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SC Court of Appeals

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

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

Respondents,

v.

Julia B. Brooker,

Appellant.

RETURN OF APPELLANT TO RESPONDENTS' MOTION TO DISMISS APPEAL

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INTRODUCTION

In their motion, Respondents argue that Edwards v. SunCom, 369 S.C. 91, 631 S.E.2d 529 (2006) requires dismissal of this appeal. Their argument lacks merit. Edwards and its progeny only address situations where the trial court stays a civil proceeding actually before it, not the situation here, where Respondents initiated a civil proceeding pursuant to § 15-48-20 of the South Carolina Uniform Arbitration Act (the “Act”) to stay an arbitration proceeding. Moreover, as explained by Edwards, the general rule that a stay is not immediately appealable only applies “[a]bsent some specialized statute.” Edwards, 369 S.C. at 93, 631 S.E.2d at 530. Here, there is such a specialized statute, and it provides for an immediate appeal of the order at issue. Pursuant to § 15-48-200(a) of the Act, “[a]n appeal may be taken from . . . [a]n order denying an application to compel arbitration made under § 15-48-20” or “[a]n order granting an application to stay arbitration made under § 15-48-20(b).” S.C. Code Ann. 15-48-200(a)(1)-(2).

Pending before the circuit court and resolved by its order were cross motions to stay arbitration and to compel arbitration under § 15-48-20 of the Act. By entering an order staying the arbitration proceeding, the circuit court necessarily granted Respondents’ motion to stay the arbitration proceeding pursuant to § 15-48-20(b). Thereby, it also denied Appellant’s motion to compel arbitration pursuant to § 15-48-20(a). The circuit court simply had no other authority, no jurisdiction whatsoever, outside of the Act’s § 15-48-20 to enter the order at issue in this appeal. Therefore, that order is immediately appealable pursuant to § 15-48-200(a) of the Act, and Respondents’ motion should be denied.

FACTUAL AND PROCEDURAL BACKGROUND

This matter relates to a March 17, 2020 arbitration demand by Appellant against Respondents. (See Ex. C to Resp’ts’ Mot. to Dismiss Appeal (“Resp’ts’ Mot.”), Arbitration Demand, Mar. 17, 2020 (hereinafter, the “Arbitration Demand”).) That Arbitration Demand seeks

the dissolution of a family limited liability company called BBB&C Family LLC and an accounting. (Arbitration Demand 11-15.) It also asserts breach of fiduciary duty claims against Respondents under the South Carolina Uniform Limited Liability Company Act of 1996. (Id. at 15-16.)

Appellant Julia B. Brooker and Respondents Beacham O. Brooker, Jr. and Ellen B. Corontzes executed the Operating Agreement of BBB&C Family LLC on January 31, 2014. (Arbitration Demand Ex. 1 (Operating Agreement, LLC of BBB&C Family LLC, Jan. 31, 2014) (hereinafter, the “Operating Agreement”).) Section 11.01 of the Operating Agreement provides as follows:

Section 11.01. **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 under this Section 11.01 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).

Counsel for Respondents accepted service of Appellant’s Arbitration Demand on Respondents’ behalf on April 7, 2020. Rather than following the procedures set forth in Section 11.01 of the Operating Agreement, Respondents initiated this proceeding by filing their Petition and Motion to Stay the arbitration proceeding pursuant to § 15-48-20 of the Act. (See Ex. D to

Resp'ts' Mot., Pet & Mot. to Stay, Apr. 21, 2020 (hereinafter, the "Original Petition and Motion to Stay").)

In their Original Petition and Motion to Stay, 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 arbitration proceeding should be stayed pursuant to § 15-48-20 of the Act until the resolution of an entirely separate probate dispute between the parties over the interpretation of a trust agreement. (Original Petition and Motion to Stay 1 (explaining that Respondents "hereby petition and move this Court, pursuant to S.C. Code Ann § 15-48-20, for a stay of the arbitration demand").) 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. (See Ex. E to Resp'ts' Mot., Mot. to Dismiss and Mot. to Compel Arbitration, Apr. 24, 2020.)

Respondents then filed their April 29, 2020 Petition and Amended Motion to Stay (see Ex. F to Resp'ts' Mot., Pet. & Am. Mot. to Stay (hereinafter, the "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 (see Ex. G to Resp'ts' Mot, Mem. in Supp., Apr. 29, 2020). With their April 29, 2020 submission, Respondents again petitioned and moved the circuit court for a stay of the arbitration proceeding pursuant to § 15-48-20 of the Act. (Petition and Amended Motion to Stay 1 (explaining that Respondents "petition and move this Court, pursuant to S.C. Code Ann. § 15-48-20 and the South Carolina Uniform Arbitration Act, in toto, for a stay of the arbitration demand").)

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. (Ex. H to Resp'ts' Mot., Renewed Mot. to Dismiss Pet. & Am. Mot. to Stay, Mot. to Compel Arbitration, & Mot. for an Award of Att'y's Fees & Expenses, May 1, 2020 (hereinafter, the "Renewed Motion to Compel Arbitration").) In her Renewed Motion to Compel Arbitration, Appellant "move[d] the Court, pursuant to Section 15-48-20(a) of the Act . . . for an order compelling the arbitration of claims asserted in [Appellant's] arbitration demand." (Id. at 2.)

The circuit court held a hearing on these competing motions to stay and compel arbitration on June 24, 2020. At the hearing, counsel for Appellant and the circuit court had this exchange:

MR. GRIFFIN: And so what's before the Court today is the defendant's motion to stay the arbitration and our motion to dismiss the case and compel the defendants to arbitrate. So they are cross-motions pending, Your Honor.

THE COURT: That's fine. That's fine. Who wants to go first? . . .

(Mot. Hr'g Tr. 5:11-16, June 24, 2020 (attached hereto as **Exhibit 1**.)

Pursuant to the circuit court's request, the parties submitted proposed orders on June 30, 2020. (Resp'ts' Proposed Order Granting Mot. to Stay, June 30, 2020 (attached hereto as **Exhibit 2**); Appellant's [Proposed] Order, June 30, 2020 (attached hereto as **Exhibit 3**.) On July 17, 2020, the circuit court signed and entered Respondents' proposed order granting Respondents' motion to stay the arbitration proceeding without alteration, potentially delaying for years that arbitration proceeding and the availability of the relief it seeks. (See Ex. I to Resp'ts' Mot., Order Granting Pet'rs' Mot. to Stay, July 17, 2020 (hereinafter, the "Order").)

