

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

Mar 08 2021

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas for the Ninth Circuit

The Honorable Bentley Price, Circuit Court Judge

Case No. 2019-CP-10-00178
App. No. 2020-000925

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

v.

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

RECORD ON APPEAL

EPTING & RANNIK

/s/ Jaan Rannik

Jaan G. Rannik (SC Bar #103014)

46A State Street

Charleston, SC 29401

P: 843-377-1871

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jgr@epting-law.com

ATTORNEY FOR APPELLANTS

McCULLOUGH KHAN, LLC

/s/ Clayton B. McCullough

Clayton B. McCullough (SC Bar #13722)

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Clay@mklawsc.com

ATTORNEYS FOR RESPONDENT

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP1000178

J Daniel Mahoney
PLAINTIFF(S)

Muhler Company Inc The et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

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

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Charleston Common Pleas

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

Case Number: 2019CP1000178

Type: Order/Electronic Form 4

IT IS SO ORDERED!

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

Electronically signed on 2020-06-17 11:47:22 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

J. DANIEL MAHONEY,

Plaintiff,

v.

THE MUHLER COMPANY and HENRY
HAY, SR., in his individual capacity,

Defendants.

**IN THE COURT OF COMMON PLEAS
FOR CHARLESTON COUNTY**

CASE NO.: 2018-CP-10-05077

**ORDER GRANTING DEFENDANTS'
MOTION TO CONFIRM
ARBITRATION AWARD**

The Court has before it the arbitration Panel's Award issued December 12, 2019 and Defendants' Motion to Confirm Arbitration Award. Based upon the Panel's Award, the Panel's Award is confirmed, and I Order that judgment be entered thereon.

IT IS SO ORDERED.

THE HONORABLE BENTLEY PRICE

This ____ day of _____, 2020
Charleston, South Carolina



Charleston Common Pleas

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

Case Number: 2018CP1005077

Type: Order/Confirm

IT IS SO ORDERED!

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

Electronically signed on 2020-03-21 13:36:24 page 2 of 2

**STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON**

J. DANIEL MAHONEY,

Plaintiff,

v.

THE MUHLER COMPANY, INC. and
HENRY HAY, SR., in his individual
capacity,

Defendants.

**IN THE COURT OF COMMON PLEAS
FOR CHARLESTON COUNTY**

CASE NO.: 2019-CP-10-178

**ORDER GRANTING DEFENDANTS'
MOTION TO STAY AND COMPEL
ARBITRATION**

FILED
2019 JUN 24 PM 3:33
JULIE J. ARMSTRONG
CLERK OF COURT

Before the Court is a Motion to Stay the Case and Compel Arbitration filed by Defendants.

Having had the benefit of oral argument on May 31, 2019, as well as after reviewing materials provided by all parties at the hearing, the Court rules as follows:

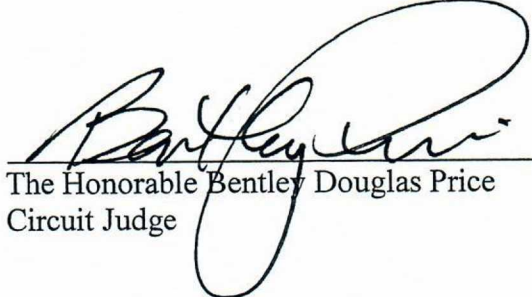
1. Defendants' Motion is granted, and arbitration is compelled.
2. Based on the facts and circumstances of this dispute, I find Article XIII, Section 2 of the Amended Bylaws to the Muhler Company, Inc. regarding the selection of the arbitrators to be inequitable and therefore unenforceable. S.C. Code Ann. Section 15-48-10(a) ("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.") I find Section 2 should be stricken.
3. Further, Article XIII, Section 8 contains a Severability clause meaning the remainder of the arbitration provision is valid and binding.
4. Having struck Article XIII, Section 2, the default arbitrator selection language of the South Carolina Uniform Arbitration Act applies: "If the arbitration agreement provides a method of appointment of arbitrators, this method is followed. In the absence thereof, there shall be three arbitrators with one chosen by the party making the demand for

arbitration, one chosen by the party against whom demand is made and the third being chosen by those two chosen by the parties.” S.C. Code Ann. Section 15-48-40.

5. I will retain jurisdiction of this case to hear all matters once the arbitration is concluded.

IT IS SO ORDERED.

This 24th day of June, 2019



The Honorable Bentley Douglas Price
Circuit Judge

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

J. DANIEL MAHONEY,

Plaintiff,

v.

THE MUHLER COMPANY, INC. and
HENRY HAY, SR., in his individual
capacity,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR CHARLESTON COUNTY

CASE NO.: 2018-CP-10-5077

ORDER GRANTING DEFENDANTS'
MOTION TO STAY AND COMPEL
ARBITRATION

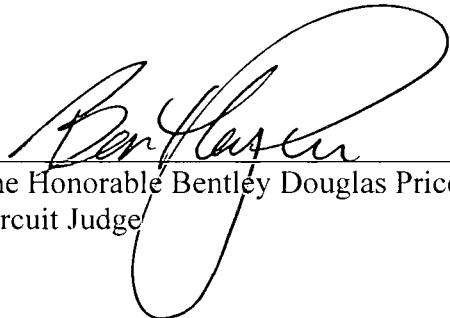
FILED
2019 MAY 17 AM 11:45
JULIE J. ARMSTRONG
CLERK OF COURT
BY 2

Before the Court is a motion to stay and compel arbitration filed by Defendants The Muhler Company, Inc. and Henry Hay. Having had the benefit of oral argument on May 16, 2019, and for the reasons stated on the record and in Defendants' brief, the Court rules as follows:

1. Defendants' motion is granted.
2. Defendants shall not oppose discovery in the arbitration.
3. I will retain jurisdiction to hear all matters once the arbitration is concluded.

IT IS SO ORDERED.

This 17 day of May, 2019


The Honorable Bentley Douglas Price
Circuit Judge

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

J. DANIEL MAHONEY,)

Plaintiff,)

vs.)

THE MUHLER COMPANY AND HENRY)
HAY, SR., IN HIS INDIVIDUAL)
CAPACITY,)

Defendant.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-10-5077

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

_____, Bar No. _____

Address:

Phone: _____ Fax: _____

E-mail: _____ Other: _____

Defendant's Attorney:

JAAN G. RANNIK, Bar No. 103014

Address:

46-A State Street, Charleston, SC 29401

Phone: 843-377-1871 Fax 843-377-1310

E-mail: jgr@epring-law.com Other: _____

- ☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion to Stay and Compel Arbitration

Estimated Time Needed: 15 min.

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

12/17/18

Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: \$ _____

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,

reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED – AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

J. DANIEL MAHONEY,

Plaintiff,

v.

THE MUHLER COMPANY AND HENRY
HAY, SR., IN HIS INDIVIDUAL
CAPACITY,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR CHARLESTON COUNTY

CASE NO.: 2018-CP-10-5077

MOTION TO STAY THE CASE AND
COMPEL ARBITRATION

2018 DEC 17 PM 3:44
CLERK OF COURT
RY

Defendants hereby demand Plaintiff arbitrate this dispute and move this Court for an Order staying this matter and compelling arbitration. In support thereof, Defendants state as follows:

1. Article XIII of the Muhler Bylaws states:

Any and all disputes, claims, or controversies (i) relating to the Corporation, (ii) brought against the Corporation by or on behalf of any third party or any shareholder of the Corporation, or (iii) between shareholders of the Corporation (hereinafter "Disputes"), shall upon the demand of any party to such Dispute, be resolved via binding and final arbitration in accordance with the South Carolina Uniform Arbitration Act, S.C. Code §§ 15-48-10 et seq. (the "UAA").

(Exh. A).

2. The instant dispute is accordingly subject to arbitration and this action must be stayed or dismissed pending a final decision in arbitration

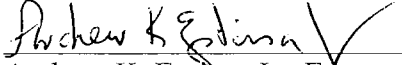
WHEREFORE:

1. Defendants move this Court for an order staying or dismissing this matter in favor of arbitration.

Respectfully submitted:

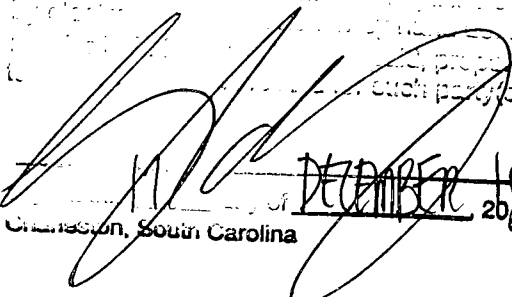
ANDREW K. EPTING, JR., LLC

On this 14th day of December, 2018
Charleston, SC


Andrew K. Epting, Jr., Esq.
Jaan G. Rannik, Esq.
46A State Street, Charleston, SC 29401
P: 843.377.1871
F: 843.377.1310
ake@epting-law.com
jgr@epting-law.com

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE
THE UNDERSIGNED HEREBY
and certify that I have caused this certificate to be filed with the Clerk of the Court in the County of Charleston, South Carolina, in the case of *[illegible]* vs. *[illegible]*, Case No. *[illegible]*, and that a copy of this certificate has been served by first-class mail, return receipt requested, on each of the parties to the case, and that the copy of this certificate has been properly addressed to each party(s).


Jaan G. Rannik, Esq.
11 DECEMBER 18 at
Charleston, South Carolina

**AMENDMENT TO BYLAWS
THE MUHLER COMPANY, INC.**

October 14, 2016

The following is hereby added to the Bylaws of The Muhler Company, Inc. dated May 31, 1996.

ARTICLE XIII - ARBITRATION

1. Procedures for Arbitration of Disputes. Any and all disputes, claims, or controversies (i) relating to the Corporation, (ii) brought against the Corporation by or on behalf of any third party or any shareholder of the Corporation, or (iii) between shareholders of the Corporation (hereinafter "Disputes"), shall, upon the demand of any party to such Dispute, be resolved via binding and final arbitration in accordance with the South Carolina Uniform Arbitration Act, S.C. Code §§ 15-48-10 et seq. (the "UAA").

For purposes of this Article, "shareholder" shall mean any shareholder of record, any beneficial owner of shares of the Corporation, or any former shareholder of record or beneficial owner of shares of the Corporation.

This provision applies, regardless of whether the Dispute is brought on the shareholder's own behalf, on behalf of the Corporation, or on behalf of any series or class of shares of the Corporation or shareholders of the Corporation against the Corporation or any Director, officer, manager, agent, or employee of the Corporation, including Disputes relating to the meaning, interpretation, effect, validity, performance, or enforcement of the Articles of Incorporation or these bylaws or relating in any way to such a Dispute or Disputes. For the avoidance of doubt, and not as a limitation, Disputes are intended to include derivative actions against the Corporation or its Directors, officers, or managers and class actions by shareholders against those individuals or entities and the Corporation. For the avoidance of doubt, a Dispute shall include a Dispute made derivatively on behalf of one party against another party.

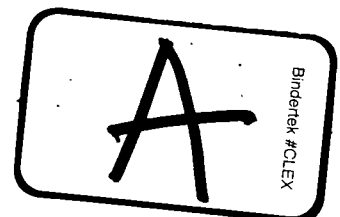
2. Arbitrators. There shall be three arbitrators, each of whom shall be a Certified Public Accountant ("CPA") licensed in the State of South Carolina.

