to award it because the arbitrator did not have the authority to award prejudgment interest for the time between the arbitration award and the district court's confirmation of the award). *See generally* Philip L. Bruner & Patrick J. O'Connor, Jr., 8 Bruner & O'Connor on Construction Law § 21:252, *Awarding Interest* (June 2018) ("Where the arbitrators have authority to award prejudgment interest, it has been held that the trial court may not award interest for the period of time prior to the date of the arbitration award. Courts generally may award prejudgment interest from the date of the award to the date of the judgment, notwithstanding the failure of the arbitrators to mention post-award interest in their decision.").

6. As to whether the circuit court erred in confirming the award although it was not timely issued: S.C. Code Ann. §15-48-90(b) (2005) ("A party waives the objection that an award was not made within the time required unless he notifies the arbitrators of his objection prior to the delivery of the award to him."); *Grant v. Magnolia Manor-Greenwood, Inc.*, 383 S.C. 125, 131, 678 S.E.2d 435, 438 (2009) (requiring strict adherence to the arbitration rules of the agreement where the selection of the rules was an integral part of the arbitration agreement and not merely an ancillary concern). *See generally* Samuel Estreicher & Steven C. Bennett, *Untimely Arbitration Awards*, 235 N.Y.L.J. No. 59 at 1 (2006) ("[T]he weight of modern authority is that untimeliness of an award is typically not fatal to

enforceability of an award."); *Success Vill. Apartments, Inc. v. Amalgamated Local 376, Int'l Union United Auto. Aerospace & Agric. Implement Workers of Am., UAW*, 380 F.Supp.2d 95, 98 (D. Conn. 2005) (holding that despite state regulations requiring the issuance of arbitration awards at a specific time, there was no basis to set aside the award when the plaintiff did not object to the delay prior to the issuance of the award).

AFFIRMED.

SHORT, THOMAS, and GEATHERS, JJ., concur.

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

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SC Court of Appeals

Rajinder Parmar, Respondent,

v.

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

PETITION FOR REHEARING

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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 AHILA 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.

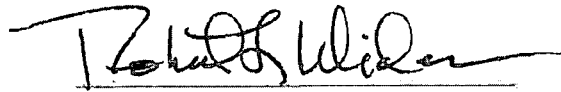
For the reasons set forth in Minhas' briefs, which are incorporated herein, Minhas submits that South Carolina should follow the rules established by North Carolina, to-wit: (1) a trial court cannot award prejudgment interest if it was denied by the arbitrator, or the arbitration award is silent on the 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
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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

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

Rajinder Parmar, Respondent,

v.

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

RESPONDENT'S RETURN TO PETITION FOR REHEARING

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Respondent Rajinder Parmar (“Respondent” or “Parmar”) submits this Return to Appellant Minhas’ (“Minhas”) Petition for Rehearing in this matter. After consideration of the briefs filed by the parties and hearing oral arguments, this Court affirmed the circuit court order granting Parmar’s motion to confirm an arbitration award. Appellant has now filed a petition for rehearing, challenging this Court’s reliance upon sound and well-established principles of law. Appellant appears to take issue with the Court’s resolution of this appeal summarily under Rule 220(b), SCACR. The Court properly set forth each issue presented by Appellant and provided the case or cases that support its decision. See, *In re Memorandum Decisions by Court of Appeals*, 322 S.C. 53,55,471 S.C.2d 456, 457 (1993). Appellant makes general allegations that this Court misunderstood the purpose and intent of its arguments and largely repeats the arguments previously made in its Final Brief and Reply Brief. Because Appellant has failed to demonstrate that this Court has overlooked or misapprehended any matters of fact or law warranting rehearing of this matter, the petition should be denied.

