THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY

L. Casey Manning, Circuit Court Judge

Appellate Case No. 2020-001159

Case No. 2020-CP-40-02040

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

v.

Julia B. Brooker,…… Appellant

REPLY TO RETURN OF APPELLANT TO RESPONDENTS' MOTION TO DISMISS APPEAL

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Respondents' Motion to Dismiss Appeal should be granted. Nowhere in Julia Brooker's Return does she say that she specifically requested the circuit court to rule on her motion to compel arbitration or that she noticed that the motion to compel was never ruled on, and therefore, should be addressed in a Rule 59(e) motion. Nowhere does she direct this Court to any language in the circuit court's orders where it specifically denied a motion to compel arbitration. This is true because Julia Brooker ("Julia") never received a ruling on her motion to compel arbitration. To avoid this fatal conclusion, Julia states (1) she moved for a motion to compel arbitration pursuant to Section 15-48-20(a) of the South Carolina Uniform Arbitration Act; (2) her lawyer mentioned her motion to compel in his opening comment to the circuit court at the hearing; and (3) the circuit court mentioned "cross motions" in his order. (Return at 2, 4-6.) None of these factual arguments prevents the final result that there is no order denying Julia's motion to compel arbitration.

Similarly, Julia argues that this Court should look beyond the ruling of *Edwards v. SunCom*, 369 S.C. 91, 631 S.E.2d 529 and its progeny to conclude the *Edwards* Court did not rule for all matters that orders granting motions to stay are not immediately appealable. She argues that *Edwards* only applies to more conventional civil litigation. She then argues that the calculus, creating the principle of law in *Edwards*, should be unwound so that Julia can argue against the tenet of orders granting stays cannot be appealed immediately. In no order did the circuit court state that it was issuing "an order granting an application to stay arbitration made under § 15-48-20(b)" or "an order denying an application to compel arbitration made under § 15-48-20[.]" Rather, it simply asserted the authority it has as a court of general jurisdiction to stay an arbitration, while an intertwined probate appellate matter reaches a final decision. The circuit court did not err. Julia did err, by appealing an order that is not immediately appealable.

ARGUMENT

I. The Orders Do Not Provide that the Stay was Issued Pursuant to Section 15-48-20(b).

Julia argues that because the circuit court had to have issued its stay under Section 15-48-20(b), then section 15-48-200(a) of the South Carolina Uniform Arbitration Act must apply, which allows for an appeal of (1) an order denying an application to compel arbitration under § 15-48-20 or (2) an order granting an application to stay the arbitration made under § 15-48-20(b). But Julia overlooks the language and import of the circuit court orders.

Neither the order granting the motion to stay ("Order," Ex. I to Mot. to Dismiss Appeal) nor the order denying the reconsideration motion ("Reconsideration Order," Ex. K to Mot. to Dismiss Appeal) granted the stay based on Section 15-48-20(b) of the South Carolina Code. In fact, the circuit court recognized that "[b]oth parties rely on S.C. Code § 15-48-20(b) which allows for a court to stay an arbitration proceeding but [the legislature] then goes on to premise it on the absence of an agreement to arbitrate." (Order at 3.) The circuit court recognized that both parties agreed to arbitrate, which is why it reached the following conclusion: "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." (*Id.*) In other words, the circuit court could have issued a stay under Section 15-48-20(b), but it chose not to because the parties agree there is a valid arbitration agreement. Rather, the court relied on its inherent authority to stay an action when judicial economy and efficiency of the parties are served. After all, "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." (*Id.*)

In an effort to avoid this conclusion, Julia argues, without any precedent, that the circuit court only had the power to grant the stay through Section 15-48-20(b). This is not so. "Courts have inherent power to stay proceedings in actions pending before them as part of their power to control their docket." *Civil Action No. #2001-CP-32-0711 Carolina Water Serv. Inc. v. Lexington County Joint Mun. Water & Sewer Comm'n*, 367 S.C. 141, 153 n.2, 625 S.E.2d 227, 233 (Ct. App. 2006) (citing 1A C.J.S. *Actions* § 244 (2004)), *rev'd on other grounds by Carolina Water Serv., Inc. v. Lexington County Joint Mun. Water & Sewer Comm'n*, 373 S.C. 96, 644 S.E.2d 681 (2007). The circuit court had inherent authority to stay the arbitration demand under South Carolina common law, not solely the South Carolina Uniform Arbitration Act. Again, nowhere in the circuit court's Order or Reconsideration Order did it issue a stay based on the section 15-48-20(b). Therefore, section 15-48-200(a)(1) of the South Carolina Uniform Arbitration Act has no application here. Rather, the common law that stay orders are not immediately appealable does apply.

II. The Order Does Not Deny Appellant's Motion to Compel Arbitration.

Julia summarily concludes that because the circuit court granted the motion to stay, the circuit court *ipso facto* denied her motion to compel arbitration. This is not true. It still exists. Or as noted by the *Edwards* court, Julia is free to move the circuit court for a lift of stay if the probate appeal is taking too long. *Edwards v. SunCom*, 369 S.C. 91, 95 n.4, 631 S.E.2d 529, 531 n.4 (2006). Similarly, Julia can pursue her motion to compel arbitration if the probate appeal drags along. It is faulty logic to conclude that because one motion was granted, the other was denied. Julia could have always sought clarification on the impact of one motion on the other, but she did not. This issue was never before the circuit court as noted by the circuit court, itself, when it held

"[t]he arguments made in Respondent's Motion are not convincing and are not new." (Reconsideration Order at 1.) Julia could have always sought clarification, but she did not.

CONCLUSION

For the reasons set forth in the motion to dismiss appeal and those set forth above, Respondents respectfully request that this appeal be dismissed.

SOWELL & DURANT, LLC

s/Bess J. DuRant

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v.

Julia B. Brooker,…… Appellant

CERTIFICATE OF SERVICE

I certify that I have caused the service of the Reply to Return of Appellant to Respondents' Motion to Dismiss Appeal by emailing and by depositing a copy of it in the United States Mail, postage prepaid, on January 19, 2021, to the addresses listed below:

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SOWELL + DuRANT

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VIA EMAIL AND U.S. MAIL

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Beacham O. Brooker, Jr., Ellen B. Corontzes; and BBB&C Family, LLC v. Julia B. Brooker
Appellate Case No. 2020-001159

Dear Ms. Kitchings:

Enclosed for filing is the Reply to the Return of Appellant to Respondents' Motion to Dismiss Appeal.

Please let me know if you have any questions. Thank you for your assistance.

Very truly yours,

Bess J. DuRant

BJD:aak

Enclosures

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