The claimant or claimants shall select one arbitrator within fifteen (15) days following notice of the demand for arbitration; provided, that, if there is more than one claimant, such arbitrator shall be selected by the majority vote of the claimants.

The respondent or respondents shall select one arbitrator within fifteen (15) days following notice of the demand for arbitration; provided, that, if there is more than one respondent, such arbitrator shall be selected by the majority vote of the respondents.

The third arbitrator shall be an employee of the Corporation's accountant. This third arbitrator will be appointed even in the event that the corporation is a claimant or respondent.

3. Place of Arbitration. The place of arbitration shall be Charleston, South Carolina.



4. Discovery. There shall be only limited documentary discovery of documents directly related to the issues in dispute, as may be ordered by the arbitrators.
5. Awards. All matters shall proceed under South Carolina law. Any arbitration proceedings or award rendered hereunder and the validity, effect and interpretation of this arbitration agreement shall be governed by the UAA; provided, however, that, if the UAA should be held inapplicable for any reason, then the Federal Arbitration Act, 9 U.S.C. §1 et seq. shall govern with respect to the foregoing. The Award shall be in writing and may, but shall not be required to, briefly state the findings of fact and conclusions of law on which it is based. Any monetary award shall be made and payable in U.S. dollars free of any tax, deduction or offset. The party or parties to the Dispute shall direct the arbitrators to issue the Award within thirty (30) days of the completion of the arbitration proceedings (subject to payment of the arbitrators as set forth below in Section 6 of this Article X). The party against which the Award assesses a monetary obligation shall pay that obligation on or before the thirtieth (30th) day following the date of the Award or such other date as the Award may provide. Costs and expenses shall be paid equally during the conduct of the proceeding, but shall be allocated by the panel in favor of the prevailing party.
6. Final and Binding. An Award shall be final and binding upon the parties thereto and shall be the sole and exclusive remedy between such parties relating to the Dispute, including any claims, counterclaims, issues, or accounting presented to the arbitrators. Judgment upon the Award may be entered in any court having jurisdiction. To the fullest extent permitted by law, no application or appeal to any court of competent jurisdiction may be made in connection with any question of law arising in the course of arbitration or with respect to any award made except for actions relating to enforcement of this agreement to arbitrate or any arbitral award issued hereunder and except for actions seeking interim or other provisional relief in aid of arbitration proceedings in any court of competent jurisdiction.
7. Beneficiaries. This Article is intended to benefit and be enforceable by the shareholders, Directors, officers, managers, agents or employees of the Corporation and the Corporation and shall be binding on the shareholders of the Corporation and the Corporation, as applicable, and shall be in addition to, and not in substitution for, any other rights to indemnification or contribution that such individuals or entities may have by contract or otherwise.
8. Severability. If any of the provisions, terms or clauses of this Article is declared illegal, unenforceable, or ineffective in a legal forum, those provisions, terms and clauses shall be deemed severable, such that all other provisions, terms, and clauses of this Article shall remain valid and binding upon the applicable parties.

Adopted by vote of the shareholders this 25 day of October, 2016.

Attested to by Henry M. Hay, III, 75% stockholder:


Henry M. Hay, III

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

COUNTY OF CHARLESTON)

CASE NO.: 2019-CP-10-178

J. DANIEL MAHONEY,)

Plaintiff,)

vs.)

THE MUHLER COMPANY and HENRY)
HAY, III, in his individual capacity,)

Defendant.)

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____		Defendant's Attorney: Jaan G. Rannik, Bar No. ~~12621~~ Address: 46A State Street, Charleston, SC 29401 Phone: 843-377-1871 Fax 843-377-1310 E-mail: jgr@epting-law.com Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Motion to Stay Case and Compel Arbitration Estimated Time Needed: 15 min Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type			
☐ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
15/ Signature of Attorney for ☐ Plaintiff / ☒ Defendant		2.15.19 Date submitted	
SECTION III: Motion Fee			
☒ PAID – AMOUNT: \$ _____ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCPP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED – AMOUNT DUE: \$ _____			

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

J. DANIEL MAHONEY,

Plaintiff,

v.

THE MUHLER COMPANY and HENRY
HAY, III, in his individual capacity,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR CHARLESTON COUNTY

CASE NO.: 2019-CP-10-178

**MOTION TO STAY THE CASE AND
COMPEL ARBITRATION**

FILED
2019 FEB 15 PM 3:48
JULIE J. ARMSTRONG
CLERK OF COURT

Defendants hereby demand Plaintiff arbitrate this dispute and move this Court for an Order staying this matter and compelling arbitration. In support thereof, Defendants state as follows:

1. Article XIII of the Muhler Bylaws states:

Any and all disputes, claims, or controversies (i) relating to the Corporation, (ii) brought against the Corporation by or on behalf of any third party or any shareholder of the Corporation, or (iii) between shareholders of the Corporation (hereinafter "Disputes"), shall upon the demand of any party to such Dispute, be resolved via binding and final arbitration in accordance with the South Carolina Uniform Arbitration Act, S.C. Code §§ 15-48-10 et seq. (the "UAA").

(Exh. A).

2. The instant dispute is accordingly subject to arbitration and this action must be stayed or dismissed pending a final decision in arbitration

WHEREFORE, Defendants move this Court for an order staying or dismissing this matter in favor of arbitration.

[signature on following page]

Respectfully submitted:

ANDREW K. EPTING, JR., LLC

On this 15th day of February, 2019
Charleston, SC

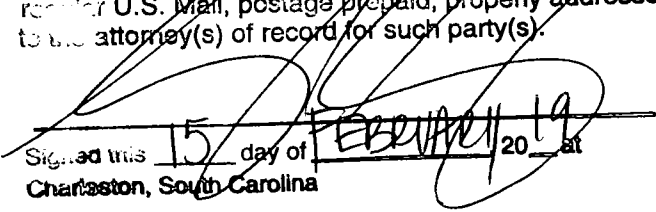


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Jaan G. Rannik, Esq.
46A State Street, Charleston, SC 29401
P: 843.377.1871
F: 843.377.1310
ake@epting-law.com
jgr@epting-law.com

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that true and correct copies of the pleading or paper to which this certificate is affixed was served upon the party(s) in due action in accord with the applicable Court Rules by electronic transmission or by hand delivery or by registered U.S. Mail, postage prepaid, properly addressed to the attorney(s) of record for such party(s).


Signed this 15 day of FEBRUARY 2019 at
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

J. DANIEL MAHONEY,

Plaintiff,

v.

THE MUHLER COMPANY and HENRY
HAY, SR., in his individual capacity,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR CHARLESTON COUNTY

CASE NO.: 2018-CP-10-05077

**DEFENDANTS' MOTION TO
CONFIRM ARBITRATION AWARD**

Defendants The Muhler Company and Henry Hay, Sr. (collectively "Muhler") respectfully move this Court to confirm the award rendered in the arbitration between J. Daniel Mahoney ("Mahoney") and Muhler.

This matter involves the termination of Mahoney as CEO of Muhler on September 18, 2018. Mahoney filed his Complaint on October 22, 2018, and the action was stayed on May 17, 2019 in favor of arbitration. Arbitration was conducted on December 3, 2019. A copy of the Arbitration Award is attached as **Exhibit A**.

Pursuant to S.C. Code Ann. §§ 15-48-130 and 140, Mahoney had 90 days to move to vacate, correct, or modify the award. As no motion was made by Mahoney, the award must be confirmed pursuant to S.C. Code Ann. § 15-48-120 upon a motion for confirmation.¹ Muhler so moves.

WHEREFORE, as no motion to vacate, correct, or modify the award has been filed, Muhler respectfully moves for an order confirming the award and requests that judgment be entered consistent with that award.

¹ Given the language of the statute, consultation of counsel would serve no useful purpose.

This 19th day of March, 2020
Charleston, S.C.

Respectfully submitted:

/s/ Jaan G. Rannik
Jaan G. Rannik (SC Bar No. 103014)
EPTING & RANNIK, LLC
46A State Street
Charleston, SC 29401
P: (843) 377-1871
F: (843) 377-1310
jgr@epting-law.com

ATTORNEY FOR DEFENDANTS

EXHIBIT A

J. DANIEL MAHONEY,

Claimant,

v.

THE MUHLER COMPANY, INC.
And HENRY M. HAY, III, in his
individual capacity,

Respondents.

I. INTRODUCTION

This matter was heard by us on December 3, 2019. The parties provided briefs with exhibits and deposition excerpts. We heard from witnesses J. Daniel Mahoney, Michael Herlocker, Henry Hay, and Matthew Patz, and received further exhibits into evidence. The parties, by agreement, conducted this proceeding before us without opening statements or closing arguments, and by agreement, proposed orders were submitted. The parties request that our order set forth its underpinnings.

II. THE CLAIMS

Dan Mahoney (“Mahoney”) has sued, claiming \$129,000 in salary and benefits; he asks that these sums be trebled under the South Carolina Payment of Wages Act, S.C. Code Ann. § 41-10-80. Alternatively, he claims a breach of contract accompanied by fraud and requests \$129,000 plus punitive damages.

The Muhler Company, Inc. (“Muhler”) claims amounts owed by Mahoney on account of monies advanced or paid by Muhler on behalf of Mahoney which have not been repaid. Muhler seeks \$25,447 plus interest.

III. THE PARTIES

Muhler and Glasscorp LLC (“Glasscorp”) are both in the window business. Glasscorp was created to perform commercial glass installation and was spun out of Muhler’s more extensive window products business. The Glasscorp shareholders at the time of its inception were Michael Herlocker (“Herlocker”), 44%, Henry Hay (“Hay”) 42%, and Mahoney 14%. Mahoney became the CEO of Muhler on January 15, 2008 and was terminated on September 18, 2018. Respondents’ Trial Exh. 5. Mahoney became a 25% shareholder in Muhler on November 4, 2008. Respondents’ Trial Exh. 2. The balance of Muhler stock is owned by Hay, who is Muhler’s founder.

IV. CONTROLLING LAW

“A fiduciary relationship exists when one reposes special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one reposing confidence.” *O’Shea v. Lesser*, 308 S.C. 10, 15, 416 S.E.2d 629, 631 (1992). The duty of loyalty requires that officers and directors must act in good faith and the best interest of the corporation. *See* Black’s Law Dictionary (2d ed.) (“Duty of Loyalty”). Self-dealing—defined as an action taken by a corporate fiduciary done for personal gain rather than for the benefit of the corporation—constitutes a breach of the duty of loyalty. *Menezes v. WL Ross & Co.*, 403 S.C. 522, 533 (2013) (citing Delaware case referring to “self-dealing or other breach of loyalty”). Self-serving acts or agreements between a fiduciary and the corporation constitute a breach of the duty of loyalty and are unenforceable. *See* Restatement (Second) of Contracts § 193; *Ace Limited v. Capital Re Corporation*, 747 A.2d 95, 105 (Del. Ch. 1999). A fiduciary relationship “imposes on the members the obligation of refraining from taking any advantage of one another by the slightest misrepresentation or concealment.” *Lawson v. Rogers*, 312 S.C. 492, 499 (1993). Indeed, a significant feature of a fiduciary relationship is that the representations of a fiduciary can

be trusted and relied upon, unlike in an arm's length transaction. *See Ardis v. Cox*, 314 S.C. 512, 516 (Ct. App. 1993).