DISCUSSION

1. **The Court correctly ruled that there was nothing in the Record to suggest that the Parmar was precluded from recovery.**

Appellant contends that the purpose of Argument I was to demonstrate that if the Court determined that the arbitrator’s decision was reviewable under the other arguments asserted by Appellant then the arbitrator plainly erred in issuing an award for Parmar. For the reasons set forth below, this Court correctly determined that the merits of the arbitrator’s decision was not subject to review. “South Carolina has a strong policy of favoring resolution of disputes through alternative dispute resolution, including arbitration.” *C-Sculptures, LLC v. Brown*, 403 S.C. 53, 742 S.E.2d 359 (2013). “Generally, an arbitration award is conclusive and courts will refuse to review the merits of the award.” *Id.* The South Carolina Uniform Arbitration Act enumerates the

exclusive grounds upon which an award may be vacated. This Court correctly considered and applied the Act, the applicable caselaw and the facts in determining that the award should be confirmed.

2. The Court correctly ruled that the circuit court properly compelled the parties to arbitrate the subject disputes.

Appellant fails to introduce any new arguments as to why the circuit court erred in compelling arbitration. Rather, Appellant mischaracterizes the cases relied upon by this Court to support its conclusion that the disputes were, in fact, properly subject to arbitration and rehashes the arguments from its Brief.

Appellant contends that the disputes arise out of the 2014 sales agreements which have no arbitration clauses; and as such, the disputes were not subject to arbitration. The arbitration clauses at issue are contained within the MG Shareholders' Agreement and the MEC Operating Agreement. The MEC arbitration agreement provides as follows:

“In the event of any controversy or claim *arising out of or relating to this Agreement, or the breach, termination, or validity thereof*, the parties will attempt in good faith to resolve such controversy or claim.

The MG arbitration agreement contains similar language. These arbitration provisions mean the parties must arbitrate the Disputes if the arbitration agreement remains in force. The parties never agreed to terminate either agreement. Furthermore, nothing in the plain language of the 2014 Agreements indicates an intention to substitute the MG Shareholders' Agreement or the MEC Operating Agreement and the arbitration provisions therein. *See, e.g., Hill v. Ricoh Ams. Corp.*, 603 F.3d 766, 778 (10th Cir. 2010) (holding that a subsequent agreement did not supersede a prior agreement where the former did "not explicitly state that [the prior agreement was] nullified"). Parmar contends the arbitration clauses in both the MEC and MG Agreements encompass "any

controversy or claim arising out of or relating to” the Agreements, broadly embracing all disputes between the parties that have a relationship to the contract. The parties’ dispute as to the interpretation of the buyout terms of the Agreements clearly arises out of and relates to the Agreements themselves.

The case supporting the analytical framework for determining whether a particular claim is subject to arbitration is *Zabinski v. Bright Acres Assoc.*, 346 S.C. 580, 553 S.E2d 110 (2001). In *Zabinski*, the court stated:

To decide whether an arbitration agreement encompasses a dispute, a court must determine whether the factual allegations underlying the claim are within the scope of the broad arbitration clause, regardless of the label assigned to the claim. *Hinson v. Jusco Co.*, 868 F.Supp. 145 (D.S.C. 1994); *S.C. Pub. Serv. Auth. v. Great W. Coal*, 312 S.C. 559, 437 S.E.2d 22 (1993). Any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration. *Towles, supra*. Furthermore, unless the court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered.

This Court cited the specific quotes from *Zabinski* in its Opinion, which Appellant attacks. This Court properly determined at the very least that it cannot be said with “positive assurance” that the Disputes are outside the scope of the arbitration agreement.

- 3. The Court correctly ruled that the circuit court did not err in failing to vacate the arbitrators ruling on the grounds that he exceeded his authority under S.C. Code Ann. § 15-48-130(a)(3).**

Appellant complains that this Court failed to address its “novel” issues of South Carolina law regarding an arbitrator’s exceeding his powers. Appellants argument fails to recognize that its novel theories of law directly contradict the statutory provisions of the S.C. Arbitration Act and the established caselaw. Notably, Appellants do not argue that the arbitrator exceeded his authority under the common law manifest disregard of the law. Rather, Appellant rehashes the argument that somehow an arbitrator exceeds his authority under § 15-48-130(a)(3) if he manifestly

disregards the terms of the agreement or if the award is not based on a plausible interpretation of the agreement. Appellant argues that in this case the arbitrator exceeded his authority because the parties' contracts plainly prohibit Respondent from receiving any interest in the companies' accounts receivable or bank accounts.

