

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Appellate Case No. 2020-001159
Case No. 2020-CP-40-02040

RECEIVED

Nov 16 2020

SC Court of Appeals

Beacham O. Brooker, Jr., Ellen B. Corontzes;
and BBB&C Family, LLC,

Respondents,

v.

Julia B. Brooker,

Appellant.

MOTION FOR EXPEDITED APPEAL

James M. Griffin (S.C. Bar # 9995)
Margaret N. Fox (S.C. Bar # 76228)
GRIFFIN DAVIS LLC
4408 Forest Drive, Suite 300
Columbia, South Carolina 29206
(803) 744-0800

Badge Humphries (S.C. Bar # 72904)
GRIFFIN HUMPHRIES LLC
2113 Middle Street, Suite 305
Sullivan's Island, South Carolina 29482
(843) 883-7424

Attorneys for Appellant

INTRODUCTION

Appellant respectfully requests that the Court expedite her appeal of the circuit court's order staying her duly commenced arbitration proceeding against Respondents. Without an expedited appeal, Appellant will lose her right to a prompt and efficient resolution of her claims through arbitration. Those claims seek the dissolution of a family limited liability company, request an accounting, and assert causes of action for breach of fiduciary duty against Respondents. Without an expedited appeal, the circuit court's order staying the arbitration proceeding could last for years, forcing Appellant to remain part of a limited liability company against her wishes and allowing Respondents' alleged misconduct to continue to harm Appellant and the company. In this case in particular, justice delayed would be justice denied.

There is no dispute that the parties are subject to a valid, enforceable, and irrevocable agreement to arbitrate pursuant to Section 15-48-10 of the South Carolina Uniform Arbitration Act (the "Act"). There is also no dispute that the agreement to arbitrate covers Appellant's claims against Respondents. Nonetheless, the circuit court stayed Appellant's duly commenced arbitration proceeding, potentially delaying for years a process that should have lasted a matter of months pursuant to the agreement between the parties. In so doing, the circuit court violated the clear mandate of Section 15-48-20 of the Act, which states that "the court **shall order** the parties to proceed with arbitration" upon finding a valid agreement to arbitrate between the parties. S.C. Code Ann. § 15-48-20(a), (b) (emphasis added).

Without an expedited appeal, the Appellant will have no meaningful appellate remedy from the circuit court's order staying her arbitration proceeding and no way to secure the relief it seeks. In so doing, the circuit court's order undermines the state's strong policy favoring arbitration. As previously noted by this Court, there is a strong preference for arbitration that "has manifested itself in legislation and judicial decisions supporting the expeditious appeal of decisions denying

an application to compel arbitration.” Towles v. United HealthCare Corp., 338 S.C. 29, 34, 524 S.E.2d 839, 842 (Ct. App. 1999). Accordingly, Appellant respectfully requests that the Court expedite this appeal and set this case for oral argument during the next available argument calendar week after Appellant files her reply brief.

FACTUAL AND PROCEDURAL BACKGROUND

This matter relates to a March 17, 2020 arbitration demand by Appellant against Respondents. (Pet. and Mot. to Stay Ex. A (Arbitration Demand, Mar. 17, 2020) (the “Arbitration Demand”).) That Arbitration Demand seeks the dissolution of a family limited liability company called BBB&C Family LLC and an accounting, and it asserts breach of fiduciary duty claims against Respondents under Section 33-44-409(h) of the South Carolina Code of Laws. (Arbitration Demand 11-16.) On July 17, 2020, the circuit court entered an order staying the arbitration proceeding initiated by the Arbitration Demand, potentially delaying that proceeding and the availability of the relief it seeks for years. (Order Granting Pet’rs’ Mot. to Stay (the “Order”).) The Order and the circuit court’s subsequent order refusing to alter or amend it are the subjects of this appeal. (Id.; (Order Denying Mot. to Alter or Amend Order Granting Pet’rs’ Mot. to Stay 1-2, Aug. 24, 2020.)