Where there is a bona fide dispute as to whether wages are owed under the S.C. Payment of Wages Act, S.C. Code Ann. § 41-10-10 *et seq.*, there can be no trebling of the wages even if they are determined as owing. *Morin v. Innegrity, LLC*, 424 S.C. 559, 573–74 (Ct. App. 2018).

V. MAHONEY'S CLAIM

a. Standards

Mahoney testified that as CEO he owed a duty of loyalty which he would violate by doing any of the following:

1. Compromising Muhler's ability to compete;
2. Misrepresenting facts to Muhler and its shareholders;
3. Self-dealing, defined by Mahoney as preferring one's own interests to that of Muhler;
4. Failing to follow the directives of Muhler's shareholders;
5. Failing to enforce Muhler's bylaws.

We accept Mahoney's formulation of his CEO duty of loyalty. A breach of the duty of loyalty justifies a termination for cause and would deny a recovery to Mahoney.

b. Shareholder Meetings

Muhler's trial exhibit 8 was the Glasscorp Operating Agreement which was signed by all three members and effective October 30, 2013. Of particular interest to this dispute is § 3.1, which defines the purpose for which the company was created:

The company has been formed to engage in the commercial glass installation and repair business and to engage in other ancillary businesses provided all activities are legally allowed pursuant to South Carolina law.

Respondents' Trial Exh. 8 at § 3.1.

Mahoney, Herlocker, and Hay all testified that their agreement was that Muhler and Glasscorp would never compete with each other. This agreement flowed from Muhler loaning the money to start Glasscorp, funding the members' shareholder accounts, giving its commercial glass business to Glasscorp as a starter, and providing access to banking, clients, and materials; indeed a weekly meeting was held at which Muhler's and Hay's expertise was given to Glasscorp, Michel Herlocker, and Dan Mahoney so as to facilitate Glasscorp's competitiveness in its market.¹

This dispute largely arises from Muhler's and Hay's attempt to have Mahoney and Herlocker affirm the agreed-upon product delineation stated above. When Hay's negotiations were unsuccessful, Hay called first a meeting of Muhler in which he sought and received the agreement of Mahoney to the following:

In order to avoid a conflict between Glasscorp and Muhler, Glasscorp shall not offer clad-wood doors or windows, vinyl doors or windows, sunrooms, shutters, replacement vinyl or wood windows, or hurricane protection.

Respondents' Trial Exh. 3. Hay then requested a meeting of the Glasscorp shareholders to accept the exact same delineation contained in the Muhler Motion:

In order to avoid conflict between Glasscorp and Muhler I propose that Glasscorp shall not offer clad wood windows and doors, vinyl doors and windows, sunrooms, shutters, replacement vinyl or wood windows, or hurricane protection, which is basically what Muhler does.

Respondents' Trial Exh. 4. Both Mahoney and Herlocker voted against the Motion so that it failed.

c. Mahoney's Defense Fails – Product Delineation

¹ Mr. Hay was animated in his description of his sharing (for many years) his sales strategy and pricing, product patent development, product testing, and budgets. Hay testified to Herlocker's previous experience millwork and lack of experience in the commercial glass business.

By his own standards as testified to before us, Mahoney failed to follow the unequivocal and unanimous directions of his shareholders as expressed at the Muhler meeting. Further, Mahoney had the opportunity and duty to vote at the Glasscorp meeting in favor of the product delineation. In failing to do so, he was facilitating competition with Muhler and compromising Muhler's market "space" and value. This is all the more irregular as this product delineation was expressed in the operating agreement and affirmed by Mahoney's and Herlocker's testimony at trial.

Mahoney advanced in his brief and in his and Herlocker's testimony that Glasscorp was not competing with Muhler. While we reject this contention based upon Hay's testimony, the issue before us is the conduct of a CEO. Mahoney, as CEO, wears a Muhler hat, and it is no defense to say that at the time he voted against Muhler's interest he was wearing his Glasscorp hat.

There are two subsequent events that support Muhler and Hay's insistence on affirming the product delineation. First, within weeks of Mahoney's termination from Muhler, he began work with Glasscorp. Muhler's comptroller, Todd Currie, within weeks of Mahoney's termination, gave notice to Muhler that he would begin working for Glasscorp. Second, under § 13.3 of the Glasscorp Operating Agreement, Mahoney's termination from Muhler created a call option on Mahoney's Glasscorp stock. Glasscorp failed to exercise the call option, and it passed to the shareholders. Hay exercised the option. Thereafter, Mahoney, without notice to Hay, sold his interest in Glasscorp to Herlocker for in excess of \$500,000 despite the outstanding call by Hay. While both of these events occurred after Mahoney's termination, they support that Mahoney pursued his own interest and not that of Muhler.

We find Mahoney's termination to be with cause.

d. Self-Dealing

Hay was asked on cross examination if certain events were grounds for Mahoney's termination. He was asked whether:

- The Savannah competitive bid by Glasscorp was a basis for termination.
- The irregularity surrounding car leases was a basis for termination.
- The loans due from shareholder were a basis for termination.
- The amount of vacation days was a basis for termination.

Hay acknowledged the above grounds were not additional grounds for termination. However, the issue before this Panel is whether Mahoney can recover. It is true that Mahoney and Currie's employment at Glasscorp and Mahoney's sale of stock to Herlocker occurred after Mahoney's termination and were not grounds for termination, but they are actions that support Mr. Hay's claim of self-dealing. Mahoney's representation to Hay that the employment and shareholder agreements were prepared to be "fair" to Muhler and Hay are belied by the documents themselves. We find Mahoney's admission at trial that Exhibits 1 and 2 were prepared by his lawyer to protect his interests as employee and shareholder are acts of self-dealing, not enforceable, and further reason that Mahoney's claims fail.

e. All American Windows

Mr. Hay testified that collaboration with All-American Windows represented a potentially lucrative business opportunity for Muhler and that he, as majority shareholder, directed Mahoney to pursue it. He testified, and we accept, that Mahoney refused to pursue the opportunity. This is another breach of the duty of loyalty.

f. Conclusion

For each reason stated above, Mahoney's claim fails.

VI. MUHLER'S CLAIMS

We decline to award Muhler on its counterclaim as they deal with events which are too stale by passage of time.

VII. CONCLUSION

Mahoney's claims are denied, and Muhler's counterclaims are denied. The costs of this proceeding are taxed against Mahoney, pursuant to §15-48-110, S.C. Code Ann. Costs of this proceeding shall be limited to arbitrators' fees which shall be submitted with reasonable promptness and paid within 30 days of receipt of the arbitrators' statement for services.

IT IS SO ORDERED, this 12th day of December 2019.

for *Barry Gumb*
BARRY GUMB, Arbitrator, on behalf of the Panel, *at*
Mr. Gumb's request

for *Peter Kent*
PETER KENT, Arbitrator, on behalf of the Panel *at*
Mr. Kent's request

Marvin D. Infinger
MARVIN D. INFINGER, Arbitrator, on behalf of
the Panel

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

J. DANIEL MAHONEY,

Plaintiff,

v.

THE MUHLER COMPANY and HENRY
HAY, III, in his individual capacity,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR CHARLESTON COUNTY

CASE NO.: 2019-CP-10-178

**DEFENDANTS' MOTION TO CONFIRM
ARBITRATION AWARD**

Defendants The Muhler Company, Inc. and Henry M. Hay, III (collectively "Muhler") move pursuant to S.C. Code § 15-48-120 for confirmation of the unanimous Arbitration Award issued December 12, 2019 ("Award," **Exh. A**) following arbitration between Plaintiff and Muhler.

The arbitration panel unanimously found that the shareholder agreement, upon which Plaintiff sues in this action, is unenforceable. **Exh. A** at 6 ("We find Mahoney's admission at trial that [the shareholder and employment agreements] were prepared by his lawyer to protect his interests as employee and shareholder are acts of self-dealing [and] not enforceable . . ."). This finding was based upon the well-settled maxims that a fiduciary must act in good faith with due regard to interests of the one imposing the confidence and that a fiduciary's self-serving agreements in violation of that duty are unenforceable. *E.g., Davis v. Greenwood Sch. Dist. 50*, 365 S.C. 629, 635 (2005); Restatement (Second) of Contracts § 193.

No motion was filed to vacate or modify the Award within the time allowed under the South Carolina Arbitration Act. S.C. Code §§ 15-48-130, 140. Accordingly, the statute provides that the "court shall confirm [the] award." S.C. Code § 15-48-120. On March 27, this Court

entered an order confirming the Award in a separate suit between these two parties and entering judgment thereupon. **Exh. B.** See 4 Am. Jur. 2d Alternative Dispute Resolution § 206 (“An arbitration award confirmed by the courts under statutory procedure becomes as binding on all parties to the arbitration agreement as a judgment on an action within the same court.”).

Muhler therefore requests this Court confirm the Award in the instant suit.

Respectfully submitted:

EPTING & RANNIK, LLC

On this 8 day of May, 2020
Charleston, SC

s/Jaan G. Rannik
Jaan G. Rannik, Esq.
46A State Street,
Charleston, SC 29401
P: 843.377.1871
F: 843.377.1310
jgr@epting-law.com

ATTORNEYS FOR DEFENDANTS

EXHIBIT A

J. DANIEL MAHONEY,

Claimant,

V.

THE MUHLER COMPANY, INC.

And HENRY M. HAY, III, in his individual capacity,

Respondents.

ARBITRATION AWARD

I. INTRODUCTION

This matter was heard by us on December 3, 2019. The parties provided briefs with exhibits and deposition excerpts. We heard from witnesses J. Daniel Mahoney, Michael Herlocker, Henry Hay, and Matthew Patz, and received further exhibits into evidence. The parties, by agreement, conducted this proceeding before us without opening statements or closing arguments, and by agreement, proposed orders were submitted. The parties request that our order set forth its underpinnings.

II. THE CLAIMS

Dan Mahoney (“Mahoney”) has sued, claiming \$129,000 in salary and benefits; he asks that these sums be trebled under the South Carolina Payment of Wages Act, S.C. Code Ann. § 41-10-80. Alternatively, he claims a breach of contract accompanied by fraud and requests \$129,000 plus punitive damages.

The Muhler Company, Inc. (“Muhler”) claims amounts owed by Mahoney on account of monies advanced or paid by Muhler on behalf of Mahoney which have not been repaid. Muhler seeks \$25,447 plus interest.

III. THE PARTIES

Muhler and Glasscorp LLC (“Glasscorp”) are both in the window business. Glasscorp was created to perform commercial glass installation and was spun out of Muhler’s more extensive window products business. The Glasscorp shareholders at the time of its inception were Michael Herlocker (“Herlocker”), 44%, Henry Hay (“Hay”) 42%, and Mahoney 14%. Mahoney became the CEO of Muhler on January 15, 2008 and was terminated on September 18, 2018. Respondents’ Trial Exh. 5. Mahoney became a 25% shareholder in Muhler on November 4, 2008. Respondents’ Trial Exh. 2. The balance of Muhler stock is owned by Hay, who is Muhler’s founder.