South Carolina courts have consistently held "the question of whether arbitrators have exceeded their powers relates to the arbitrability of the issue they have attempted to resolve." *Pittman Mortg. Co. v. Edwards*, 327 S.C. 72, 488 S.E.2d 335 (1997). Where an arbitrator resolves the very issue presented to him, he has not exceeded his powers, even assuming factual and legal errors. *Id.* at 77; *see also Harris v. Bennett*, 332 S.C. 238, 503 S.E.2d 782 (Ct. App. 1998), *See also, Gissell v. Hart*, 382 S.C. at 241, 676 S.E.2d 323 (stating to vacate an arbitrator's award, the "governing law ignored by the arbitrator must be well defined, explicit and clearly applicable.").

This Court quoted *Gissel* in support of its conclusion that an error of fact or law is not sufficient to vacate an award under the Act. Moreover, this Court cited the specific provision of the Act that expressly precludes vacating the award on that basis: "[T]he fact that the [arbitrator's] relief was such that it could not or would not be granted by a court of law or equity is not [a] ground for vacating or refusing to confirm the award." S.C. Code Ann. §15-48-130(a); (Opinion at Ruling 3).

Appellant complains that this Court cited *Helms Realty*, 611 S.E.2d 485, 487-88, for the proposition that the Appellant has the burden of providing a sufficient record for appellate review without explanation as to how the record was insufficient. Appellant's complaint fails to recognize the questions this Court posed to counsel in oral arguments as to how Appellant could ask the Court to consider its argument that the arbitrator exceeded his powers and disregarded the law without providing a complete transcript of the arbitration proceeding in the Record on Appeal.

There are simply no facts in the Record to support a finding that S.C. Code Ann. §15-48-130(a)(3) requires the award be vacated. The arbitrator could not have exceeded his authority by deciding the very issues presented to him. Appellant ignores established South Carolina precedent and the express provisions of the Act and instead urge this court to adopt a novel theory that requires broader statutory authority to vacate arbitration awards. Therefore, this Court addressed, considered and correctly interpreted that that arbitrator did not exceed his authority under the Act.

4. **The Court correctly ruled that the circuit court did not err in failing to reduce the arbitrator's award to avoid a double recovery.**

Parmar argued that this was not an "election of remedies" issue as cited by Appellants. *Iman v. Imperial Chrysler-Plymouth, Inc.*, 397 S.E.2d 774, 776-77. Rather, Appellants characterization of the award as a "double recovery" is merely an objection to the arbitrator's ruling on the merits of the controversy. The Court may correct or modify and award only in accordance with the provisions of S.C. Code Ann. § 15-48-140. There is no common law basis for correcting or modifying an award. Moreover, any modification must have a basis in the Record. Appellant rehashes its request that this Court accept and assume the variance amounts were already included in the accounts receivable and bank accounts awarded to Parmar. There is simply no evidence in the Record as to what monies made up the accounts receivable and the bank accounts, and the Court is not required to take Appellants' word for it. Appellant raised this very issue to the arbitrator in a Motion to Correct, which the arbitrator considered and denied based on the evidence presented at the arbitration hearing. In that Motion, Appellant conceded to the arbitrator that a denial of the Motion to Correct "demonstrates the arbitrator's calculations and ultimate disposition was the product of intentional decision making and free of computational error."

This Court addressed, considered and correctly concluded that this was not an “election of remedies”; that the requested modification was not permitted under the Act; and that there is nothing in the Record to support a conclusion other than the award of the elements of damages were for different losses.

5. **The Court correctly ruled that the circuit court did not err in award post-award, pre-judgment interest pursuant to S.C. Code Ann. § 34-31-20.**

Appellant again simply reasserts its argument previously presented that post-award, prejudgment interest is improper. Appellant ignores *Fitigues, Inc. v. Varat Enterprises, Inc.*, 813 F. Supp. 1336 (N.D. Ill. 1992), a case directly on point which applies South Carolina law, and repeats its plea that the Court adopt the law of North Carolina. Moreover, Appellant seeks to have this Court ignore the prevailing law in other jurisdictions concerning post-award, pre-judgment interest as asserted in established legal treatises addressing this precise issue in arbitrations. *See generally*, Philip L. Bruner & Patrick J. O’Conner, Jr., 8 Bruner & O’Conner on Construction Law § 21:252, *Awarding Interest* (June 2018).