In its Order, the circuit court explained that "[t]his matter came before the Court on cross motions of the parties." It further explained that "[b]oth parties rely on S.C. Code § 15-48-20(b)." (Order 3.) The circuit court then stated that "[w]hat 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.” (Id.) It ultimately concluded that “[b]ased on the record before the Court, a stay under these circumstances is warranted.” (Id.) Therefore, the circuit court granted “the Petition to Stay and order[ed] that the arbitration demand be stayed.” (Order 3.)

On July 27, 2020, Appellant filed her Motion to Alter or Amend the Court’s Order Granting Petitioners’ Motion to Stay, pursuant to Rules 52(b) and 59(a), SCRCP. (See Ex. J to Resp’ts’ Mot., 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. Kelly of Sowell & Durant to Judge Manning (enclosing proposed order), Aug. 21, 2020 (attached hereto as **Exhibit 4**)) The circuit court signed and entered that proposed order without alteration on August 24, 2020. (See Ex. K to Resp’ts’ Mot, 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. On November 16, 2020, Appellant filed her Initial Brief, Designation of Matter for Record on Appeal, and Motion for Expedited Appeal. On December 4, 2020, Respondents filed a Motion for Extension of Time to file their initial brief, and the Court granted Respondents’ Motion on December 7, 2020. On December 31, 2020, Respondents filed their Motion to Dismiss Appeal and Memorandum in Support that is currently before the Court.

ARGUMENT

Respondents incorrectly argue that Edwards v. SunCom, 369 S.C. 91, 631 S.E.2d 529 (2006) and its progeny stand for the proposition that a stay is not immediately appealable. (See Resp’ts’ Mot. 1, 5-6.) Respondents’ reliance on Edwards is misplaced. First, Edwards and the other cases relied upon by Respondents all deal with situations where a trial court stays a case that is

actually pending before it. None of them deal with a situation such as here, where the circuit court has stayed an arbitration proceeding not pending before it pursuant to the Act. Second, as Edwards explains, the general proposition that a stay is not appealable only applies “[a]bsent some specialized statute.”

Here, a specialized statute—the Act—governs the appealability of the parties’ cross motions to stay and to compel arbitration resolved by the circuit court’s Order. Specifically, § 15-48-200(a) of the Act provides that “[a]n appeal may be taken from: (1) [a]n order denying an application to compel arbitration made under § 15-48-20 [or] (2) [a]n order granting an application to stay arbitration made under § 15-48-20(b).” S.C. Code Ann. § 15-48-200(a)(1)-(2). The circuit court’s Order did both. It granted Respondents’ application to stay arbitration made under § 15-48-20(b), and in so doing, it denied Appellant’s application to compel arbitration made under § 15-48-20(a). Accordingly, the Order is immediately appealable under the Act.

I. The Order “grant[ed] an application to stay arbitration made under § 15-48-20(b),” triggering Appellant’s right to immediate appeal under § 15-48-200(a)(2).

The circuit court granted an application to stay arbitration made under § 15-48-20(b) because that is what Respondents expressly requested in their Petition and Amended Motion to Stay. Respondents petitioned and moved the circuit court “pursuant to S.C. Code Ann. § 15-48-20 and the South Carolina Uniform Arbitration Act, in toto, for a stay of the arbitration demand.” (Petition and Amended Motion to Stay 1.) Subsection (b) of § 15-48-20 is the only provision of the Act that provides for the stay of an arbitration proceeding, and the circuit court granted that Petition and Amended Motion to Stay (see Order 3 (stating that “the court grants the Petition for Stay and orders that the arbitration demand be stayed.”)). Accordingly, the Order granted an application to stay arbitration made under § 15-48-20(b).

A. No provision of the Act other than § 15-48-20(b) possibly authorized the stay of the arbitration proceeding.

As argued in more detail in Appellant’s opening brief (at pages 8-10), no provision of the Act other than § 15-48-20(b) could possibly be interpreted as authorizing a stay of the arbitration proceeding at issue. In their briefing below in support of their Petition and Amended Motion to Stay, Respondents argued that § 15-48-20(d) and § 15-48-170 of the Act somehow gave the circuit court authority to stay the arbitration proceeding. (See Ex. G to Resp’ts’ Mot, Mem. in Supp. 5, Apr. 29, 2020.) These arguments lack merit and were not even addressed, much less relied upon, by the circuit court’s Order.

Without explanation, Respondents suggested below that § 15-48-20(d) of the Act somehow provided for a stay of the arbitration proceeding. (See id.) However, this provision merely addresses what happens in a pending civil action when a motion to compel arbitration is filed. See S.C. Code Ann. § 15-48-20(d). Such action is stayed pending the resolution of the motion to compel arbitration under § 15-48-20(d). Id. It is clearly inapplicable in this case because Respondents were not making an application for an order for arbitration. See id. Instead, they were making a motion to stay an arbitration proceeding. Accordingly, § 15-48-20(d) of the Act does not provide for the circuit court’s stay of the arbitration proceeding. Id.

Likewise without explanation, Respondents quoted the language of § 15-48-170 in stating below that they were “relying” on this provision to stay the arbitration. (See Ex. G to Resp’ts’ Mot, Mem. in Supp. 5, Apr. 29, 2020.) This section of the Act similarly provides no basis to support a stay of the arbitration proceeding. It does not even contain the word “stay,” much less provide a basis to change the clear meaning of the provisions—in § 15-48-20(a)-(b)—actually dealing with a motion to compel or stay arbitration. By any reading of this provision, it simply provides that a motion suffices for an “application” under the Act (dispensing with the need for a petition or

complaint) and should be heard as a motion (rather than by trial) but that the same should be served like a summons, instead of like a motion. See S.C. Code Ann. § 15-48-170.

Importantly, the circuit court referenced no provision of the Act other than § 15-48-20(b) in discussing its authority to issue a stay of the arbitration proceeding. (See Order 3.) Notwithstanding Respondents' spurious arguments below about the applicability of § 15-48-20(d) and § 15-48-170, the circuit court's Order only addressed the meaning of § 15-48-20(b). (Id.) Accordingly, these provisions provided no basis for the circuit court's Order, much less can change the fact now that the Order "grant[ed] an application to stay arbitration made under § 15-48-20(b)." S.C. Code Ann. § 15-48-200(a)(2).

