

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. 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
Supreme Court Case No. 2020-000370

J. Daniel Mahoney.....Respondent,

v.

The Muhler Company, Inc. and Henry Hay III, in his individual capacity..... Petitioners.

RESPONDENT’S OBJECTION TO PETITIONERS’ MOTION FOR TAKING OF
JUDICIAL NOTICE

Respondent J. Daniel Mahoney hereby objects to Petitioners’ Motion for Taking of Judicial Notice. Petitioner is seeking to have this Court consider the ruling of the Honorable Bentley Price in an entirely unrelated arbitration. By way of background and to outline the procedural history of this case, please see the following timeline:

1. On January 14, 2019 Respondent Mahoney filed a Summons and Complaint with the Charleston County Court of Common Pleas *Case No.: 2019-CP-10-178*. This lawsuit focuses on a series of minority shareholder claims Mahoney has against Petitioners. This is the matter currently before this Honorable Court.

2. On February 15, 2019, The Muhler Company, Inc and Henry Hay, III, in his individual capacity (“Petitioners”) filed an Answer and Demand for Arbitration as well as a Motion to Stay the Case and Compel Arbitration.

3. The parties went before the Honorable Bentley Price on May 31, 2019 with regard to Petitioners’ Motions to Stay the Case and Compel Arbitration and to Quash Subpoenas.

4. On June 24, 2019 (the Order was originally filed June 5, 2019 but because of a clerical error it was filed in a separate case, that Order was vacated on June 14, 2019 and a new Order was issued) Judge Price signed an Order granting Petitioners’ Motion to Compel arbitration. However, he found that Article XIII, Section 2 of the Amended bylaws to the Muhler Company, Inc. regarding the selection of the arbitrators to be inequitable and therefore unenforceable.

5. On June 18, 2019 Petitioners filed a Motion for Reconsideration of the above Order. This Motion was denied.

6. On July 22, 2019 Petitioners filed a Notice of Appeal to appeal Judge Price’s Order dated June 24, 2019.

7. On August 6, 2019 Respondent’s filed a Motion to Dismiss with the Court of Appeals.

8. On October 25, 2019, an Order was issued by the Court of Appeals and Respondent’s Motion to Dismiss the appeal was granted.

9. On November 8, 2019 Petitioners filed a Petition for Rehearing with the Court of Appeals.

10. On February 5, 2020, the Court of Appeals issued an Order denying Petitioners’ Petition for Rehearing.

11. On February 28, 2020 Petitioners’ filed a Petition for a Writ of Certiorari with the Supreme Court. This Petition is pending before this Court.

Unrelated to this minority stockholder litigation, Mahoney and Muhler were also involved in a previously filed employment lawsuit. The employment lawsuit was filed in Charleston Court of Common Pleas Case No: 2018-CP-10-5077. Muhler moved to compel arbitration in the employment case and that motion was granted. The employment claim proceeded to arbitration and an Arbitration Award was entered on December 12, 2019. This award (in Case No 2018-CP-10-5077) was confirmed by the Honorable Bentley Price on March 27, 2020.

Now, turning back to the above-titled litigation (Case No: 2019-CP-10-178), Defendants/Appellants/Petitioners are trying to use the employment arbitration award to block Mahoney's claims in the minority shareholder suit by seeking to enter the award in THIS case. The timeline of these efforts is as follows:

1. On May 11, 2020 Petitioners' filed a Motion to Confirm the Arbitration Award from case No: 2018-CP-10-5077 in Case No.: 2019-CP-10-178, a completely separate lawsuit with separate claims, separate legal issues, separate facts, different arbitrators, different witnesses, and a different attorney for Mahoney.

2. On June 16, 2020, a hearing was held before Judge Price on Petitioners' Motion to Confirm Arbitration Award.

3. On June 17, 2020 Judge Price signed an Order denying Petitioners' Motion to Confirm Arbitration Award.

4. On June 24, 2020 Defendants/Appellants/Petitioners filed another Notice of Appeal.

5. On June 24, 2020 Defendants/Appellants/Petitioners filed this Motion for Taking Judicial Notice asking to take notice of the findings in the employment litigation arbitration.

ANALYSIS

Petitioners had no basis to seek the confirmation of the arbitration award from an entirely different case – much less the basis to appeal the denial of such a request. This request and the effort to appeal its denial are both improper. Furthermore, asking this Honorable Court to rely on the unrelated findings in the employment case in this pending minority shareholder case is inappropriate. As such, Respondent objects to the request.

The arbitration award and findings at issue were from a separate matter involving an employment related issue between Mahoney and The Muhler Company, Inc. The undersigned counsel was not involved in the other arbitration and the arbitration award should not be considered in the current appeal before this Honorable Court.

Respectfully Submitted,

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