

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
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Beacham O. Brooker, Jr.; Ellen B.)
Corontzes; and BBB&C Family, LLC,)
)
)
Petitioners)
)
vs.)
)
Julia B. Brooker,)
)
)
Respondent)
_____)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
Case No. 2020-CP-40-02040

**ORDER GRANTING
PETITIONERS' MOTION TO STAY**

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Aug 24 2020
SC Court of Appeals

This matter came before the Court on cross motions of the parties; Petitioners' Motion for Stay filed on April 21, 2020 and Respondent's Motion to Dismiss filed April 24, 2020.¹ The Court heard oral arguments via WebEx technology on June 24, 2020. Present for the hearing were Gray T. Culbreath, Esquire on behalf of BBB&C Family, LLC and James M. Griffin, Esquire on behalf of Respondent. Thornwell F. Sowell and Bess J. DuRant also appeared on behalf of Beacham O. Brooker Jr. and Ellen B. Corontzes. After consideration of the memoranda submitted by the parties in advance of the hearing and the arguments of counsel, the Court hereby grants the Petitioners' Motion for Stay.

FACTUAL AND PROCEDURAL HISTORY

The matter currently before the Court as the result of an arbitration demand filed by the Respondent on or about March 17, 2020. A copy of that demand was made an exhibit to both parties' filings. While the demand seeks the dissolution of the BBB&C Family, LLC, it makes repeated references to acts and transactions which currently the subject of a probate matter

¹ The parties filed an Amended Motion to Stay on April 29 and a Renewed Motion to Dismiss on May 2020 respectively.

bearing civil action number 2019-CP-40-03582. Counsel for the Respondent described the matter as “related.” That related matter is an appeal of a probate trial before the Honorable Amy McCullough which involved disposition of certain assets of the Trust of the late Janet Brooker which includes issues which are the subject of the arbitration demand. The arbitration demand, which is comprised of 69 paragraphs, contains at least ten paragraphs which specifically reference the Trust, the probate action or disposition of assets. It should be noted that the LLC was not a party to the probate matter nor was the LLC’s counsel, Mr. Culbreath.²

DISCUSSION

The Petitioners seek a stay of the demand for arbitration pending the disposition of the probate court appeal. The Respondent, on the other hand, has moved pursuant to South Carolina Rule of Civil Procedure 12(b)(6) to dismiss the petition contending that nothing in the law of South Carolina allows for a stay of an arbitration where there is an agreement to arbitrate. The Court disagrees with the Respondent’s position.

Mindful of the dictates of SCRCP 1 which provides that the Rules of Civil Procedure “shall be construed to secure the just, speed and inexpensive determination of every action,” the Court finds that a stay pending the probate court appeal would serve the tenets of Rule 1. Respondent filed her arbitration demand eight months after the appeal of the probate matter filed in July of 2019. As set forth above, ten paragraphs of the arbitration demand specifically reference as a ground for the arbitration either some estate planning mechanism or the probate litigation itself.³ Given the allegations made by the arbitration demand, it appears clear that elements of the probate case are implicated. The Court cannot judge to what extent they are but suffice it to say discovery of those issues will necessarily need to be had. To allow the

² The underlying probate action arises from the Estate Number 2017-GC-40-36. The trial of that matter was held on February 5 and 7, 2019.

³ Paragraphs 11, 12, 17, 18, 24, 25, 27, 29, and 30 of the arbitration demand.

arbitration to proceed at this time while the probate appeal is pending would necessarily result in duplicative discovery or result in findings by an arbitration panel that could be undone by a final decision in the probate appeal. Accordingly, based on the evidence before the Court a stay is appropriate consistent with the tenets of Rule 1 of the South Carolina Rules of Civil Procedure.

Respondent argues that South Carolina law does not allow a stay of an arbitration where there is an agreement to arbitrate. In making this argument, Respondent relies generally upon S.C. Code § 15-48-20, which is South Carolina’s version of the Uniform Arbitration Act. A stay is defined by Black’s Law Dictionary as a “temporary suspension,” which is what the Petitioners in this case seek. Both parties rely on S.C. Code § 15-48-20(b) which allows for a court to stay an arbitration proceeding but then goes on to premise it on the absence of an agreement to arbitrate. However, those provisions are inconsistent. It is undisputed that there is an agreement to arbitrate. What is at issue is whether or not this court has the power to order a stay or temporary suspension pending the disposition of the probate appeal. Based on the record before the Court, a stay under these circumstances is appropriate.

Respondent seeks attorney’s fees which the court denies. However, if the court had not stayed this matter, the court declined award of attorney’s fees and instead leave that issue to the duly appointed arbitrators.

Accordingly, for the reasons set forth herein, the court grants the Petition for Stay and orders that the arbitration demand be stayed pending the disposition of the probate appeal.

IT IS SO ORDERED.

L. Casey Manning
Circuit Court Judge, Fifth Judicial Circuit



Richland Common Pleas

Case Caption: Beacham O Brooker Jr , plaintiff, et al vs Julia B Brooker

Case Number: 2020CP4002040

Type: Order/Stay

So Ordered

s/L. Casey Manning, 2061