B. The circuit court lacked authority to stay the arbitration proceeding except through § 15-48-20(b) of the Act.

The circuit court had no authority over the arbitration proceeding to stay it other than through § 15-48-20(b) of the Act. That provision provided the only means through which the circuit court could possibly exercise any jurisdiction over the arbitration proceeding by virtue of the Petition and Amended Motion to Stay. The only proceeding pending before the circuit court was this proceeding initiated pursuant to § 15-48-20(b) by Respondents' Petition and Amended Motion to Stay. The arbitration proceeding was not pending before the circuit court like a typical civil case subject to the circuit court's jurisdiction and the South Carolina Rules of Civil Procedure. Thus, the circuit court's reliance on Rule 1, SCRCF, is misplaced and can provide no basis for staying the arbitration proceeding. (See Order 2-3.)

Absent the statutory provision in § 15-48-20(b), the circuit court had no jurisdiction—no power whatsoever—to stay a proceeding that was not pending before it. The only other potential way that the circuit court could have effectively "stayed" the arbitration proceeding would have been by enjoining the parties or the panel of arbitrators from engaging in that proceeding. The

Respondents did not seek such relief, and accordingly, the circuit court never considered it. As shown by its Order, the circuit court did not undertake the analysis and make the findings required to sustain such a preliminary injunction against the necessary parties. Therefore, by staying the arbitration proceeding, the Order granted an application to stay arbitration made under § 15-48-20(b) of the Act.

II. The Order denied Appellant’s “application to compel arbitration made under § 15-48-20,” triggering Appellant’s right to immediate appeal under § 15-48-200(a)(1).

When the circuit court entered its Order, Appellant’s Renewed Motion to Compel Arbitration was before the circuit court. (Order 1 (explaining that [t]his matter came before the Court on cross motions of the parties” and that “[a]fter consideration of the memoranda submitted by the parties in advance of the hearing and the arguments of counsel, the Court hereby grants the [Respondents’] Motion to Stay”); Mot. Hr’g Tr. 5:11-16 (noting that the motion to compel arbitration was before the circuit court).) In her Renewed Motion to Compel Arbitration, Appellant moved the circuit court, pursuant to § 15-48-20(a), for an order compelling the arbitration of claims asserted in her arbitration demand. (Renewed Motion to Compel Arbitration 2.) By granting Respondents’ Petition and Amended Motion to Stay Appellant’s arbitration proceeding, the circuit court necessarily denied Appellant’s application to compel arbitration under § 15-48-20(a). That arbitration proceeding is not moving forward as a result of the circuit court’s Order and is instead expressly stayed by it, potentially for years. (Order 3 (stating that “the court grants the Petition for Stay and orders that the arbitration demand be stayed pending the disposition of the probate appeal.”).) Therefore, § 15-48-200(a)(1) of the Act provides additional grounds for an immediate appeal of the circuit court’s Order.

CONCLUSION

For the reasons stated, Appellant has the right to immediately appeal the circuit court's Order pursuant to § 15-48-200(a) of the Act. Accordingly, Appellant respectfully requests that this Court deny Respondents' Motion to Dismiss Appeal in its entirety.

Respectfully submitted,

January 11, 2021

s/Badge Humphries

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THE STATE OF SOUTH CAROLINA
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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

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

Respondents,

v.

Julia B. Brooker,

Appellant.

**EXHIBIT 1 TO APPELLANT'S RETURN TO RESPONDENTS'
MOTION TO DISMISS APPEAL**

Motion Hearing Transcript, June 24, 2020

State of South Carolina
County of Richland

Court of Common Pleas

Beacham O. Brooker, Jr.;)
Ellen B. Corontzes;)
and BBB&C Family, LLC,)
)
Petitioners,)
v.)
)
Julia B. Brooker,)
)
Defendant.)

Transcript of Record
2020-CP-40-02040

June 24, 2020
Columbia, South Carolina
(Via remote platform)

B E F O R E:

The Honorable Casey L. Manning, Judge.

A P P E A R A N C E S:

Thornwell F. Sowell, Esquire
Bess J. DuRant, Esquire
Attorneys for the Petitioners
Beacham O. Brooker, Jr. and
Ellen B. Corontzes

Gray T. Culbreath, Esquire
Attorney for the Petitioner BBB&C Family, LLC

James M. Griffin, Esquire
Attorney for Respondent Julia B. Brooker

Bethanie K. Creppon
Circuit Court Reporter

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NO.

DESCRIPTION

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EVD.

(No Exhibits.)

P R O C E E D I N G S

* * *

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3 THE COURT: All right. The first case this
4 afternoon is number 8. Let's see. Tim Griffin and
5 Gray Culbreath. I saw -- are y'all both ready.

6 MR. GRIFFIN: Yes, Your Honor.

7 THE COURT: All right. This is -- how come I
8 have all these family court cases this week?

9 Brooker vs. Brooker; is that right? This must
10 be a breach of contract, father -- and the motion,
11 it seems strange: Renewal of Motion to Dismiss
12 Petition and Amend Motion to Stay.

13 Is this your motion, Mr. Griffin?

14 MR. GRIFFIN: Well, they're competing motions,
15 Your Honor. This is a dispute over a family limited
16 partnership. We represent one of the members and
17 we're trying to dissolve it. We filed a demand in
18 arbitration and arbitration agreement.

19 THE COURT: Mute your microphone, if you're not
20 saying anything, because it causes static. All
21 right?

22 MR. GRIFFIN: Your Honor, we filed an
23 arbitration provision in the operating agreement.
24 The defendant, the Family partnership, LLC, and
25 the other --

1 THE COURT: Are these brothers? Father and
2 son? Who is it? Tell me.

3 MR. GRIFFIN: They're brother and sister.

4 THE COURT: Okay. All right.

5 MR. GRIFFIN: So the brother and sister that we
6 sued, they filed an action, declaratory judgment, in
7 circuit court, requesting that the arbitration be
8 stayed, pending resolution of an appeal from Judge
9 Amy McCulloch's decision in a related trust dispute.

10 THE COURT: Okay.

11 MR. GRIFFIN: And so what's before the Court
12 today is the defendant's motion to stay the
13 arbitration and our motion to dismiss the case and
14 compel the defendants to arbitrate. So they are
15 cross-motions pending, Your Honor.

16 THE COURT: That's fine. That's fine. Who
17 wants to go first? Mr. Griffin, since you're
18 talking, I don't think Gray minds.