IV. CONTROLLING LAW

“A fiduciary relationship exists when one reposes special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one reposing confidence.” *O’Shea v. Lesser*, 308 S.C. 10, 15, 416 S.E.2d 629, 631 (1992). The duty of loyalty requires that officers and directors must act in good faith and the best interest of the corporation. *See* Black’s Law Dictionary (2d ed.) (“Duty of Loyalty”). Self-dealing—defined as an action taken by a corporate fiduciary done for personal gain rather than for the benefit of the corporation—constitutes a breach of the duty of loyalty. *Menezes v. WL Ross & Co.*, 403 S.C. 522, 533 (2013) (citing Delaware case referring to “self-dealing or other breach of loyalty”). Self-serving acts or agreements between a fiduciary and the corporation constitute a breach of the duty of loyalty and are unenforceable. *See* Restatement (Second) of Contracts § 193; *Ace Limited v. Capital Re Corporation*, 747 A.2d 95, 105 (Del. Ch. 1999). A fiduciary relationship “imposes on the members the obligation of refraining from taking any advantage of one another by the slightest misrepresentation or concealment.” *Lawson v. Rogers*, 312 S.C. 492, 499 (1993). Indeed, a significant feature of a fiduciary relationship is that the representations of a fiduciary can

be trusted and relied upon, unlike in an arm's length transaction. *See Ardis v. Cox*, 314 S.C. 512, 516 (Ct. App. 1993).

Where there is a bona fide dispute as to whether wages are owed under the S.C. Payment of Wages Act, S.C. Code Ann. § 41-10-10 *et seq.*, there can be no trebling of the wages even if they are determined as owing. *Morin v. Innegrity, LLC*, 424 S.C. 559, 573–74 (Ct. App. 2018).

V. MAHONEY'S CLAIM

a. Standards

Mahoney testified that as CEO he owed a duty of loyalty which he would violate by doing any of the following:

1. Compromising Muhler's ability to compete;
2. Misrepresenting facts to Muhler and its shareholders;
3. Self-dealing, defined by Mahoney as preferring one's own interests to that of Muhler;
4. Failing to follow the directives of Muhler's shareholders;
5. Failing to enforce Muhler's bylaws.

We accept Mahoney's formulation of his CEO duty of loyalty. A breach of the duty of loyalty justifies a termination for cause and would deny a recovery to Mahoney.

b. Shareholder Meetings

Muhler's trial exhibit 8 was the Glasscorp Operating Agreement which was signed by all three members and effective October 30, 2013. Of particular interest to this dispute is § 3.1, which defines the purpose for which the company was created:

The company has been formed to engage in the commercial glass installation and repair business and to engage in other ancillary businesses provided all activities are legally allowed pursuant to South Carolina law.

Respondents' Trial Exh. 8 at § 3.1.

Mahoney, Herlocker, and Hay all testified that their agreement was that Muhler and Glasscorp would never compete with each other. This agreement flowed from Muhler loaning the money to start Glasscorp, funding the members' shareholder accounts, giving its commercial glass business to Glasscorp as a starter, and providing access to banking, clients, and materials; indeed a weekly meeting was held at which Muhler's and Hay's expertise was given to Glasscorp, Michel Herlocker, and Dan Mahoney so as to facilitate Glasscorp's competitiveness in its market.¹

This dispute largely arises from Muhler's and Hay's attempt to have Mahoney and Herlocker affirm the agreed-upon product delineation stated above. When Hay's negotiations were unsuccessful, Hay called first a meeting of Muhler in which he sought and received the agreement of Mahoney to the following:

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c. Mahoney's Defense Fails – Product Delineation

¹ Mr. Hay was animated in his description of his sharing (for many years) his sales strategy and pricing, product patent development, product testing, and budgets. Hay testified to Herlocker's previous experience millwork and lack of experience in the commercial glass business.

By his own standards as testified to before us, Mahoney failed to follow the unequivocal and unanimous directions of his shareholders as expressed at the Muhler meeting. Further, Mahoney had the opportunity and duty to vote at the Glasscorp meeting in favor of the product delineation. In failing to do so, he was facilitating competition with Muhler and compromising Muhler's market "space" and value. This is all the more irregular as this product delineation was expressed in the operating agreement and affirmed by Mahoney's and Herlocker's testimony at trial.

Mahoney advanced in his brief and in his and Herlocker's testimony that Glasscorp was not competing with Muhler. While we reject this contention based upon Hay's testimony, the issue before us is the conduct of a CEO. Mahoney, as CEO, wears a Muhler hat, and it is no defense to say that at the time he voted against Muhler's interest he was wearing his Glasscorp hat.

There are two subsequent events that support Muhler and Hay's insistence on affirming the product delineation. First, within weeks of Mahoney's termination from Muhler, he began work with Glasscorp. Muhler's comptroller, Todd Currie, within weeks of Mahoney's termination, gave notice to Muhler that he would begin working for Glasscorp. Second, under § 13.3 of the Glasscorp Operating Agreement, Mahoney's termination from Muhler created a call option on Mahoney's Glasscorp stock. Glasscorp failed to exercise the call option, and it passed to the shareholders. Hay exercised the option. Thereafter, Mahoney, without notice to Hay, sold his interest in Glasscorp to Herlocker for in excess of \$500,000 despite the outstanding call by Hay. While both of these events occurred after Mahoney's termination, they support that Mahoney pursued his own interest and not that of Muhler.

We find Mahoney's termination to be with cause.

d. Self-Dealing

Hay was asked on cross examination if certain events were grounds for Mahoney's termination. He was asked whether:

- The Savannah competitive bid by Glasscorp was a basis for termination.
- The irregularity surrounding car leases was a basis for termination.
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- The amount of vacation days was a basis for termination.

Hay acknowledged the above grounds were not additional grounds for termination. However, the issue before this Panel is whether Mahoney can recover. It is true that Mahoney and Currie's employment at Glasscorp and Mahoney's sale of stock to Herlocker occurred after Mahoney's termination and were not grounds for termination, but they are actions that support Mr. Hay's claim of self-dealing. Mahoney's representation to Hay that the employment and shareholder agreements were prepared to be "fair" to Muhler and Hay are belied by the documents themselves. We find Mahoney's admission at trial that Exhibits 1 and 2 were prepared by his lawyer to protect his interests as employee and shareholder are acts of self-dealing, not enforceable, and further reason that Mahoney's claims fail.

e. All American Windows

Mr. Hay testified that collaboration with All-American Windows represented a potentially lucrative business opportunity for Muhler and that he, as majority shareholder, directed Mahoney to pursue it. He testified, and we accept, that Mahoney refused to pursue the opportunity. This is another breach of the duty of loyalty.

f. Conclusion

For each reason stated above, Mahoney's claim fails.

VI. MUHLER'S CLAIMS

We decline to award Muhler on its counterclaim as they deal with events which are too stale by passage of time.

VII. CONCLUSION

Mahoney's claims are denied, and Muhler's counterclaims are denied. The costs of this proceeding are taxed against Mahoney, pursuant to §15-48-110, S.C. Code Ann. Costs of this proceeding shall be limited to arbitrators' fees which shall be submitted with reasonable promptness and paid within 30 days of receipt of the arbitrators' statement for services.

IT IS SO ORDERED, this 12th day of December 2019.

for *Barry Gumb*
BARRY GUMB, Arbitrator, on behalf of the Panel, *at*
Mr. Gumb's request

for *Peter Kent*
PETER KENT, Arbitrator, on behalf of the Panel *at*
Mr. Kent's request

Marvin D. Infinger
MARVIN D. INFINGER, Arbitrator, on behalf of
the Panel

EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

J. DANIEL MAHONEY,

Plaintiff,

v.

THE MUHLER COMPANY and HENRY
HAY, SR., in his individual capacity,

Defendants.

**IN THE COURT OF COMMON PLEAS
FOR CHARLESTON COUNTY**

CASE NO.: 2018-CP-10-05077

**ORDER GRANTING DEFENDANTS'
MOTION TO CONFIRM
ARBITRATION AWARD**

The Court has before it the arbitration Panel's Award issued December 12, 2019 and Defendants' Motion to Confirm Arbitration Award. Based upon the Panel's Award, the Panel's Award is confirmed, and I Order that judgment be entered thereon.

IT IS SO ORDERED.

THE HONORABLE BENTLEY PRICE

This ____ day of _____, 2020
Charleston, South Carolina



Charleston Common Pleas

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

Case Number: 2018CP1005077

Type: Order/Confirm

IT IS SO ORDERED!

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

Electronically signed on 2020-03-21 13:36:24 page 2 of 2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	CASE NO.: 2019-CP-10-0178
J. Daniel Mahoney,	)	
	)	
Plaintiff,	)	PLAINTIFF'S OBJECTION TO
	)	DEFENDANTS' MOTION TO
vs.	)	CONFIRM ARBITRATION AWARD
	)	
The Muhler Company, Inc. and Henry Hay,	)	
Sr. in his individual capacity,	)	
	)	
Defendants.	)	
	)	

Please allow this to serve as Plaintiff's objection to the Defendants' Motion to Confirm Arbitration Award. This case was referred to arbitration by this Honorable Court. Defendants have appealed this Court's decision, first to the Court of Appeals and currently before the South Carolina Supreme Court.

The Arbitration Award the Defendants are attempting to confirm is from an entirely separate lawsuit/claim. It involved an employment related claim that is separate and apart from the issues that are the core of this lawsuit. The undersigned counsel did not participate or appear in the Arbitration and it is improper for the Defendants to seek to have this Arbitration Award confirmed and used in the above-entitled matter in any way. It is NOT arising out of this litigation and it is entirely improper for the Defendants to try to have the findings in a separate proceeding enrolled in this lawsuit. All finding of fact and conclusions of law in this matter should be decided by the arbitration panel for this case. That has not yet occurred.

There have been no findings in this proceeding. This is in an entirely separate case and it should be allowed to proceed to a full arbitration hearing. As such, Defendants' motion should be denied.

Plaintiff is requesting a hearing on this matter.

Respectfully Submitted,

McCULLOUGH KHAN, LLC

s/Clayton B. McCullough
Clayton B. McCullough (SC Bar #13722)
359 King Street, Suite 200
Charleston, SC 29401
(843) 937-0400
(843) 937-0706 (fax)
clay@mklawsc.com

ATTORNEY FOR THE PLAINTIFF

May 19, 2020
Charleston, South Carolina

IN ARBITRATION WITH THE AMERICAN ARBITRATION ASSOCIATION

J. DANIEL MAHONEY,

Claimant,

v.

THE MUHLER COMPANY, INC. and
HENRY M. HAY, III, in his individual
Capacity,

Respondents.

RESPONDENTS' TRIAL BRIEF

I. The Parties

The Muhler Company, Inc. (“Muhler”) is engaged in the sale of, *inter alia*, windows, doors, sunrooms, and storm protection. Mr. Henry M. Hay (“Hay”) is the founder of the company. Mr. Dan Mahoney (“Mahoney”) became the chief executive officer in 2008. He was terminated on September 18, 2018.

Muhler spun off its commercial glass business in 2014 into Glasscorp, LLC (“Glasscorp”). Glasscorp’s president, a long time Muhler employee, was and is Michael Herlocker (“Herlocker”), and the shareholders at the company’s inception were Herlocker, 44%, Hay, 42%, and Mahoney, 14%. Glasscorp’s charter provides its business is “commercial glass installation and repair” and business “ancillary” to the same (§ 3.1 of Glasscorp Operating Agreement (not attached)); the charter insured Glasscorp would not compete with Muhler.