This Court properly applied the analysis set forth in *Fitigues, Inc.* to the facts of this case, which are very similar to those in *Fitigues, Inc.*, in finding that an award of post-award, pre-judgment interest to Parmar was proper.

6. **The Court correctly ruled that the circuit court did not err in confirming the award although it was not timely issued.**

Appellant, yet again, presents nothing more than a regurgitation of the arguments presented in their Brief. This Court correctly found that the Record reflected that Appellant waived any argument when it failed to object to the timeliness of the award until after the award was issued. S.C. Code Ann. § 15-48-90(b). The caselaw cited by Appellant does not mandate strict adherence

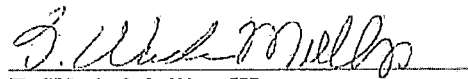
to the AHLA Rules. Nor does it hold that procedural rules of a designated arbitration forum preempt S.C. Code Ann. § 15-48-90(b).

CONCLUSION

For the foregoing reasons, this Court did not overlook or misapprehend either the law or the facts. The Opinion of this Court confirming the circuit court's Order confirming that arbitration award is legally and factually correct. The Petition for Rehearing should be denied.

Respectfully submitted,

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Jean H. Toal, Circuit Court Judge
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and Midlands Endoscopy Center, LLC, Appellants.

REPLY TO RETURN TO
PETITION FOR REHEARING

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REPLY ARGUMENTS

The Respondent repeatedly complains that the Appellant's Petition for Rehearing does not make any new arguments and repeats arguments previously made to this Court. This complaint has no merit because, *inter alia*, rehearing petitions generally are limited to arguments previously made. Moreover, as to Arguments 2, 3, and 6, those arguments request a specific ruling on the arguments previously made. As to all remaining arguments by the Respondent, the Appellant relies on the Petition for Rehearing and appellate briefs. The Respondent's return on the "double recovery" issue, however, warrants a specific reply.

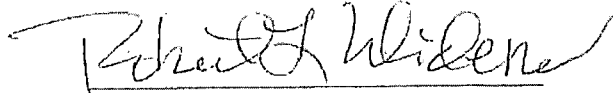
With regard to the Appellant's Argument 4 on "double recovery," the Respondent argues that the Appellant is asking this Court to "assume the variance amounts were already included in the accounts receivable and bank accounts awarded [but there is] no evidence in the Record as to what monies made up the accounts receivable and the bank accounts . . ." (Ret. at Arg. 4). The Appellant's "double recovery" argument, however, is not based on any money-in / money-out analysis. Rather, all monies available to make any payment to anyone were in the accounts receivable and bank accounts. Thus, when the arbitrator awarded the "variances" to the Respondent, those payments manifestly had to be made from the accounts receivable or the bank accounts, there being no other payment source. Thus, to avoid double recovery of those "variance" amounts, it was necessary to deduct those amounts from the accounts receivable / bank accounts values before awarding the Respondent 50% of those accounts.

CONCLUSION

For all of the foregoing reasons, and for the reasons set forth in the Appellant's Petition for Rehearing, Brief of Appellant and Reply Brief, which are incorporated herein, 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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December 9, 2019
Columbia, SC

The South Carolina Court of Appeals

Rajinder Parmar, Respondent,

v.

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

Appellate Case No. 2017-000994

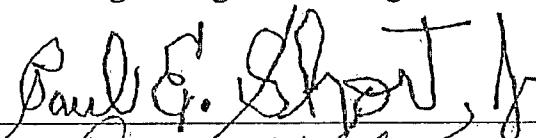
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ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



J.

Columbia, South Carolina

cc:
Edward Wade Mullins, III, Esquire
Robert L. Widener, Esquire

FILED