19 You mind if he goes first?

20 MR. CULBREATH: No, Your Honor. I'll have
21 plenty to say once he finishes.

22 THE COURT: Okay. Okay.

23 Go ahead, Mr. Griffin.

24 MR. GRIFFIN: Thank you, Your Honor. So what's
25 important to know is there is no dispute that there

1 is a binding arbitration agreement here, and that
2 the only question is, when will this case be
3 arbitrated?

4 The defendants have come to the Court by filing
5 a petition, purportedly under the South Carolina
6 Uniform Arbitration Act, saying that that act gives
7 the Court authority to stay the arbitration. And
8 the reason they ask for it to stay is they want it
9 stayed, pending a resolution of their appeal from
10 Judge Amy McCulloch's decision involving a separate
11 agreement, a trust agreement, that their mother set
12 up.

13 THE COURT: Okay.

14 MR. GRIFFIN: We say that the Arbitration Act
15 requires that this matter be arbitrated; that under
16 the provisions that we cite, 15-48-28, once the
17 Court determines or once there's been a finding
18 there is a binding arbitration agreement, then the
19 Court orders arbitration.

20 This stay issue that they're suggesting, that
21 decision should be made by the arbitrators; and that
22 arbitrators, under the agreement, have the right to
23 make such a stay order. And they can certainly
24 petition the arbitrator. But they don't get to stay
25 the whole arbitration.

1 They cited to the Court Section 15-28-40(b),
2 which basically says that the Court can stay
3 arbitration if there's a dispute as to whether there
4 is an agreement to arbitrate. Here, there's no
5 dispute about the arbitration agreement, and so,
6 therefore, that provision doesn't apply.

7 They've cited another provision that says when
8 a case is pending in civil court -- circuit court,
9 and someone raises the question of whether it should
10 be arbitrated, that the case in circuit court is
11 stayed, pending a resolution of the arbitration
12 decision. Again, that's the total opposite of what
13 we have.

14 Your Honor, it is very straightforward. It
15 is -- we're asking that the Court order them to
16 arbitrate, as required under the South Carolina
17 Arbitration Act. Their request for a stay is just a
18 delay tactic. The outcome of the appeal from Judge
19 McCulloch's decision will not impact the -- it is
20 not determinative of our arbitration proceeding.

21 Our arbitration proceeding seeks to dissolve a
22 Family limited partnership or LLC. We have multiple
23 reasons for requesting the dissolution. The
24 economic purpose of the company is being frustrated.
25 There's other activities going on and there's -- the

1 majority members are unlawfully and oppressing our
2 client who is a minority interest owner. And so
3 there's some oppression.

4 And we use, in our pleading and our arbitration
5 demand, an example; one reason that -- example of
6 oppression is the fact that Ms. -- in this trust
7 agreement where these three siblings are
8 beneficiaries of the trust. Our client, Judge
9 McCulloch determined, was due \$1.4 million.

10 Before she hired me, the oppressor is what
11 we -- the brother and sister offer her \$300,000;
12 once I got hired, they offered her \$500,000; after
13 Judge McCulloch's order, they paid her \$735,000.
14 And so it doesn't really matter what the ultimate
15 decision on appeal will be; it is we have a track
16 record of oppression, that she had to hire a lawyer
17 to get what now they say she's entitled to,
18 \$735,000. And that was just one example of
19 oppressive conduct. They're wanting to bootstrap
20 that to stop the whole arbitration.

21 And, Your Honor, if you were to stay the
22 arbitration and we prevail on appeal with Judge
23 McCulloch -- which the appeal is pending in circuit
24 court -- then they have an opportunity to appeal to
25 the Supreme Court, this thing would stay for years.

1 It would stay for years. And they would continue to
2 oppress our client, misuse the assets that are in
3 the Family limited partnership. And there's no
4 legal basis whatsoever. Any stay request can be
5 made to the arbitrators. And that's our request, is
6 that you dismiss their petition and order them to
7 arbitrate.

8 THE COURT: Thank you, Mr. Griffin.

9 Mr. Culbreath?

10 MR. CULBREATH: Yes, Your Honor. I represent
11 the Family, LLC. Biff Sowell and Bess DuRant, who
12 are on as well, represent Beacham Brooker and his
13 sister Ellen Corontzes who are the defendants in
14 this matter.

15 First, the motion is really focused on the
16 arbitration demand. But I think it's important to
17 remember Rule 1 of the Rules of Civil Procedure,
18 that they should be construed to secure the just,
19 speedy, and inexpensive determination of every
20 action.

21 Now, when Mr. Griffin filed the arbitration
22 demand, he referenced that they reference one piece
23 of conduct. But my count of the 69 paragraphs of
24 the arbitration demand, ten of them specifically
25 refer to items that are either currently at issue in

1 the probate or part of the probate or the trust.

2 Throughout all the entities, the probate, the
3 trust, the LLC, there's Lockheed Martin stock that's
4 a -- all a part of it. I wasn't part of the probate
5 anyway. So moving forward for arbitration, I'm
6 going to necessarily have to take his client's
7 deposition. And to the extent that there's some
8 resolution that can be had of the probate matter
9 before that starts, it would tend to lead itself to
10 inexpensive determination. It would be appropriate
11 to do that to the appeal.

12 Now, Mr. Griffin has referenced, well, the
13 statute we rely on really doesn't say that. Well,
14 looking at 15-48-20, South Carolina, according to
15 Professor Flanagan, adopted the Uniform Arbitration
16 Act. So I didn't see much case law on stay, so I
17 went to the Uniform Arbitration Act.

18 And, in fact, the Uniform Arbitration Act
19 version of stay and what South Carolina adopted are
20 two different things. But if we think about stay in
21 the Black's Law Dictionary, which is a temporary
22 suspension, the statute in South Carolina clearly
23 contemplates a stay. And it doesn't make any sense
24 if you can only stay it if it was no agreement to
25 arbitrate, because there certainly could be other

1 reasons to do so. Like here, give it disposition of
2 the probate issue so those can be put to the side
3 and move on, if all we're asking for, consistent
4 with the language of stay, is a temporary suspension
5 until the appeal of Judge McCulloch's order is
6 heard.

7 Now, Mr. Griffin has also asked for attorney's
8 fees. And while we believe the stay, if not, the
9 issue of attorney's fees should be decided by the
10 arbitrators, once that begins. So that, in a
11 nutshell, is our argument here. Happy to answer any
12 questions that Your Honor may have.