II. The Litigation

In addition to Mahoney’s suit before this panel for wages, through separate counsel, he has sued Muhler and Hay for other benefits he claims from Muhler; this suit is likewise in arbitration but with no panel or trial date. In a third action, Hay has sued Glasscorp, Herlocker

and Mahoney on account of their efforts to enlarge the scope of Glasscorp's products and services and compete with Muhler.¹

III. A Brief History

A. Prior to 2008

In the period 2004-2006, Muhler suffered substantial losses as it was diversifying and enlarging its footprint in this market; the market softened, and Muhler suffered financially losses. Hay worked to right the books and the business by bringing in consultants and obtaining an approved plan forward with his lenders, including Wells Fargo. Hay had largely turned Muhler around when, in 2007, the real estate market began to tighten, as did the lending in this market.

Hay owned considerable real estate, the value of which began to deteriorate, and the lenders tightened their credit at a time when tenant defaults increased. Hay, using his and his father's assets, continued to fund Muhler. However, Hay recognized that further management in Muhler would be beneficial to continuing the turn around and allowing Hay more time to continue to resolve his troubled real estate portfolio. Hay sought out and found Mahoney. Mr. Bill Boyd ("Boyd"), a CPA, was brought in as Muhler's comptroller.

B. 2008 to 2015

Mahoney began work in January 2008, and his attorney prepared an employment agreement and stockholders agreement. While dated January 15, 2008, these agreements were executed at a later date. *See Exh. 1* (Employment Agreement); *Exh. 2* (Stockholders' Agreement); *see also Exh. 2* at 23 (Action of Stockholders, executed November 4, 2008).

¹ While there are likely multiple explanations of the difference in Glasscorp and Muhler's scope of products and services, in its simplest form, Muhler supplies finned windows but not labor. Glasscorp provides storefronts and curtain walls, which it builds and then installs, and its business is labor intensive.

From 2008 to 2015, Hay's involvement in Muhler was directed at research and development, product development and marketing a patented glass product. Hay submitted and obtained patents—six issued, four allowed, and 15 pending—involving windows and storm protection. Hay's efforts were to design products that would distinguish Muhler in the marketplace from Pella and Anderson and yet compete pricewise with the lower end of the window market, *e.g.*, Ply Gem. The patented glass allowed Muhler to distinguish itself in the market at this time and facilitate Muhler's profitability. Mahoney's job was to execute the marketing, sales, and financial plans; *i.e.*, to run Muhler.

In late 2013, Hay recognized the margins in its commercial glass business. Muhler was transitioning out of the millwork business. Herlocker was the Muhler employee running the millwork division, so Hay transferred Herlocker to the commercial glass division. Glasscorp began business in January 2014 with Herlocker as president. Glasscorp succeeded and has excelled, so much so that, at a later date, Mahoney and Herlocker chose to forget Hay's pivotal role and their agreed-upon product and services differentiation.

Hay continued to put what money he had into these ventures. In December 2015, Hay closed a loan which refinanced his real estate holdings, and his issues with Wells Fargo concluded. In and about this time, Hay was freed up to take an ever greater management role in Muhler.

C. 2016 to September 2018

The above narrative is overly simplistic, as Hay has worked diligently on behalf of Muhler and Glasscorp in whatever capacity he was needed. However, Hay's involvement began to increase in 2016 and continued to increase over the next several years. This led to conflict with Mahoney.

By this time Hay had curtailed Mahoney's control over the finances because of questions surrounding Muhler's finances as they involved Mahoney. When Mahoney suffered a stroke in early 2017, Hay became more involved in the day-to-day workings of the business. Further, and importantly, Hay had received patents that would allow for the manufacture of windows with storm protection measures built in. Hay and Mahoney hired Craig Shippe to begin "testing the water" to manufacture windows that provided a competitive advantage over its competitors. Hay believed his proposed products would be disruptive in the coastal hurricane rated window and door market nationwide.²

Mahoney, for reasons that will be developed at trial,³ would not pursue the shareholder's directives to pursue the All American Windows objective, and this became a source of additional conflict between Hay and Mahoney.

IV. Product Delineation

In 2017, Hay became concerned that Glasscorp was selling into Muhler's "space" and asked that the companies neatly define their scope of the market. Discussions ensued but did not yield the agreement of Mahoney and Herlocker, who controlled the majority of shares in Glasscorp. When negotiations failed, Hay called a Muhler meeting to address this issue. Attending were Mahoney and Hay. At this meeting on July 10, 2018, Mahoney as CEO voted for the product delineation sought by Hay. **Exh. 3** (notes from meeting).⁴ The resolution accepted by Hay and Mahoney provided:

² All American Window is this company and has begun operations and with success. Its present window capacity is 50% of what is needed to serve near term demand locally and a fraction of what is needed nationwide.

³ And developed briefly at the conclusion of this brief.

⁴ Each meeting that is discussed herein was preceded by notice, in some cases continuation of the date of the hearing, an agenda and a transcription of the meeting. These are attached, but in the

In order to avoid a conflict between Glasscorp and Muhler, Glasscorp shall not offer clad-wood doors or windows, vinyl doors or windows, sunrooms, shutters, replacement vinyl or wood windows, or hurricane protection.

Id.

A Glasscorp meeting was subsequently held in August of 2018 to have the same exact delineation accepted by Glasscorp. Hay, believed that Mahoney, the CEO of Muhler, would be in favor of protecting Muhler. Hay was wrong. Mahoney voted with Herlocker and refused to restrict Glasscorp in a way to prevent conflict and competition. **Exh. 4.** The exact language before the Glasscorp shareholders was:

In order to avoid conflict between Glasscorp and Muhler I propose that Glasscorp shall not offer clad wood windows and doors, vinyl doors and windows, sunrooms, shutters, replacement vinyl or wood windows, or hurricane protection, which is basically what Muhler does.

Id.

V. The September 18, 2018 Meeting

Hay, after Mahoney's vote in the Glasscorp meeting, called a further Muhler meeting for the purpose of terminating Mahoney. The meeting was held on September 18, 2018, and Mahoney was terminated. **Exh. 5.**

VI. The Issue

This panel is called upon to decide whether Mahoney's actions in the course of his ten-year tenure were in keeping with his fiduciary obligations to Muhler, or whether Mahoney was engaged in self-dealing acts.⁵

interest of a streamlined narrative not discussed. *See* **Exhs. 3a** (Muhler, July 10, 2018), **4a** (Glasscorp, August 14, 2018), **5a** (Muhler Termination, September 18, 2018).

⁵ This Brief addresses largely the product differentiation issue with a passing reference to Muhler's attempt to pursue the All American Window opportunity. There are other instances of Mahoney's self-dealing that will be addressed at trial.

Mahoney, in his deposition, accepts what is loyalty and what is self-dealing. He states:

Q. What's your definition of fiduciary duty?

A. That's the responsibility of an individual to do the right thing for those they have responsibility to.

Q. To work in the best interests of those that they have a responsibility to, correct?

A. Yes.

[. . .]

Q. Can we agree, Mr. Mahoney, that self-dealing is not working in the best interests of those to whom the fiduciary obligation is owed?

A. Yes.

Deposition of J. Daniel Mahoney 4:14-21, 5:4-7.

VII. Discussion

A. Mahoney's Defenses

i. Mahoney was not terminated for cause.

Mahoney attempts to narrow the trial to a discrete issue — which he loses. Mahoney argues that, except for termination for disloyal acts and gross or criminal conduct, he is entitled to ten months of compensation. **Exh. 1**, §§ 8.c and 8.d. As to termination for cause, Hay asked an interrogatory in this case to which Mahoney responded. The entire response is provided (**Exh. 6**) but in most relevant part Mahoney claims:

The corporate Resolution Defendant Hay prepared and provided to Plaintiff indicated Plaintiff's termination was not for cause.

Exh. 6 (Plaintiff's Responses to Defendants' First Set of Interrogatories at p. 2–3, ¶ 1). Now juxtapose the actual resolution that was passed at the meeting terminating Mahoney (**Exh. 5**) which states:

It is hereby recognized and resolved by the Shareholders of The Muhler Company, Inc. ("Muhler") that the employment of J. Daniel

Mahoney, CEO of Muhler, be terminated with immediate effect **and for cause**, on the following grounds:

1. As CEO of Muhler, Mr. Mahoney **breached his duty of loyalty** and fiduciary duty to Muhler by:

- a. At a recent meeting of Glasscorp LLC's shareholders, Mr. Mahoney voted against a proposal by Mr. Hay which would have more clearly establish [sic] product delineation between Muhler and Glasscorp. His vote was contrary to the best interests of Muhler.
- b. At a recent meeting of Glasscorp's shareholders, Mr. Mahoney voted for a budget proposal presented by Mr. Herlocker which reduced the expense allocation from Muhler to Glasscorp. His vote was contrary to the best interests of Muhler.

In both of these votes, Mr. Mahoney did so without consulting Muhler's shareholders. To amplify the above, given the facts, circumstances, and history of Glasscorp and Muhler. Glasscorp can never enter into competition with Muhler. The proposed delineation of products put forth at the Glasscorp meeting was made necessary by Mr. Mahoney's actions to ensure Glasscorp (who has access to all Muhler's information regarding vendors, customers, banking relationships, products, secrets, patents, and all other proprietary information) would not attempt to operate in competition with Muhler. Mr. Mahoney voted against it, contrary to Muhler's best interests."

Exh. 5 (Resolution of the Shareholders of The Muhler Company, Inc. (emphases added)).

Mahoney absolutely was terminated for cause. It absolutely was conduct disloyal to Muhler and the grounds of termination set forth in the Resolution clearly state just this.

ii. Mahoney's Safe Harbor Defense

While the interrogatory response of Mahoney is uneven, it appears to have a "fall back" that Mahoney can take positions that are in conflict with or disloyal to Muhler's interests.

Mahoney calls attention to §3 of his employment agreement, which states:

3. Other Responsibilities. The Company acknowledges and agrees that Executive has other business, consulting and board of directors commitments and responsibilities outside of the Company that will

continue while he is employed by the Company, and such activities shall not be considered a conflict or distraction from his duties as CEO, nor shall they be viewed in a negative manner by the Company.

Exh. 1.

Mahoney's alternative theory conflicts with his own testimony under oath. First, however, some context. A review of §3 above leads inevitably to the conclusion that Mahoney wanted to continue with other consulting activities as existed at the time of the execution of the employment agreement. He confirms this in his deposition and sets forth the consulting services he was rendering, stating that none conflicted with Muhler's business interests:

Q. Okay. Were any of them [his consulting clients] in the window supply business to the construction market?

A. Not that I'm aware of.

Deposition of J. Daniel Mahoney, 24:14-16.

But in his full interrogatory answer above, Mahoney's "fall back" position appears to advance that he could, after beginning as CEO of Muhler, take a consulting job with Muhler's competitor whenever he wanted and it would be allowable under §3. This is wrong for two reasons.