Appellant Julia B. Brooker (“Appellant” or “Julia”) and Respondents Beacham O. Brooker, Jr. (“Beacham”) and Ellen B. Corontzes (“Ellen”) executed the Operating Agreement of BBB&C Family LLC on January 31, 2014. (Arbitration Demand Ex. 1 (Operating Agreement of BBB&C Family LLC, Jan. 31, 2014) (the “Operating Agreement”).) Section 11.01 of the Operating Agreement provides that “[a]ny dispute or controversy between the parties hereto arising out of, under, or in connection with, or in relation to, this Operating Agreement shall be submitted to binding arbitration in accordance with South Carolina Code Sections 15-48-10, et seq.” (Operating

Agreement 23.) It further requires that “[a]ny dispute as to whether a controversy or claim is subject to arbitration shall be submitted as part of the arbitration proceeding.” (Id.)

Counsel for Respondents accepted service of Appellant’s Arbitration Demand on Appellants’ behalf on April 7, 2020. (Mot. to Dismiss and Compel Arbitration Ex. 3 (Acceptance of Service of Arbitration Demand, Apr. 7, 2020).) Respondents did not follow the procedures set forth in Section 11.01 of the Operating Agreement. Instead, on April 21, 2020, Appellants initiated this proceeding by filing their Petition and Motion to Stay the arbitration proceeding initiated by Respondent’s Arbitration Demand. (Pet. & Mot. to Stay, Apr. 21, 2020 (the “Petition”).) In their submission, Respondents conceded the existence of an agreement to arbitrate the underlying dispute between the parties pursuant to the Operating Agreement; however, Respondents argued that Appellant’s duly commenced arbitration proceeding should be stayed until the resolution of an entirely separate probate dispute between the parties over the interpretation of a trust agreement. (Petition 1.)

Three days later, Appellant filed her April 24, 2020 Motion to Dismiss Petition and Motion to Stay and a Motion to Compel Arbitration and supporting memorandum of law. (Mot. to Dismiss and Mot. to Compel Arbitration, Apr. 24, 2020.) Respondents then filed their April 29, 2020 Petition and Amended Motion to Stay and Memorandum of Law in Support of their Petition and Amended Motion to Stay and in Opposition to Respondent’s Motion to Dismiss Petition and Motion to Stay, Motion to Compel Arbitration, and Motion for an Award of Attorney’s Fees and Expenses. (Pet. and Am. Mot. to Stay; Mem. in Supp., Apr. 29, 2020.) Thereafter, Appellant filed her May 1, 2020 Renewed Motion to Dismiss Petition and Amended Motion to Stay and a Motion to Compel Arbitration and supporting memorandum of law. (Renewed Mot. to Dismiss Pet., Am. Mot. to Stay, and Mot. to Compel Arbitration, May 1, 2020.)

The circuit court held a hearing on these competing motions to compel and stay arbitration on June 24, 2020. (Mot. Hr'g Tr., June 24, 2020.) The parties submitted proposed orders on June 30, 2020. (Pet'rs' Proposed Order Granting Mot. to Stay, June 30, 2020; Appellant's [Proposed] Order, June 30, 2020.) On July 17, 2020, the circuit court signed and entered Respondents' proposed order granting Respondents' motion to stay the arbitration proceeding. (Order Granting Pet'rs' Mot. to Stay, July 17, 2020.) On July 27, 2020, Appellant filed her Motion to Alter or Amend the Court's Order Granting Appellants' Motion to Stay, pursuant to Rules 52(b) and 59(a), SCRPC. (Mot. to Alter or Amend Order Granting Pet'rs' Mot to Stay, July 27, 2020.) Upon being prompted by the circuit court, Respondents submitted a proposed order denying Appellant's motion to alter or amend the circuit court's order granting a stay of the arbitration proceeding on August 21, 2020. (Email from A. Sowell to Judge Manning (enclosing proposed order), Aug. 21, 2020.) The circuit court signed and entered that proposed order without alteration on August 24, 2020. (Order Denying Mot. to Alter or Amend Order Granting Pet'rs' Mot. to Stay, Aug. 24, 2020.) On the same day, Appellant filed her notice of appeal. (Notice of Appeal, Aug. 24, 2020.)

ARGUMENT

“The policy of the United States and South Carolina is to favor arbitration of disputes.” Zabinski v. Bright Acres Assocs., 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001). “This preference for arbitration has manifested itself in legislation and judicial decisions supporting the expeditious appeal of decisions denying an application to compel arbitration. Towles, 338 S.C. at 34, 524 S.E.2d at 842. The circuit court's order staying Appellant's arbitration proceeding “frustrate[s] the statutory policy of rapid and unobstructed enforcement of arbitration agreements.” Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 23 (1983). Pursuant to this well-recognized policy and the deprivation of rights that Appellant will suffer without an expedited appeal,

Appellant respectfully requests that the Court expedite her appeal of the circuit court's Order granting a stay of her arbitration proceeding.