13 THE COURT: I don't have any questions. I
14 think you gentlemen have been pretty succinct and
15 clear. But I'm not going to decide it today. Y'all
16 need five days? Send me proposed orders. I got to
17 review the file and everything to be fair to y'all.
18 Is five days soon enough?

19 MR. GRIFFIN: Yes, Your Honor.

20 MR. CULBREATH: Five days is plenty. Yes, Your
21 Honor.

22 THE COURT: Okay. Within five days, get it to
23 me. I'll read both of them and look back through
24 the file, if I need to. I'll make a decision, one
25 way or the other. I don't think anybody is going to

1 die from my decision -- well, not this decision;
2 other people have, but that was a long time ago.
3 Anyway, get the proposed orders to me. I hope
4 everybody is fine. Thank you-all.

5 -- END OF TRANSCRIPT OF RECORD --

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause held via remote platform, relative to appeal in the Circuit Court for Richland County, South Carolina, on the 24th of June, 2020.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

October 16, 2020

s/Bethanie K. CrepponBethanie K. Creppon
Circuit Court Reporter

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

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

Respondents,

v.

Julia B. Brooker,

Appellant.

**EXHIBIT 2 TO APPELLANT'S RETURN TO RESPONDENTS'
MOTION TO DISMISS APPEAL**

Respondents' Proposed Order Granting Motion to Stay, June 30, 2020

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

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**

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 SCRPC 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

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

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

Respondents,

v.

Julia B. Brooker,

Appellant.

**EXHIBIT 3 TO APPELLANT'S RETURN TO RESPONDENTS'
MOTION TO DISMISS APPEAL**

Appellant's [Proposed] Order, June 30, 2020

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

Petitioners,

v.

Julia B. Brooker,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
CASE NO. 2020-CP-40-02040

[PROPOSED] ORDER

Before the Court are competing motions concerning an arbitration proceeding between the parties: (1) Petitioners' Petition and Amended Motion to Stay the arbitration proceeding initiated by Respondent and (2) Respondent's Renewed Motion to Dismiss Petition and Amended Motion to Stay, her Motion to Compel Arbitration, and her Motion for an Award of Attorney's Fees and Expenses. Having considered the arguments and authorities cited by counsel for the parties in the briefing submitted and at a hearing on this matter on June 24, 2020, the Court hereby GRANTS Respondent's Motion to Dismiss the Petition and her Motion to Compel Arbitration for the reasons stated herein.

I. BACKGROUND

Petitioners Beacham O. Brooker, Jr. ("Beacham") and Ellen B. Corontzes ("Ellen") and Respondent Julia B. Brooker ("Julia") executed the Operating Agreement of BBB&C Family LLC (the "Operating Agreement") dated January 31, 2014. Section 11.01 of the Operating Agreement contains an arbitration provision. It 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." (Resp't's Mem. Ex. 1, Operating Agreement, § 11.01.) 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.*)

The Operating Agreement also provides, in Section 11.02, that “[i]n any controversy, claim or dispute arising out of, or relating to, this Operating Agreement or the method or manner of the performance hereof, the prevailing party shall be entitled to, in addition to any other relief, recovery of proceeding expenses.” (*Id.*, § 11.02.) That section further provides that “[i]n determining the award of proceeding expenses, attorney’s fees . . . and other reasonable expenses shall be included.” (*Id.*) In this regard, “the term ‘proceeding’ shall include . . . judicial proceedings.”

On March 17, 2020, Respondent Julia B. Brooker sent an Arbitration Demand via electronic mail to counsel for Petitioners. Respondent’s Arbitration Demand asserts claims for dissolution of BBB&C Family LLC, an accounting, and breach of fiduciary duty under S.C. Code Ann. § 33-44-409(h). (Resp’t’s Mem. Ex. 2, Arbitration Demand, ¶¶ 51-69.) It is undisputed that all of these claims arise out of and relate to the Operating Agreement. (*See id.*)

Counsel for Petitioners accepted service of Respondent’s Arbitration Demand on Petitioners’ behalf on April 7, 2020. Rather than following the procedures set forth in Section 11.01 of Operating Agreement, Petitioners filed their Petition and Motion to Stay the arbitration proceeding initiated by Respondent’s Arbitration Demand on April 21, 2020. Three days later, Respondent filed a Motion to Dismiss Petitioner’s Petition and Motion to Stay, a Motion to Compel Arbitration, and a Motion for an Award of Attorney’s Fees and Expenses.

On April 29, 2020, Petitioners filed the Petition and Amended Motion to Stay (“Pet. and Am. Mot. to Stay”) presently before the Court as well as a 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'rs' Mem."). Two days later, on May 1, 2020, Respondent filed her motions that are presently before the Court—her Renewed Motion to Dismiss Petitioner's Petition and Motion to Stay, her Motion to Compel Arbitration, and her Motion for Attorney's Fees and Expenses—as well as a supporting memorandum of law ("Resp't's Mem."). On June 24, 2020, the Court heard arguments of counsel at a hearing on the pending motions.

II. ANALYSIS

A. **Petitioners' Petition and Amended Motion to Stay should be dismissed under Rule 12(b)(6) because it fails to state any basis justifying a stay.**

Petitioners purport to base their Petition and Amended Motion to Stay on "S.C. Code § 15-48-20 and the South Carolina Uniform Arbitration Act, *in toto*." The Court finds that their reliance is misplaced. (*See* Pet. and Am. Mot. to Stay 1.)

Section 15-48-20(b) provides the sole basis for staying this arbitration proceeding under the South Carolina Uniform Arbitration Act (the "Act"), and it only affords such relief upon "a showing that there is no agreement to arbitrate." S.C. Code Ann. § 15-48-20(b). Here, Petitioners concede that there is an agreement to arbitrate and even file a copy of the Operating Agreement containing the same. (*See* Pet. and Am. Mot. to Stay Ex. 1, Ex. A.)

Instead of pleading the sole basis for staying an arbitration proceeding under Section 15-48-20(b), Petitioners state that their "motion is made on the ground that the determination of the appeal in 2019-CP-40-03582 may have a material effect on this proceeding." (Pet. and Am. Mot. to Stay 1.) They plead for relief based vaguely on a holistic reading of the Act "*in toto*" without pointing to any particular provision or even multiple sections supporting a stay. In so doing, they ignore the most relevant sections, Section 15-48-20(a)-(b). Section 15-48-20(b) provides no basis for staying the arbitration.