First, Mahoney signed a non-disclosure agreement (dated the same day as his employment agreement, January 15, 2008, that addresses confidential information and its protection from competitors:

1. That during the course of my employ there may be disclosed to me certain trade secrets of the Company; said secrets consisting of but not necessarily limited to:

(b) Business information: Customer lists, pricing data, sources of supply, financial data and marketing, production, or merchandising systems or plans.

2. I agree that I shall not during, or at any time after the termination of my employment with The Muhler Company, use for myself or other, or disclose or divulge to other including future employees, any trade secrets, confidential information, or any other proprietary data of The Muhler Company in violation of this agreement.

Exh. 7.

Secondly, when pressed in his deposition, Mahoney stated emphatically that the section referenced in his interrogatory answer was never intended to allow him to take actions that conflict with his fiduciary obligations to Muhler. He states:

A. There's no way that I intended in 2008, when I negotiated that agreement [§ 3 of the Employment Agreement] that I would serve on the boards of competitors. There's no way that I intended that, and the agreement does not say that.

Q. Okay. All right. So the agreement --

A. Once again, you're putting words in my mouth.

Q. All right. So the agreement doesn't say it because the idea originally was that you'd be allowed to serve on those boards and do the work that you had traditionally done for the people that you described earlier in your deposition, correct?

A. Yes.

Deposition of J. Daniel Mahoney, 60:20–61:9.

iii. Mahoney Can Wear Competitor's Hat

Mahoney defends his Glasscorp vote rejecting a clear delineation designed to protect Muhler by saying he had no choice as, on the date of the Glasscorp meeting, he was “wearing his Glasscorp hat.” Despite recognizing that rejecting the delineation was not in Muhler’s interest and a disloyal act, Mahoney appears to suggest he is relieved of his CEO role and related fiduciary obligations when he wears a “Glasscorp hat.”

Mahoney’s defenses and his underlying actions are more unfathomable because the delineation of products and services was the very foundation of the creation of Glasscorp.

Glasscorp was only in the commercial glass business. Mahoney states he voted at the Glasscorp meeting against product and services differentiation because:

A. I acted in the best interest of Glasscorp because I was wearing my Glasscorp stockholder's hat.

Deposition of J. Daniel Mahoney, 57:9-11.

Consider that Muhler is still owed \$3,500 that Mahoney borrowed to found Glasscorp. And consider that Mahoney, in order to prevent Hay from enforcing the agreed upon product delineation, sold his Glasscorp stock to Herlocker for \$550,000 at a time that Hay had exercised a call option of Mahoney's stock.

VIII. All American Window

This was an opportunity for Muhler as it would dramatically alter Muhler's competitiveness in the market. Mahoney, rather than pursuing it with diligence "slow played" the opportunity for his own self-dealing reasons which will be developed at trial. But he accepts that it is a breach of loyalty not to follow the shareholders' directions and states:

Q. Yes. And if the shareholders and/or board gave you instructions in response to your advice, would you carry out their instructions?

A. I would be expected to. Yes.

Q. All right. And that would be exercising your fiduciary obligations to that company; would you agree?

A. Yes.

Deposition of J. Daniel Mahoney, 27:16-23.

IX. Counterclaims

Dan Mahoney asked for and received permission to sell Muhler products to his neighbor(s) and himself at cost; his neighbor(s) paid and Mahoney directed the comptroller to show his debt as an account receivable. Mahoney has owed over \$14,000 since 2009. He

abused his car rental and allowance and owes money to Muhler to be testified to at trial.

Mahoney owes Muhler \$3,500, related to the launch of Glasscorp. The Panel should impose an appropriate interest rate running to the time of the award.

X. Conclusion

In his deposition, Mahoney clung to the notion that his vote against a measure to prevent Glasscorp competing with Muhler was an instance of no harm, no foul as Glasscorp was not “really competing.” At trial, this will prove wrong. Glasscorp *was* competing and wanted to compete more. But the issue is this: Muhler’s CEO, by his vote, could have prevented Glasscorp from even being in Muhler’s space. He did not.

This brief has been narrowly tailored, but the trial will reveal multiple acts of self-dealing and disloyalty.

Mahoney’s relief should be denied. Muhler should be awarded judgment, plus interest, and this Panel should impose the cost of this arbitration and Panel fees to Mahoney.

November 27, 2019
Charleston, SC

Respectfully submitted:



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EMPLOYMENT AGREEMENT

This Employment Agreement (the "Agreement") is dated effective as of the 15th day of January, 2008 (the "Effective Date"), by and between J. Daniel Mahoney (the "Executive") and The Muhler Company, Inc., a South Carolina corporation (the "Company").

WHEREAS, the Company has hired Executive as Chief Executive Officer of the Company and Executive desires to work for Company in such capacity; and

WHEREAS, the parties desire to enter into this Agreement to set forth certain terms of Executive's employment.

NOW, THEREFORE, in consideration of the promises contained herein, the compensation to be paid to Executive, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. **Effective Date.** This Agreement is effective as of January 15, 2008 (the "Effective Date"), and shall continue until Executive's employment relationship is terminated by Executive or the Company.
2. **Position and Duties.** Executive is employed as Chief Executive Officer ("CEO") of the Company and shall have such duties as are related to such position. The Company agrees that Executive shall be allowed to perform his duties as CEO on and off Company premises. All of the time spent working by Executive will be considered as part of the time required by this Agreement, even if such time is spent off Company premises.
3. **Other Responsibilities.** The Company acknowledges and agrees that Executive has other business, consulting and board of directors commitments and responsibilities outside of the Company that will continue while he is employed by the Company, and such activities shall not be considered a conflict or distraction from his duties as CEO, nor shall they be viewed in a negative manner by the Company.
4. **Term.** This Agreement shall begin January 15, 2008 and shall continue until December 31, 2008 (said period being referred to as the "Initial Term"). On or before sixty (60) days prior to the end of the Initial Term, the parties shall review the relationship and the financial results of the Company and negotiate in good faith whether to continue Executive's employment beyond the Initial Term (any continuation beyond the Initial Term shall be referred to as the "Renewal Term") and, if so, the new compensation and benefits Executive shall receive and the number of hours Executive shall work during the Renewal Term. If the parties do not continue Executive's employment beyond the Initial Term and into the Renewal Term, the Company shall redeem at the end of the Initial Term all outstanding stock that Executive owns in the Company pursuant to the terms of the

Stockholders' Agreement dated effective January 15, 2008, between Executive and the Company (the "Stockholders' Agreement").

5. **Compensation and Benefits.** During the Initial Term, the Company shall pay Executive the sum of Ten Thousand Dollars (\$10,000) per month, less applicable state and federal withholdings, to be paid the first day of each month. In return, Executive shall work up to 10 days per month in his capacity as CEO of the Company. In addition, the Company shall pay for, and Executive shall receive, health insurance for Executive and his family (at the Company's expense), a car allowance of Four Hundred Dollars (\$400.00) per month, and any other employee benefits afforded to other executive employees. Should the parties agree to continue Executive's employment beyond the Initial Term and into the Renewal Term, Executive's compensation, benefits, and the number of days per month that Executive must work during the Renewal Term will be negotiated by the Company and Executive as set forth in Section 4 hereof.
6. **Reimbursement of Expenses.** The Company shall reimburse Executive for all expenses he incurs in connection with his position as CEO. Executive shall submit invoices or other documentation evidencing the expenses and the Company shall reimburse Executive within thirty (30) days.
7. **Support to Executive.** Executive shall be provided an office, administrative support and appropriate equipment to perform his duties as CEO.
8. **Termination of Employment.** Executive's employment may be terminated only as follows:
 - a. During the Initial Term, either party may terminate Executive's employment, with or without cause, upon thirty (30) days written notice;
 - b. During the Renewal Term, Executive may terminate Executive's employment upon sixty (60) days written notice to the Company;
 - c. During the Renewal Term, the Company may terminate Executive's employment with Cause at any time. As used herein, "Cause" shall be defined as: breach of Executive's duty of loyalty to the Company; gross negligence or willful misconduct of Executive materially damaging to the Company's business; or a violation of state or federal law in connection with Executive's employment;
 - d. During the Renewal Term, the Company may terminate Executive's employment without Cause upon sixty (60) days written notice to the Executive, provided that the Company pays to Executive upon such termination a severance payment equal to ten (10) months of Executive's base salary, minus applicable withholdings.

Upon termination of Executive's employment for any reason, whether during the Initial Term or the Renewal Term, the Company shall redeem all outstanding stock that Executive owns in the Company pursuant to the terms of the Stockholders' Agreement.

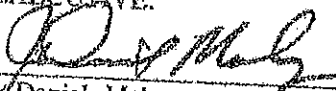
9. **Governing Law.** This Agreement shall be interpreted, construed, and governed according to the laws of the State of South.

10. **Amendments.** No amendments or variation of the terms or conditions of this Agreement shall be valid unless agreed to in writing and signed by the parties.

11. **Entire Agreement.** This Agreement constitutes the entire agreement regarding the subject matter hereof and shall bind and inure to the benefit of Company and Executive and their respective successors, heirs, assigns and legal representatives.

IN WITNESS WHEREOF, the parties hereto set their hands and seals to be effective the day and year first written above.

EXECUTIVE:

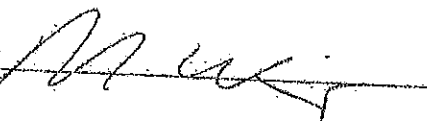

J/ Daniel Mahoney

COMPANY:

The Muhler Company, Inc.

By:

Its:



STOCKHOLDERS' AGREEMENT

THIS AGREEMENT is made and entered into by and among Henry M. Hay, III, and J. Daniel Mahoney, hereinafter referred to collectively as "Stockholders" and each individually as a "Stockholder," and The Muhler Company, Inc., a South Carolina corporation, having its principal place of business at Charleston, South Carolina, hereinafter referred to as "Corporation."

Background

The Stockholders own all the issued and outstanding capital stock of the Corporation as follows:

<u>NAME</u>	<u>NUMBER OF SHARES</u>
Henry M. Hay, III	1,000
Daniel Mahoney	333 1/3

The parties to this Agreement believe it to be in their mutual interests to provide for continuity in the management and policies of the Corporation by imposing certain restrictions and obligations on themselves and the outstanding capital stock of the Corporation. The Corporation and the Stockholders desire to facilitate liquidation of the stock of any retiring, deceased, disqualified or disabled Stockholder by the creation of a guaranteed market for his stock at a fair value. The Corporation and the Stockholders further desire to impose certain restrictions on the transfer of stock in the Corporation during the lifetime of the Stockholders;

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

ARTICLE 1.

Restrictions on Transfer of Stock

No Stockholder shall at any time during the existence of this Agreement directly or indirectly, voluntarily or involuntarily, sell, assign, transfer, mortgage, encumber, pledge, gift, or otherwise deal with or dispose of all or any part of the shares of stock in the Corporation now owned and hereafter acquired by him without first obtaining the written consent of the Corporation and the other Stockholders or, in the absence of such written consent, without first complying with the terms and conditions of this Agreement. Without limiting the above, under no circumstances shall any transfer be made to any transferee which jeopardizes the Subchapter S status, if applicable, of the Corporation without the prior written consent of all Stockholders. Upon a transfer of any shares to any permitted transferee, the shares shall continue to be subject to this Agreement, and as a condition to the transfer, each proposed transferee shall

execute this Agreement or other documents satisfactory to counsel for the Corporation pursuant to which such proposed transferee becomes bound by the terms and conditions of this Agreement. In the event a proposed transferee shall refuse to execute such documents, such transferee shall not become a stockholder of the Corporation. During the term of this Agreement any action of the Corporation not in the ordinary course of business including specifically but not limited to the incurring of additional debt of greater than \$50,000 or the sale of substantially all of the Corporations' assets shall be approved by a vote by the holders of one hundred (100%) percent of the common stock of the Corporation, unless a higher percentage vote is required in the Articles of the Corporation, the bylaws of the Corporation, this Agreement or the laws of the State of South Carolina.