Unless the Court grants Appellant's motion for expedited appeal, Appellant will be deprived of her contractual right to arbitrate her disputes with Respondents. If allowed to stand, the circuit court's order will potentially delay for years a process that should have been complete within five months pursuant to the express terms of the agreement to arbitrate in the Operating Agreement:

Any dispute or controversy between the parties hereto arising out of, under, or in connection with, or in relation to, this Operating Agreement shall be submitted to binding arbitration in accordance with South Carolina Code Sections 15-48-10, et seq., as such may be amended from time to time (the ["Act"]). . . . Any dispute as to whether a controversy or claim is subject to arbitration shall be submitted as part of the arbitration proceeding. The arbitrators shall be selected as provided in the [Act], and **the arbitrators shall render a decision on any dispute within one hundred twenty (120) Days** after the last of the arbitrators has been selected. If any party to this Operating Agreement fails to select an arbitrator with regard to any dispute submitted to arbitration . . . within thirty (30) Days after receiving notice of the submission to arbitration of such dispute, then the other party shall select an arbitrator for such non-selecting party. **The decision of the arbitrators shall be final and binding on the parties, who specifically renounce any judicial review of the award**, and agree that judgment on the award may be enforceable in any court of competent jurisdiction.

(Operating Agreement 23) (emphasis added).

The circuit court's order ignores the clear language and policy expressed in the Act. Pursuant to Section 15-48-20(a), upon the "application of a party showing an agreement [to arbitrate], and the opposing party's refusal to arbitrate, the court **shall order** the parties to proceed to arbitration." S.C. Code Ann. § 15-48-20(a) (emphasis added). A party is entitled to a stay of an arbitration proceeding only where the party disputes the existence of the agreement to arbitrate. S.C. Code Ann. § 15-48-20(b). In that case, that issue "when in substantial and bona fide dispute, shall be **forthwith and summarily** tried." *Id.* (emphasis added). "If found for the opposing party, the court **shall order** the parties to proceed to arbitration." *Id.*

Here, there is no dispute as to the existence of an agreement to arbitrate under the Act and no dispute that the agreement covers the claims at issue. Accordingly, the circuit court was required to “order the parties to proceed to arbitration” under the Act. S.C. Code Ann. § 15-48-20(a), (b); see Weckesser v. Knight Enterprises S.E., LLC, 228 F. Supp. 3d 561, 564 (D.S.C. 2017), aff’d, 735 F. App’x 816 (4th Cir. 2018) (“If a valid arbitration agreement exists and covers the claims at issue, this Court has ‘no choice but to grant a motion to compel arbitration.’” (quoting Adkins v. Labor Ready, Inc., 303 F.3d 496, 500 (4th Cir. 2002))). The Act is clear and not susceptible to any alternate reading by its plain terms. Nonetheless, the circuit court wrongly concluded that its provisions are somehow “inconsistent.” (Order 3.) Based on this finding, the circuit court then stayed Appellant’s arbitration proceeding pending the final determination of the probate dispute between the parties, the appeals from which could drag on for years.

The sole basis for the circuit court’s decision was a portion of Rule 1, SCRCPP, that reads “[the rules] shall be construed to secure the just, speedy, and inexpensive determination of every action.” (Order 2 (quoting Rule 1, SCRCPP).) That portion of Rule 1, SCRCPP, is not a rule in itself, and there is no rule of civil procedure governing motions to compel and stay arbitration proceedings. Such motions are only authorized by the Act, and they should be exclusively governed by its express terms. Moreover, the circuit court had no authority to apply any rules of civil procedure to the arbitration proceeding because that proceeding was not a civil action pending before it. Rather, the sum and substance of its jurisdiction was provided by the Act via this separate proceeding initiated by the parties’ competing motions pursuant to the Act. Accordingly, staying that proceeding on the basis of Rule 1, SCRCPP, made no sense.

As discussed in more detail in the Initial Brief of Appellant, there are other fundamental errors with the circuit court’s Order and its reasoning. Allowing the circuit court’s order to stand

undermines the Act and the strong policy favoring arbitration that it represents and Appellant will have no meaningful appeal of the circuit court's Order staying her arbitration proceeding without an expedited appeal.