Petitioners claim that they “are not relying *solely* on section 15-48-20(b)” of the Act, but they fail to explain how they could be relying on Section 15-48-20(b) at all. (Pet’rs’ Mem. 5 (emphasis added).) By any reading of its terms, Section 15-48-20(b) provides no basis on which Petitioners can request a stay of Respondent’s arbitration proceeding. S.C. Code Ann. § 15-48-20(b). By its plain language, Section 15-48-20(b) only provides a basis for staying an arbitration upon “a showing that there is no agreement to arbitrate.” *Id.* Petitioners concede the existence of an agreement to arbitrate, so Section 15-48-20(b) provides no relief.

If the Court had any doubt as to the meaning of the of Section 15-48-20(b), reading the Act “*in toto*” as Petitioners suggest makes its import even clearer.

First, Section 15-48-10 of the Act explains what is required for a valid “agreement to arbitrate,” stating as follows:

A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, *save upon such grounds as exist at law or in equity for the revocation of any contract*. Notice that a contract is subject to arbitration pursuant to this chapter shall be typed in underlined capital letters, or rubber-stamped prominently, on the first page of the contract and unless such notice is displayed thereon the contract shall not be subject to arbitration.

S.C. Code Ann. § 15-48-10 (emphasis added). Petitioners do not claim that there are any grounds “at law or in equity for the revocation” of the Operating Agreement. Accordingly, the Operating Agreement’s arbitration clause is indisputably valid, enforceable and irrevocable under Section 15-48-10 of the Act. *Id.*

Next, Section 15-48-20(a) provides that a court shall compel the parties to arbitrate where there is a valid arbitration agreement and a refusal by a party to arbitrate. The full text of Section 15-48-20(a) provides as follows:

On application of a party showing an agreement described in Section 15-48-10, and the opposing party’s refusal to arbitrate, *the court shall order the parties to proceed*

with arbitration, but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue so raised and shall order arbitration if found for the moving party, otherwise, the application shall be denied.

S.C. Code Ann. § 15-48-20(a) (emphasis added). Petitioners are not denying “the existence of the agreement to arbitrate,” so Section 15-48-20(a) entitles Respondent to an order compelling Petitioners to proceed with arbitration of the Arbitration Demand. *Id.*

Then, the language of Section 15-48-20(b) shows that Petitioners argument is ultimately baseless, if they are purporting to rely on this provision at all:

On application, the court may stay an arbitration proceeding commenced or threatened **on a showing that there is no agreement to arbitrate. Such an issue, when in substantial and bona fide dispute, shall be forthwith and summarily tried** and the stay ordered if found for the moving party. **If found for the opposing party, the court shall order the parties to proceed to arbitration.**

S.C. Code Ann. § 15-48-20(b) (emphasis added). Petitioners have conceded the existence of a valid and enforceable agreement to arbitrate. Therefore, Section 15-48-20(b) provides no basis for a stay of the arbitration proceeding.

1. Section 15-48-20(d) provides no basis for staying the arbitration.

Petitioners next suggest that Section 15-48-20(d) somehow provides for a stay of the arbitration proceeding. (Pet’rs’ Mem. 5.) Again, Petitioners do so without any explanation. Instead, they merely quote the language from this provision, which reads as follows:

Any action or proceeding involving an issue subject to arbitration shall be stayed **if an order for arbitration or an application therefor has been made under this section** or, if the issue is severable, the stay may be with respect thereto only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.

S.C. Code Ann. § 15-48-20(d) (emphasis added).

This provision addresses what happens in a pending civil action or court proceeding when a motion to compel arbitration is filed. *See id.* Such case is stayed pending the resolution of the

motion to compel arbitration under Section 14-48-20(d). *Id.* It is clearly inapplicable in this case because Petitioners are not making an application for an order for arbitration. *See id.* Instead, they are making a motion to stay a properly initiated arbitration. Accordingly, Section 14-48-20(d) clearly has no applicability, particularly when properly construed within the Act's statutory context.

2. Section 15-48-170 provides no basis for staying the arbitration.

Finally, Petitioners quote the language of Section 15-48-170 and state that they are “relying” on this provision to stay the arbitration as well. (Pet’rs’ Mem. 5.) Like before, Petitioners simply say so without explanation. This provision of the Act does not even contain the word “stay,” much less provide a basis to change the clear meaning of the provisions—in Section 15-48-20—actually dealing with a motion to compel or stay arbitration. Instead, it reads as follows:

Except as otherwise provided, an application to the court under this chapter shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action.

S.C. Code Ann. § 15-48-20(d).

By any reading of this provision, it provides that a motion suffices for an “application” under the Act (dispensing with the need for a petition or complaint) and should be heard as a motion (rather than by trial) but that the same should be served like a summons, instead of like a motion. That is all Section 15-14-170 says, and it does not support Petitioners’ Petition and Amended Motion for Stay.

3. The appeal of the probate matter involves the interpretation of a 2007 trust and has nothing to do with the Operating Agreement.

The Court finds that the claims asserted in the Arbitration Demand are distinct from those at issue in the appeal of the probate matter. The Court further finds that the resolution of that appeal will have little to no bearing on the Arbitration Demand and will certainly not “streamline the present arbitration,” as Petitioners suggest, again without any explanation. (Pet’rs’ Mem. 4.)

Respondent maintains that the appeal of the probate matter deals exclusively with the interpretation of a trust, not the Operating Agreement, and the Court agrees. As the second sentence of the June 20, 2019 Order Calculating Equalization Distribution of Lifetime Gifts explains, the probate matter concerns Respondent’s petition “to determine the intent of Janet B. Brooker . . . in the equalization clause of the Janet B. Brooker Trust and Decedent’s meaning of the words lifetime gifts, as it is used within the Decedent’s Trust document.” (Pet’rs’ Mem. Ex. B, at 1 (Order Calculating Equalization Distribution of Lifetime Gifts, June 20, 2019).) The Court finds that the appeal of that probate matter has little if anything to do with BBB&C Family LLC or the Operating Agreement.