ARTICLE 2.

Transfer of Stock During Lifetime

A. If a Stockholder desires to gift, transfer (except for estate planning purposes, and only to such Stockholder's spouse or issue), sell, or in any way encumber or dispose of all or any portion of his or her stock in the Corporation, such Stockholder shall first serve notice (hereinafter referred to as "Offer to Sell") to that effect upon the other parties hereto, stating the number of shares desired to be gifted, sold, encumbered, or otherwise disposed of and offering to sell such shares to the Corporation and the other Stockholders in accordance with the terms hereof. The non-selling Stockholders shall have the first right to purchase all or any part of the stock so offered by giving notice of acceptance (specifying the number of shares to be purchased) to the selling Stockholder and the Corporation within fifteen (15) days after completion of the valuation process described in Article 5 below. Each of the non-selling Stockholders shall have an individual pro rata right to purchase the shares of the selling Stockholder based on the following formula: each non-selling Stockholder may agree to purchase stock owned by the selling Stockholder in an amount equal to the total number of common shares of stock owned by the selling Stockholder multiplied by a fraction equal to the number of common shares of stock owned by that particular non-selling Stockholder divided by the total number of common shares of stock owned by all non-selling Stockholders. Should any non-selling Stockholder fail to give the notice of acceptance to the selling Stockholder and the Corporation as described above, then the non-selling Stockholders who have given notice of acceptance shall have the right but not the obligation to increase their purchase of stock of the selling Stockholder by adjusting the denominator of the fraction in the above-described formula to be the total common shares of stock owned by those non-selling Stockholders who desire to purchase the stock of the selling Stockholder. The purchase by any non-selling Stockholder shall occur within thirty (30) days following said fifteen (15) day period.

B. If the non-selling Stockholders shall fail to exercise their right to purchase all of the stock offered by the selling Stockholder, then the Corporation shall have the right to purchase such portion of the stock offered for sale which is not purchased by the non-selling

Stockholders by giving notice of acceptance (specifying the number of shares to be purchased) to the selling Stockholder and the non-selling Stockholders within fifteen (15) days following the close of the aforesaid fifteen (15) day period. The decision of whether or not the Corporation accepts such offer shall be made in the form of a resolution adopted by the Stockholders at a valid meeting. The resolution in favor of the Corporation accepting the offer to purchase such shares shall be adopted by a vote by the holders of sixty-seven (67%) percent of the outstanding shares of the Corporation. The Stockholder who made the Offer to Sell agrees that he or she will vote his or her shares in favor of the Corporation accepting the Offer to Sell. However, notwithstanding the foregoing, if the Corporation and the non-selling Stockholders have elected to purchase only a portion and not all of the stock offered for sale by the selling Stockholder, then the selling Stockholder may elect not to sell such portion to either the Corporation or the non-selling Stockholders but may elect to sell all of the stock included in the Offer to Sell, in accordance with the provisions of Paragraph D of this Article. Any purchase by the Corporation hereunder shall occur within thirty (30) days following said fifteen (15) day period of acceptance for the Corporation.

C. In the event that any stock is to be purchased pursuant to the terms of this Article 2, the following provisions shall apply:

(1) Each share of stock to be purchased pursuant to the terms of this Article 2 shall be purchased at the price specified in Article 5 of this Agreement.

(2) The purchase price of each share of stock to be purchased pursuant to the terms of this Article 2 shall be paid in accordance with the provisions of Article 5 of this Agreement.

D. In the event that the Corporation and the non-selling Stockholders fail or refuse to purchase all of the stock offered for sale, the selling Stockholder shall be free to gift, sell, encumber, or otherwise dispose of the shares of stock in any manner and upon any terms and conditions; provided, however, that such selling Stockholder shall not in fact sell any stock to another person either for a price less than or on terms more favorable than the purchase price or the terms fixed by this Agreement without first offering the Corporation and the non-selling Stockholders the right to purchase at the same price and upon the same terms as such other person. In carrying out the intent of the immediately preceding sentence, the same procedure as specified in Paragraphs A, B, and C above shall again be followed except that the notice served upon the parties to this Agreement shall specify the name and address of the person to whom the selling Stockholder proposes to sell his or her stock and the price and terms of purchase offered by such person for such stock. In the event that the Corporation and the other Stockholders shall then fail or refuse to purchase all the stock offered for sale pursuant to this Agreement, the selling Stockholder shall then be free to sell the shares of unaccepted stock to such other person for the price and upon the terms set forth in such notice; provided, however, that any such sale shall take place within sixty (60) days following the last day that the non-selling Stockholders may give notice of acceptance as provided above, and upon the expiration of such sixty (60) day

period, the provisions of this Agreement shall reattach to all of the stock not sold during said sixty (60) day period.

E. In the event that any stock is not sold but is merely encumbered during the ninety (90) day period specified in Paragraph D above, then the transferee of such encumbered stock shall accept such stock subject to the terms and conditions of this Agreement, subject to any relevant provisions, if any, in the Corporation's Articles of Incorporation.

F. In the event that any stock be involuntarily transferred pursuant to a divorce decree or otherwise, this Article 2 will apply in creating options for the Corporation or the Stockholders to first purchase the stock before such involuntary transfer is deemed to be effective.

ARTICLE 3.

Purchase of Stock Upon the Death or Termination of Mahoney

Upon the death or termination of the employment of Mahoney, the remaining Stockholders shall have the option to buy from Mahoney, or his Estate, as the case may be, all of the stock in the Corporation owned by Mahoney at the time of his departure or death by giving notice of acceptance as described in Article 2, Section A above. Should the remaining Stockholders not elect to exercise this option, based on the pro rata formula described in Article 2, Section A above, then the Corporation shall purchase and the departing or deceased Stockholder shall sell all of the stock in the Corporation owned by the departing Stockholder at the time of his death or departure. The option granted to the remaining Stockholders as described above shall expire fifteen (15) days after the completion of the valuation being made pursuant to Article 5 below, if a stipulated price is not applicable, and if such option lapses, then the Corporation shall purchase such shares of the departing or deceased Stockholder within thirty (30) days after the expiration of such option. The purchase price and terms of sale shall be as specified in Article 5 of this Agreement. Notwithstanding the above, this Article 3 shall not supercede the provisions of Article 2 above regarding the voluntary sale of stock by a Stockholder.

ARTICLE 4.

Reserved

ARTICLE 5.

Purchase Price of Stock

A. The purchase price per share for stock purchased pursuant to this Agreement is hereby stipulated to be the greater of Thirty Dollars (\$30.00) per share or an amount equal to each share's Appraised Fair Market Value. To determine Appraised Fair Market Value, the accountant for the Corporation shall first calculate the total of the Corporation's earnings before interest, taxes, depreciation, amortization, and Stockholders salaries, dividends, bonuses, and benefits (the "Adjusted EBITDA"). Appraised Fair Market Value shall equal the greater of: (i) four times Adjusted EBITDA, divided by the number of outstanding shares, or (ii) the Corporation's Book Value (defined as the sum of the Corporation's retained earnings and paid in capital) divided by the number of outstanding shares of stock. There shall be no reduction in the valuation of stock purchased pursuant to this Agreement for minority interests, lack of control, or any other reason. The purchasing Stockholders, or, if the Corporation is purchasing, the board of directors of the Corporation or the Corporation's authorized representative(s) shall thereupon fix a date, hour and place for the closing, which shall be made known to the selling or disassociated Stockholder. At the closing, such Stockholder shall deliver to the Corporation the certificate or certificates representing all of the common shares of stock of the Corporation held by such Stockholder, regardless of whether or not some part of the purchase price is deferred as hereinafter provided, with the certificates being duly endorsed, and the Corporation shall, upon delivery of the certificate or certificates, pay to such Stockholder the purchase price for such stock as described in Section B below. **Notwithstanding the above, EBITDA shall not include any income derived from the Settlement Agreement between the Corporation and Silverline dated _____, 2008.**

B. The purchase price of stock subject to this Agreement shall be in cash at closing. In the event the Stockholder or Corporation lacks sufficient cash to purchase the stock, the unpaid balance of the purchase price shall be evidenced by a negotiable promissory note payable in equal monthly installments of principal and interest with simple interest at the rate of the then applicable prime rate plus three percent (3%) interest rate per annum, with the first payment due and payable on the 30th day following the closing, and the subsequent payments due and payable at similar time frames thereafter with a final payment of all unpaid interest and principal due on the first anniversary date of the closing. Said note shall be in the form attached hereto as Exhibit B. All of the stock in the Corporation being purchased shall be pledged as collateral security to the Stockholder from whom it was purchased to secure the full payment of the principal and interest on the negotiable promissory note. The form of the stock pledge to be used is attached hereto as Exhibit C.

ARTICLE 6.

Insurance

A. The Corporation or the Stockholders may be the owner of policies of insurance on the lives of the Stockholders as listed in Exhibit A attached hereto and made a part hereof.

B. The Corporation or the Stockholders are or will be the beneficiary of the policies listed in Exhibit A and of any additional policies which may become subject to the terms hereof; and during the continuance of this Agreement, the proceeds of all policies listed on Exhibit A and of all such additional policies shall be payable to the Corporation or the Stockholders in lump sums upon the death of the insureds.

C. The Corporation shall have the right to purchase additional policies of insurance on the lives of any or all of the Stockholders, who are parties hereto, whenever it deems it reasonably necessary to acquire such additional insurance in order to meet its obligations hereunder; and, the Stockholders agree to cooperate in the acquisition of such additional insurance and to perform all acts reasonably necessary and proper in connection therewith, including the submission to such medical examinations as may be required. Any such additional policies of insurance shall become subject to the terms of this Agreement and shall be listed in Exhibit A.

D. The Corporation or the Stockholders shall pay the premiums on all of the insurance policies at any time listed in Exhibit A and shall, if requested in writing, give written proof of such payment to the insured Stockholder within fifteen (15) days after the due date of each premium. If any premium is not paid within fifteen (15) days after its due date, the insured Stockholder shall have the right to pay the premium and be reimbursed therefor by the Corporation or the Stockholders.

E. During the continuance of this Agreement, the Corporation or the Stockholders shall own all the policies at any time listed in Exhibit A and shall have the right to apply the dividends on such policies to the payment of the premiums thereof; however, the Corporation or the Stockholders shall not exercise any of the other rights, powers, or privileges in or under any of the said policies without first obtaining the written consent of the Stockholders who are then parties hereto, except that the consent of the Stockholder whose life is insured by the policy with respect to which the Corporation or the Stockholders seeks to exercise any rights, powers, or privileges shall not be required to consent to such exercise.

