

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Jun 24 2020

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

S.C. SUPREME COURT

The Honorable Bentley Price, Circuit Court Judge

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

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

Appellants, The Muhler Company, Inc. and Henry M. Hay, III (collectively, “Muhler”), update and inform this Honorable Court of matters bearing directly on this appeal as follows.

Currently, Appellants’ petition for a writ of certiorari is pending before this Court. At issue in that petition is whether the trial court’s failure to enforce an arbitrator selection clause—in contravention of state and federal law—is hostile to arbitration and therefore immediately appealable. Appellants seek to have the appellate court correct the trial court’s error before the parties arbitrate with an improperly constituted panel, as such award will necessarily be reversed.

However, a separate arbitration was conducted between these parties that decided an issue that disposes of Plaintiff/Respondent’s claims in this case. Specifically, the arbitrators

unanimously found that the agreement underlying Plaintiff/Respondent's claims in this action is unenforceable as a matter of law. That award was confirmed by the trial court on March 27, 2020¹ and judgment was entered.

The judgment disposes of Plaintiff/Respondent's claims in this action, and accordingly, Muhler moved the trial court to confirm the arbitration award in this case. Notice of that pending motion was provided to this Court on May 8, 2020. Respondent's sole defense to confirmation was that the issue decided by the panel that is dispositive in case number 2019-CP-10-0178 was not properly before that panel. Muhler responded that the issue was squarely before the panel because:

1. Muhler submitted the issue to the panel in pre-trial briefing, without objection;
2. Muhler presented evidence on the matter during trial, without objection;
3. Muhler presented the issue in a proposed order to the panel after trial, without objection; and
4. The panel ruled on the issue in an award that was confirmed by the trial court, without objection.

Muhler's motion to confirm was denied on June 17, 2020. Muhler served and filed its notice of appeal on June 22, 2020 (**Exh. A**), as the denial of a motion to confirm an arbitration award is immediately appealable pursuant to S.C. Code § 15-48-200(a)(3).

The Petition for Certiorari before this Court presents a question of first impression, whether an order whose substance is hostile to arbitration is immediately appealable regardless of its title; the newly-filed appeal of the order denying Muhler's motion to confirm provides a conclusion to the substantive dispute between the parties. Muhler intends to promptly file its

¹ In case number 2018-cp-10-5077.

brief so that this Court, in deciding the Petition for Certiorari, will have the benefit of discussion regarding the substantive issue raised in the second appeal.

Respectfully submitted:

This 24th day of June, 2020
Charleston, S.C.

/s/ Jaan Rannik
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