The Arbitration Demand seeks a judicial decree dissolving the BBB&C Family LLC on multiple grounds under Section 33-44-801(4) of the South Carolina Uniform Limited Liability Company Act of 1996. In her Arbitration Demand, Respondent has asserted four grounds for dissolution:

- (a) the economic purpose of the company is likely to be unreasonably frustrated;
- (b) another member has engaged in conduct relating to the company’s business that makes it not reasonably practicable to carry on the company’s business with that member;
- (c) it is not otherwise reasonably practicable to carry on the company’s business in conformity with the articles of organization and the operating agreement;

* * *

(e) the managers or members in control of the company have acted, are acting, or will act in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial to the petitioner

(Resp't's Mem. Ex. 2, ¶ 53; *see id.*, ¶¶ 53-62); *see also* S.C. Code Ann. § 33-44-801(4). It is undisputed that none of these statutory grounds for dissolution are at issue in the appeal. Additionally, it appears that the appeal's ultimate determination will have no bearing on these asserted bases for dissolving BBB&C Family LLC.

Respondent explains that “the reason the probate matter is discussed at all in Respondent’s Arbitration Demand is because it shows, along with other things, the last of these four grounds for dissolving BBB&C Family LLC—how Petitioners ‘have acted, are acting, or will act in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial’” to Respondent. (Resp't's Mem. 7; Resp't's Mem. Ex. 2, ¶¶ 53-62.) As explained by Respondent as to this particular basis for dissolution, the conduct of Petitioners Beacham and Ellen in connection with the probate matter is just one of six supporting reasons:

- a. For nearly as long as the Company has existed, the relationship between Julia and her siblings has been marked by severe distrust and animosity;
- b. ***Beacham and Ellen have a history of attempting to short Julia what she is entitled from Mother’s estate, as shown by the results of the litigation over Mother’s Trust, which result Beacham and Ellen are now appealing;***
- c. There has been an ongoing lack of transparency shown by Beacham and Ellen to Julia as demonstrated by their destruction of documents pertaining to Mother’s finances, which could have shed light on inconsistencies in the numbers of shares of Martin Marietta and Lockheed Martin common stock owned by Father and Mother;
- d. Contrary to the terms of the Operating Agreement, Beacham and Ellen have diverted distributions owed to Julia to an account maintained by Beacham and Ellen without Julia’s consent; . . .
- e. Beacham and Ellen have ignored Julia’s request for additional information about these deposits of funds and the Company in general; [and]

f. Beacham has failed to observe corporate formalities with regard to the real estate limited liability companies, namely 636 Harden LLC and 640 Harden LLC, and as a result is potentially exposing the assets of BBB&C in the event that a judgment is obtained against one or both real estate limited liability companies.

(Resp't's Mem. 7-8; Resp't's Mem. Ex. 2, ¶ 60 (emphasis added).)

According to Respondent, "the ultimate result of the appeal is immaterial because its only relevance to the Arbitration Demand is in showing a pattern and practice by Beacham and Ellen of attempting to cheat Julia at every turn." (Resp't's Mem. 8.) The Court agrees. Accordingly, the Court disagrees with Petitioners that "once the probate court litigation ends, it will streamline the present arbitration and preserve the resources not only of the parties, but of the judicial system." (Pet'rs' Mem. 4.) The Court finds that the arbitration proceeding will not be streamlined by the resolution of the appeal, much less resolved through it. Therefore, it does not appear that a stay of the arbitration proceeding will preserve the parties' resources or those of the judicial system. However, more importantly, that determination should be left to the actual arbitrators to decide as discussed below.

4. Petitioners provide no valid reason why the duly appointed arbitrators should not decide whether to stay the arbitration rather than this Court.

Petitioners' purported justification for a stay fails to explain why the duly selected arbitrators cannot consider their Petition and Motion to Stay on the grounds asserted. In this case, the scope of the arbitration provision is very broad, covering "[a]ny dispute or controversy between the parties hereto arising out of, under, or in connection with, or in relation to, th[e] Operating Agreement," as well as "[a]ny dispute as to whether a controversy or claim is subject to arbitration." Resp't's Mem. Ex. 1, § 11.01. Moreover, Petitioners offered no response to Respondent's argument in this regard. Accordingly, because Petitioners can submit the same

arguments made to this Court to the duly selected arbitrators, their Petition before this Court should be dismissed, and their Motion to Stay should be denied.

B. Respondent's motion to compel arbitration should be granted because Petitioners concede the existence of the Operating Agreement, which contains an arbitration provision in Section 11.01, and because they have refused to arbitrate.

Nowhere in Petitioners' submissions is there any basis to dispute the facts relevant to granting Respondent's motion to compel arbitration: (1) the existence of an arbitration agreement between the parties and (2) a refusal by Petitioners to arbitrate. Pursuant to Section 15-48-20(a) of the Act, that's all that's required for an order compelling arbitration: "[o]n application of a party showing an agreement described in § 15-48-10, and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration." S.C. Code Ann. § 15-48-20(b).

The Operating Agreement indisputably fits the description of an arbitration agreement as defined by Section 15-48-10. *See* S.C. Code Ann. § 15-48-10(a). On its first page, the Operating Agreement contains the notice required by Section 15-48-10(A) in underlined capital letters. (See Resp't's Mem. Ex. 1, at 1.) Then, Section 11.01 of the Operating Agreement requires the parties to submit any dispute or controversy to binding arbitration, providing as follows:

Section 11.01 Arbitration. 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 South Carolina Uniform Arbitration Act, "SCUAA"). . . . 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 SCUAA, 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. . . .

(Resp't's Mem. Ex. 1, § 11.01.)

Counsel for Petitioners accepted service of Respondent's Arbitration Demand on April 7, 2020, (*see* Resp't's Mem. Ex. 3) and Petitioners' filing of their Petition and Motion to Stay

evidences their refusal to arbitrate (*see* Resp't's Mem. Ex. 4). By failing to challenge the existence of an agreement to arbitrate and even submitting a copy of the same with their Petition and Motion to Stay, Petitioners concede that there is no dispute as to the existence of an agreement to arbitrate between the parties. Therefore, because Petitioners do not dispute the existence of an agreement to arbitrate and have refused to arbitrate, Respondent is entitled to an order compelling the parties to proceed to arbitration. *See* S.C. Code Ann. § 15-48-20(a).

C. Respondent should submit her request for an award of attorneys' fees and expenses as the prevailing party of this judicial proceeding pursuant to Rule 54, SCRCP, to this Court or the duly appointed arbitrators.

