

**THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas for the Ninth Circuit

The Honorable Bentley Price, Circuit Court Judge

Case No. 2019-CP-10-00178
Appellate Case No. 2020-000370

RECEIVED

May 08 2020

S.C. SUPREME COURT

J. DANIEL MAHONEY.....Respondent,

v.

THE MUHLER COMPANY, INC. and HENRY M. HAY, III, in his individual capacity,
Defendants/Appellants..... Petitioners.

MOTION FOR TAKING OF JUDICIAL NOTICE

Pursuant to Rule 201 of the South Carolina Rules of Evidence, Petitioners The Muhler Company, Inc. and Henry M. Hay, III (“Muhler”) write to request this Court take judicial notice of matters bearing on the appeal that is currently before this Court on petition for certiorari. Specifically, an arbitration award in a separate suit between these parties has been confirmed in the trial court and the time to appeal that confirmation has lapsed. An overview:

- Respondent sued Petitioners following Respondent’s termination as CEO, alleging monies owed under his employment agreement (case no. 2018-CP-10-05077);
- Respondent filed a separate suit against Petitioners alleging monies owed under a shareholder agreement (this suit, case no. 2019-CP-10-00178);

- Petitioners moved to compel arbitration in both cases. The motion was granted in the first suit (5077); in the second suit, the motion was “granted,” but the arbitration selection clause was struck.
- Arbitration occurred in the first suit, and a unanimous award was issued by the arbitrators on December 12, 2019 finding that Respondent violated his fiduciary duties to Petitioners in drafting self-serving agreements and, therefore, that the agreements were unenforceable his termination was for cause, and that he was therefore not entitled to compensation. **Exh. A.**
- The arbitration award was confirmed by the trial court on March 27, 2020 in case number 5077, and no appeal was taken.
- Petitioner has moved to confirm the December 12, 2019 arbitration award in this case, number 00178, presently on appeal and before this Court on the grounds that the trial court could not substitute an arbitrator selection process in place of the provision agreed to by the parties.

Petitioners request this Court take judicial notice of these matters as the rulings below have rendered or may render this appeal (which seeks remand to the trial court with instructions that arbitration must take place before arbitrators selected pursuant to the parties’ arbitrator selection provision) moot.

Respectfully submitted:

This 8th day of May, 2020
Charleston, S.C.

/s/ Jaan Rannik
EPTING & RANNIK, LLC
Andrew K. Epting, Jr., Esquire
Jaan G. Rannik, Esquire
46A State Street, Charleston, SC 29401
P: (843) 377-1871
F: (843) 377-1310
ake@epting-law.com
jgr@epting-law.com

ATTORNEYS FOR PETITIONERS