

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

JUL 06 2020

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

S.C. SUPREME COURT

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Unpublished Opinion No. 2019-UP-331 (S.C. Ct.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.

REPLY TO RETURN TO
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

INDEX

REPLY ARGUMENT2

 I. The 50% Interest in Corporate Assets2

 II. Double Recovery4

 III. Prejudgment Interest5

CONCLUSION6

REPLY ARGUMENT

This reply focuses on three issues: (1) Parmar's claim for a 50% interest in the corporate assets; (2) the double recovery issue; and (3) the prejudgment interest issue. As to Parmar's other responses, Minhas incorporates his Petition and his briefs before the Court of Appeals, particularly his Reply Brief, which *inter alia* responds to Parmar's error preservation and presentation claims.

I. The 50% Interest in Corporate Assets.

This is Parmar's recovery theory: As a departing employee, he is entitled to additional compensation that is measured by his former (but now extinguished) percentage of ownership interest in the corporate assets of his employer. Parmar further claims that the MG Agreement is "silent" on whether he is entitled to this additional employee compensation and, therefore, the MG Agreement is "ambiguous" and he can pursue/prove this theory. Parmar's theory is manifestly without merit for two reasons. First, as a matter of black-letter South Carolina law, mere silence in a contract does not create an ambiguity. Second, the MG Agreement is not silent. To the contrary, the plain and ordinary meaning of the MG Agreement's provisions conclusively demonstrates that Parmar has no claim for any interest in the corporate assets.

Three sections of the MG Agreement are controlling here. First, section 3.15 sets forth Parmar's right to employee compensation "for services provided to the corporation." (R. 92). It is based solely on production with adjustments for disparities in relative production (*i.e.*, the so-called variances). Nothing in § 3.15 or any other section of the MG Agreement mentions or hints at any compensation based on any other formula, including but not limited to any compensation based on a departing employee's former ownership interest in the corporation and its assets.

Second, sections 3.8 and 3.9 control any claim that Parmar could conceivably have for any interest in the corporate assets. As explained in Minhas's Petition and never refuted in Parmar's

Return, the MG Agreement established a special three-year period that detailed if, how, and when Minhas could repurchase Parmar's ownership interest, which *a priori* includes any interest in the corporate assets. (See also § 4.5 at R. 94). These contract sections specifically provide that Parmar has no interest in the corporate assets until after three years which, as specified in the MG Agreement, was agreed to in order to protect Parmar and Minhas.

Parmar's "additional employee compensation" claim is nothing more than a poorly disguised and "dressed-up" shareholder claim for a *de facto* dissolution of the corporation or forced sale of the corporate assets with him claiming a 50% interest in those assets based on his prior ownership interests. Parmar's ownership interest, however, was extinguished by the 2014 Agreements, which do not contain an arbitration clause and specifically vest jurisdiction in the state and federal courts of South Carolina. Assuming Parmar has any remaining interest in the corporate assets, he must proceed in a circuit court under those sales agreements, which do not have an arbitration clause. Thus, as set forth in Minhas's Petition, the circuit court erred in ordering arbitration, and the arbitrator exceeded his power under § 15-48-130(a)(3) and AHLA Rule 7.5

There is no rational view of South Carolina law or the MG Agreement that would permit any award of any interest in the corporate assets to Parmar. If the courts are powerless to correct the arbitrator's blatant disregard of the limitations on his power and his utter failure to comprehend the law and the facts of this case, then this Court should grant certiorari and so advise South Carolina's citizens and businesses so that they can make informed decisions about the continued efficacy of ever agreeing to arbitration in the future.

