

EXHIBIT A

**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

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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EXHIBIT A

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Jun 22 2020

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

J. DANIEL MAHONEY,..... Plaintiff / Respondent,

v.

THE MUHLER COMPANY, INC. and HENRY M. HAY, III,..... Defendants/Appellants.

NOTICE OF APPEAL

Defendants, The Muhler Company, Inc. and Henry M. Hay, III, appeal from the order of Judge Bentley Price dated June 17, 2020 (**Exh. A**) in which the Court denied Defendant/Appellants' motion to confirm an arbitration award. Defendants/Appellants received written notice of entry of Judge Price's order on June 17, 2020 .

June 22, 2020
Charleston, South Carolina

EPTING & RANNIK

/s/ Jaan G Rannik
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ATTORNEY FOR DEFENDANTS/APPELLANTS

RECEIVED

Jun 22 2020

SC Court of Appeals

EXHIBIT A

J Daniel Mahoney
PLAINTIFF(S)

Muhler Company Inc The et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED** (*CHECK REASON*): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN** (*CHECK REASON*): Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

Defendant's Motion to Confirm arbitration award agreement is denied.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/17/2020 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: J Daniel Mahoney VS Muhler Company Inc The , defendant, et al

Case Number: 2019CP1000178

Type: Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766