Because the Court is ordering the parties to proceed to arbitration, Respondent maintains that she should be entitled to an award of attorney's fees and reasonable expenses pursuant to Section 11.02 of the Operating Agreement. (Resp't's Mem. 10-11.) That section of the Operating Agreement provides as follows:

Section 11.02 Proceeding Expenses. *In any controversy, claim or dispute arising out of, or relating to, this Operating Agreement or the method or manner of the performance hereof, the prevailing party shall be entitled to, in addition to any other relief, recovery of proceeding expenses.* In determining the award of proceeding expenses, attorney's fees, arbitrator fees, proceeding costs, cost of investigation and other reasonable expenses shall be included. For the purposes of this provision, *the term "proceeding" shall include* arbitration, administrative, bankruptcy and *judicial proceedings*, including appeals therefrom or enforcement of decisions thereof.

(Resp't's Mem. Ex. 1, § 11.02 (emphasis added).)

Petitioners argue that their Petition and Motion to Stay Arbitration does not fit within the broad terms of "any controversy . . . relating to . . . th[e] Operating Agreement or the method or manner of the performance hereof" (*Id.*; *see* Pet'rs' Mem. 6.) Petitioners further argue that Respondent's claim for attorneys' fees should be determined in the arbitration proceeding.

The Court finds that Petitioners' Petition and Motion to Stay indisputably raised a controversy related to the Operating Agreement. That fact is shown by the nature of this dispute

and exhibited by Petitioners' filing the Operating Agreement to initiate this judicial proceeding. (See Pet. and Am. Mot. to Stay Ex. A, Ex. 1.) However, the Court agrees with the Petitioners that the amount of attorneys' fees and costs to be awarded for this judicial proceeding shall be determined in the arbitration proceeding. Therefore, the Court hereby denies Respondent's request for attorneys' fees without prejudice and directs Respondent to make a demand for attorneys' fees for this judicial proceeding before the arbitrators.

III. CONCLUSION

Therefore, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Respondent's Motion to Compel Petitioners to arbitrate Respondent's claims in her Arbitration Demand is GRANTED. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Petitioners' Motion to Stay is DENIED and that their Petition is DISMISSED in its entirety.

IT IS SO ORDERED.

This ___ day of _____, 2020.

The Honorable L. Casey Manning

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

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

Respondents,

v.

Julia B. Brooker,

Appellant.

**EXHIBIT 4 TO APPELLANT'S RETURN TO RESPONDENTS'
MOTION TO DISMISS APPEAL**

**Email from A. Kelly of Sowell & Durant to Judge Manning
(enclosing proposed order), Aug. 21, 2020**

From: Amy Kelly <akelly@sowelldurant.com>
Date: Friday, August 21, 2020 at 10:45 AM
To: "CManningSC@sccourts.org" <CManningSC@sccourts.org>
Cc: Gray Culbreath <gculbreath@gwblawfirm.com>, James Griffin <JGriffin@griffindavislaw.com>, Margaret Fox <MFox@griffindavislaw.com>, Badge Humphries <bhumphries@griffinhumphries.com>, Jaime Harmon <JHarmon@griffindavislaw.com>, Biff Sowell <bsowell@sowelldurant.com>, Bess DuRant <bdurant@sowelldurant.com>
Subject: Proposed Order- Beacham O Brooker Jr , plaintiff, et al vs Julia B Brooker- 2020CP4002040

Good morning Judge Manning,

Pursuant to your conversation with Gray Culbreath yesterday, attached is the proposed order denying Respondent's Motion for Reconsideration. We have filed this proposed order as well.

Thank you for your consideration.

Sincerely,
Amy Kelly

Amy A. Kelly
Director of Administration/Paralegal, SOWELL + DuRANT

1325 Park Street, Suite 100
Columbia, SC 29201

803.722.1100 | sowelldurant.com

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From: efiledonotreply@sccourts.org <efiledonotreply@sccourts.org>
Sent: Friday, August 21, 2020 10:41 AM
To: Bess DuRant <bdurant@sowelldurant.com>
Cc: Amy Kelly <akelly@sowelldurant.com>
Subject: Courtesy NEF RE: 2020CP4002040

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2020CP4002040

Official File Stamp: 08-21-2020 10:40:53 AM
Court: CIRCUIT COURT
Common Pleas
Richland
Case Caption: Beacham O Brooker Jr , plaintiff, et al vs Julia B Brooker
Event(s): Order/Order Cover Sheet \$25.00
Document(s) Submitted: Proposed Order/Other
Filed by or on behalf of: Bess Jones DuRant

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

James Mixon Griffin for Julia B Brooker
Margaret Nicole Fox for Julia B Brooker
Badge Humphries for Julia B Brooker
Thornwell F. Sowell, III for Beacham O Brooker, Jr et al
Bess Jones DuRant for Beacham O Brooker, Jr et al
Gray Thomas Culbreath for Bbb&C Family Llc

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

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proceed, while the related probate appeal is waiting for adjudication, hinders judicial efficiency and economy and unnecessarily increases the expenditure of the parties' resources.

For the above reasons, I DENY the Respondent's Motion Pursuant to Rules 52(b) and 59(a), SCRCP, to Alter or Amend Order Granting Petitioners' Motion to Stay.

IT IS SO ORDERED.

---

L. Casey Manning  
Circuit Court Judge, Fifth Judicial Circuit

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JAN 22 2021

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

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

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

Respondents,

v.

Julia B. Brooker,

Appellant.

---

**PROOF OF SERVICE**

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I hereby certify that I have served Appellant's Return to Respondents' Motion to Dismiss Appeal upon the following counsel for Respondents via electronic mail and depositing a copy in the United States Mail, postage prepaid and addressed as follows on this January 11, 2021:

Thornwell F. Sowell, III (SC Bar # 5197)  
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Attorneys for Respondent BBB&C Family,  
LLC

s/ Badge Humphries

---

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January 11, 2021

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**SC Court of Appeals**

**VIA EMAIL (CTAPPFILINGS@SCCOURTS.ORG)  
& U.S. MAIL**

The Honorable Jenny Abbott Kitchings, Clerk  
SC Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

Re: Brooker v. Brooker  
Appellate Case No. 2020-001159

Dear Ms. Kitchings:

Please find enclosed the original of Appellant's Return to Respondents' Motion to Dismiss Appeal in the above-referenced matter. By copy of this letter, and as evidenced on the enclosed Proof of Service, I am serving counsel of record. These documents were also sent via electronic mail to ctappfilings@sccourts.org and to opposing counsel.

If you have any questions, please do not hesitate to contact me.

Respectfully,

Daphne L. Greve  
Paralegal

/dlg

Enclosures

Cc (Via Email & U.S. Mail):

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SHIP TO: The Honorable Jenny Abbott Kitchings  
Clerk Of Court, SC Court Of Appeals  
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