II. Double Recovery.

South Carolina courts jealously guard and enforce the public policy of South Carolina. To that end, the courts will not apply the law of a foreign state or enforce a contract provision that violates public policy. *W & N Constr. Co. v. Williams*, 472 S.E.2d 622, 623 (S.C. 1996) (contracts); *Skywaves I Corp. v. Branch Banking & Trust Co.*, 814 S.E.2d 643, 652 (S.C. App. 2018) (foreign law). In like manner, the courts will not and cannot enter or enforce a money judgment that includes a double recovery, because doing so violates South Carolina's public policy. This public policy is so important that courts are duty bound to enforce it *sua sponte* at any stage of the proceedings as an exception the general rules on error preservation and presentation. *E.g., Inman v. Imperial Chrysler-Plymouth, Inc.*, 397 S.E.2d 774, 776-777 (S.C. App. 1990).

As set forth in Minhas's Petition, the arbitrator awarded the "variance" amount twice, because he did not deduct the "variance" amount from the value of the corporation's assets before awarding half of that asset value to Parmar as compensation in addition to the "variance" amount. Those corporate assets were the only available source to pay the "variance," so a deduction for that payment had to be made before awarding half of the remaining assets as additional compensation. The failure to do so results in a double recovery of the same dollars from a single source.

Parmar argues that South Carolina's public policy against double recovery does not apply here, because it is not listed in § 15-48-140 as a ground for modifying an arbitration award. The courts nevertheless have the inherent authority to refuse a request that the court use its authority to enter and enforce a money judgment that violates South Carolina's public policy against double recovery, including the authority to eliminate a double recovery in an arbitration award before entering and enforcing an award as a judgment. Nothing in the statute excepts arbitration awards

from the public policy of South Carolina, including the public policy against double recovery. The law cannot allow in one form (arbitration award) that which it prohibits in another form (circuit court judgment). A party to an arbitration award cannot be permitted to invoke the jurisdiction of the courts in aid of its attempt to violate the public policy against double recovery. Accordingly, this Court should grant certiorari and reduce the circuit court's judgment by the amount of the double recovery (\$41,000.00).

III. Prejudgment Interest.

The arbitrator denied Parmar's request for an award of prejudgment interest as follows: "Petitioner [Parmar] is denied . . . Prejudgment interest." (R. 25, ¶ (B)(4)). The award made no distinction between pre-award and post-award prejudgment interest. Parmar argues that it was nevertheless proper for the circuit court to modify the arbitration award and add prejudgment interest from the date of the award to the date of judgment. This bifurcation of prejudgment interest in arbitration cases is a novel question under South Carolina law that warrants this Court's consideration.

Parmar argues the issue is not novel, because there is a 28 year-old federal district court case from Illinois that predicted South Carolina law. No South Carolina court has ever cited this Illinois decision and, therefore, the issue remains novel under South Carolina law. As set forth in Minhas's Petition, the better rule is that applied by North Carolina. This court should decide this novel issue for the benefit of the bench and the bar.

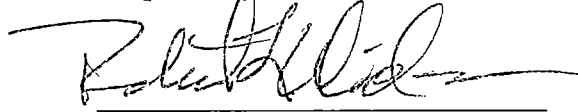
Parmar also relies on basic principles of South Carolina law. As argued from the very beginning of and throughout this litigation, Minhas welcomes the application of black-letter South Carolina law to the questions in this case. Parmar, however, argues that the arbitrator's decision is sacrosanct and beyond the reach of the courts. If this is true, the same rule manifestly applies to

the arbitrator's denial of prejudgment interest, which made no distinction between pre-award and post-award prejudgment interest. Accordingly, this Court should grant certiorari, hold that the circuit court erred in awarding prejudgment interest, and reduce the circuit court's judgment by the amount of that interest (\$22,385.94).

CONCLUSION

For all of the foregoing reasons, and for the reasons set forth in Minhas's briefs and rehearing documents before the Court of Appeals and his Certiorari Petition before this Court, it is respectfully submitted that this Court should grant certiorari and decide the important and novel issues in this matter.

Respectfully Submitted,



Robert L. Widener
MCNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

July 2, 2020
Columbia, SC

ATTORNEYS FOR PETITIONERS