CONCLUSION

For these reasons, Appellant respectfully requests that this Court expedite Appellant's appeal of the circuit court's order staying her arbitration proceeding and set this case for oral argument during the next available argument calendar week after Appellant files her reply brief.

Respectfully submitted,

November 16, 2020

s/ Badge Humphries

James M. Griffin (S.C. Bar # 9995)
Margaret N. Fox (S.C. Bar # 76228)
GRIFFIN DAVIS LLC
4408 Forest Drive, Suite 300
Columbia, South Carolina 29206
(803) 744-0800

Badge Humphries (S.C. Bar # 72904)
GRIFFIN HUMPHRIES LLC
2113 Middle Street, Suite 305
Sullivan's Island, South Carolina 29482
(843) 883-7424

Attorneys for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Appellate Case No. 2020-001159
Case No. 2020-CP-40-02040

RECEIVED
Nov 16 2020
SC Court of Appeals

Beacham O. Brooker, Jr., Ellen B. Corontzes;
and BBB&C Family, LLC,

Respondents,

v.

Julia B. Brooker,

Appellant.

PROOF OF SERVICE

I hereby certify that I have served the Initial Brief of Appellant, Appellant's Designation of Matter to be Included on the Record on Appeal, and Motion for Expedited Appeal upon the following counsel for Respondents via electronic mail at the email addresses below on this November 16, 2020 (copy of email attached):

Thornwell F. Sowell, III (SC Bar # 5197)
Bess J. DuRant (SC Bar # 77920)
Sowell & DuRant
bsowell@sowelldurant.com
bdurant@sowelldurant.com

Attorneys for Respondents Beacham O.
Brooker, Jr. and Ellen B. Corontzes

Gray T. Culbreath (SC Bar # 11907)
Gallivan White & Boyd, P.A.
gculbreath@gwblawfirm.com

Attorneys for Respondent BBB&C Family,
LLC

s/ Badge Humphries

James M. Griffin (SC Bar # 9995)

Margaret N. Fox (SC Bar # 76228)

GRIFFIN DAVIS LLC

4408 Forest Drive, Suite 300

Columbia, South Carolina 29206

(803) 744-0800

Badge Humphries (SC Bar # 72904)

GRIFFIN HUMPHRIES LLC

2113 Middle Street, Suite 305

Sullivan's Island, South Carolina 29482

(843) 883-7424

Attorneys for Appellant

From: Badge Humphries
Sent: Monday, November 16, 2020 4:29 PM
To: Biff Sowell; Bess DuRant; gculbreath@gwblawfirm.com
Cc: Jim Griffin; Maggie Fox; Badge Humphries; Daphne L. Greve; Jaime Harmon
Subject: Brooker v. Brooker, Appellate Case No. 2020-001159
Attachments: 2020-11-16_Appellant Initial Brief_FINAL.pdf; 2020-11-16_Appellant Desig of Matter_FINAL.pdf; 2020-11-16_Motion for Expedited Appeal_FINAL.pdf

Counsel:

As permitted by part (g)(3) of Supreme Court Order 2020-05-29-02, I am hereby serving via email the Initial Brief of Appellant, Designation of Matter to be Included on the Record on Appeal, and Motion for Expedited Appeal in the above-referenced action. Shortly, I will be filing these documents with the Court of Appeals electronically as permitted by part c(6) of the Order and will attach this email to the proof of service of same.

Sincerely,

Badge

BADGE HUMPHRIES
ATTORNEY



Griffin Humphries LLC
2113 Middle Street, Ste. 305
Sullivan's Island, SC 29482
o. 843.883.7424 f. 843.883.7462 c. 843.991.7080
BHumphries@griffin Humphries.com
www.griffin Humphries.com

RECEIVED

Nov 16 2020

SC Court of Appeals

CONFIDENTIALITY NOTICE: This e-mail message is intended only for the personal and confidential use of the designated recipient(s) named above and may contain work product and/or attorney-client information, which is privileged, confidential or otherwise exempt from disclosure under applicable law. If you are not a named recipient, **YOU ARE HEREBY NOTIFIED** that any review, dissemination, distribution, disclosure or copying of this message and/or attachments is **STRICTLY PROHIBITED**. If you have received this e-mail message in error, please notify us immediately at the telephone number listed above to arrange for the return and/or deletion of the original message. Thank you for your cooperation.