F. The Corporation or the Stockholders may, at any time and from time to time, with the written consent of the Stockholders who are then parties hereto, withdraw a policy or policies listed in Exhibit A from the terms hereof or substitute a policy or policies for any policy or policies listed in Exhibit A.

G. No insurance company which has issued a policy of life insurance subject to the terms of this Agreement shall have any obligation to inquire into the terms hereof or to see to the application of the proceeds and benefits of such policy, and a receipt of the Corporation or

the Stockholders to any such insurance company shall be effective to release such company from any liability as a result of such policy, and such release shall be binding upon all the parties hereto.

H. Except as provided in the Agreement, no Stockholder shall have any right, title, or interest in or to any of the policies of insurance on his or her life at any time listed in Exhibit A.

I. Any insurance company that has issued a policy subject to the terms hereof is hereby authorized to provide a Stockholder, upon written request, with any information regarding a policy or policies on his or her life.

J. For the purposes of this Agreement, the term "proceeds" shall include all payments paid on a policy as a result of the death of the insured, including, but not limited to, the face amount of the policy, dividends, and any accidental death benefits.

ARTICLE 7.

Purchase of Insurance Policies

Upon the purchase of his or her entire stock interest in the Corporation as herein provided under this Agreement, whether due to termination of employment or otherwise or upon termination of this Agreement, a selling Stockholder, if living, shall have the right to purchase from the Corporation or non-selling Stockholders all life insurance contracts on his or her life owned by the Corporation or the non-selling Stockholders that are subject to this Agreement for a purchase price equal to the amount of:

(a) The cash surrender value thereof, if any, calculated on a prorated basis to the date of the transaction, exclusive of any dividend, dividend accumulations, or policy loans, but inclusive of the cash value of any paid-up insurance additions, plus

(b) The pro rata portion of any premium paid prior to such date which covers a period extending beyond the date of the transaction, plus

(c) Any dividends or dividend accumulations, and less

(d) Any policy loan plus interest then due. The rights granted in this Article 7 shall lapse unless the selling Stockholder notifies the Corporation or the non-selling Stockholders in writing within thirty (30) days of the termination of his or her employment of his or her desire to purchase all or some of the life insurance contracts on his or her life owned by the Corporation. Any policy or policies not purchased within such thirty (30) day period may be disposed of or otherwise dealt with by the Corporation or the non-selling Stockholders in any

manner they desire; and, the Stockholders agree to execute and deliver such instruments as may be required by the Corporation to dispose of or otherwise deal with such policy or policies. In the event of a sale of a policy or policies pursuant to the terms of this Article, the Corporation or Stockholders shall execute and deliver to the purchaser such instruments as are necessary and proper to transfer full and complete title to such policy or policies.

ARTICLE 8

Corporate Inability to Purchase Stock

If for any reason the Corporation is unable to purchase all or any part of the stock from a Stockholder or a Stockholder's estate, when the Corporation is obligated to make such a purchase pursuant to this Agreement, because of a limitation or restriction imposed by statute, charter, or bylaws, the Corporation shall take, as soon as possible after the acceptance of an offer to sell or the Stockholder's disability or death, such action as may be necessary to permit the Corporation to make the purchase, including, but not limited to, a reorganization of the Corporation and the contribution by the remaining Stockholders of additional assets to the capital of the Corporation. If, notwithstanding the action of the Corporation and the remaining Stockholders, the Corporation is still unable legally to purchase all of a Stockholder's stock when the Corporation is obligated to make such a purchase pursuant to this Agreement, then the remaining Stockholders shall purchase such portion of the stock of the selling Stockholder not purchased by the Corporation.

ARTICLE 9

Reserved

ARTICLE 10.

Mandatory Dividends if an S Corporation

(a) If the corporation elects to be an S corporation and while any Subchapter S election is in effect, the corporation shall make the pro rata distributions to the Stockholders at least equal to the estimated federal and state income taxes attributable to their pro rata share of the corporation's net long-term and Section 1231 capital gains and nonseparately computed income pursuant to Section 1366(a) of the Internal Revenue Code. This estimated tax liability, which shall be computed by the accountant who regularly prepares the corporation's tax returns, shall be computed on the basis of the highest marginal rate applicable to individuals on capital gains and other taxable income for the tax year in question. Unless prevented from making any distributions under applicable state law, or the Stockholders unanimously otherwise agree, these

minimum mandatory distributions shall be declared and paid on a quarterly basis beginning no later than the last day of the third month of a taxable year and shall be based on one fourth of the estimated tax liability for the full taxable year computed as of the declaration date. Any pro rata distributions made during the taxable year in question to Stockholders in excess of the minimum mandatory dividends required by this section can be taken into account in determining the extent of any future minimum mandatory dividends for that particular taxable year.

(b) If any Subchapter S election is revoked or terminated, the corporation shall, except to the extent the Stockholders unanimously agree to the election authorized by Section 1371(e)(2) of the Internal Revenue Code, or unless prevented from doing so by applicable state law, declare and pay pro rata cash distributions during the post-termination transition period equal to the corporation's accumulated adjustments account.

ARTICLE 11.

Specific Performance

The parties hereby declare that it is impossible to measure in money the damages which will accrue to a party hereto, or his or her heirs and assigns or to the personal representative of a deceased or disabled Stockholder by reason of another party's failure to perform any of the obligations under this Agreement. Therefore, if any party hereto or the personal representative shall institute any action or proceeding to enforce the provisions hereof, any person (including the Corporation) against whom such action or proceeding is brought hereby waives the claim or defense therein that such party or such personal representative has or have an adequate remedy at law, and such person shall not urge in any such action or proceeding the claim or defense that such remedy at law exists, and any party hereto may maintain a proceeding despite the claim or defense that such remedy at law exists, and any party hereto may maintain a proceeding to compel the specific performance of the terms and conditions set forth in this Agreement or any other applicable equitable relief.

ARTICLE 12.

Health Insurance

Following the Disassociation of a Stockholder, except for "cause" (which shall be defined as conviction of a felony), such Stockholder shall have the option to continue as a covered member of the Corporation's health insurance plan, if any, to the extent allowed by applicable rules, regulations and laws, by the timely payment to the Corporation of the applicable premiums due on behalf of such Stockholder, with the amount and the timing of such premium payments to be as set by the Corporation's health insurance plan company.

ARTICLE 13.

Invalid Provision

The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions of this Agreement and the Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

ARTICLE 14.

Reserved

ARTICLE 15.

Endorsement of Stock Certificates

Simultaneously with the execution of this Agreement, the Stockholders shall surrender the stock certificates subject hereto to the Corporation and the following endorsement shall be placed on the face of each certificate:

"The sale, encumbrance or other disposition of the shares issued by this corporation may be subject to the terms and conditions of a shareholders agreement, by and among the shareholders of this corporation, with a copy of such an agreement, if it exists, being on file in the office of this corporation and to be furnished without charge to any shareholder upon written request."

After such endorsement, the certificates shall be returned to their respective owners who shall be entitled, subject to the terms hereof, to exercise all rights and interest therein. All stock hereafter issued shall bear the same endorsement. Upon the termination of this Agreement, such certificates shall be surrendered to the Corporation and new certificates without the foregoing endorsement shall be issued in lieu thereof.

ARTICLE 16.

Amendment

This Agreement may be amended, altered, or revoked at any time upon the mutual agreement of the Corporation and all of the Stockholders.

ARTICLE 17.

Termination of Agreement

This Agreement shall terminate upon the occurrence of any one of the following events:

A. The written agreement of the parties hereto or their successors in interest to that effect;

B. The bankruptcy, receivership, or dissolution of the Corporation;

C. The complete fulfillment of this Agreement according to its terms upon the happening of whichever of the following events shall first occur:

(1) The disposal of all the stock of any Stockholder during his or her lifetime shall terminate this Agreement as to such Stockholder;

(2) The sale of the stock upon the disability or death of any Stockholder shall terminate this Agreement as to such disabled or deceased Stockholder and his or her estate; provided, however, that whether or not such stock is sold upon the disability or death of a Stockholder, such Stockholder's estate or other successor in interest to the stock shall be bound by this Agreement.

D. The death of all Stockholders parties hereto, within thirty (30) days of each other.

ARTICLE 18.

Governing Law

This Agreement shall be subject to and governed by the laws and courts of the State of South Carolina.

ARTICLE 19.

Notice

Any notice required hereunder shall be given in writing and shall be sent by registered or certified mail, return receipt requested, to the parties hereto at the following addresses:

<u>Name</u>	<u>Address</u>
Henry M. Hay, III	_____

Daniel Mahoney	3910 Colonel Vanderhorst Circle Mt. Pleasant, SC 29464

Any notice required to be given hereunder to the estate of a disabled or deceased Stockholder shall be sent to the personal representative at his or her address or, if no personal representative is appointed, to the disabled or deceased Stockholder at his or her last designated address. As soon as practical after being appointed, the personal representative shall notify the other parties hereto of his or her address by notice sent in conformity with the foregoing requirements. Any party from time to time may change his or her address to which notice is to be sent pursuant hereto by sending a notice of such change in conformity with the foregoing requirements to the other parties or the personal representative.

ARTICLE 20.

Indebtedness of Stockholder

In the event that there is a purchase and sale of stock pursuant to the provisions of this Agreement and there is any indebtedness owed by the selling Stockholder or his or her estate to any party to this Agreement, then, notwithstanding the provisions of Articles 2, 3, and 5 hereof relating to the payment of the purchase price for such stock, any amount to be paid for the stock being purchased shall be applied first to reduce any indebtedness owed by the selling Stockholder or his or her estate to any party under this Agreement. If the indebtedness exceeds the total purchase price, then no payment shall be made for the stock and the excess of the indebtedness over the purchase price shall be immediately paid to such party by the selling Stockholder or his or her estate.

ARTICLE 21.

Binding Effect

This Agreement shall be binding upon the parties, their heirs, legal representatives, successors and assigns. In furtherance hereof, each Stockholder may need to execute a will, or codicil to such, directing his or her personal representative to perform this Agreement and to do any and all things necessary to effectuate the Agreement and the purposes hereof, but the failure to execute such will or codicil shall not affect the rights or the obligations of the Stockholders or their respective estates hereunder.

ARTICLE 22.

Gender

All pronouns used herein shall be deemed to include the masculine, the feminine and the neuter, and the singular shall include the plural and vice-versa, whenever the context requires or permits.

ARTICLE 23.

Counsel

Each party hereto agrees and acknowledges that he or she has had ample opportunity and time prior to the execution of this Agreement to seek advice concerning the terms, conditions and effect of this Agreement from independent tax and/or legal advisors.

ARTICLE 24.

Counterparts

This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

ARTICLE 25.

Severability

If any clause or provision herein shall be adjudged invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it shall not affect the validity of any other clause or provision which shall remain in full force and effect.

ARTICLE 26.

Adjudication

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by a court of competent jurisdiction in the State of South Carolina, County of Charleston.

ARTICLE 27.

Waiver

The waiver by either party of a breach of any provision of this Agreement by either party shall not operate or be construed as a waiver of any subsequent breach.

ARTICLE 28.

Entire Agreement

This Agreement constitutes the entire agreement among the parties hereto and supersedes all prior agreements, understandings and negotiations, both written and oral, among and between the parties with respect thereto.

ARTICLE 29.

Headings

The headings or titles of articles, sections and subsections contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

ARTICLE 30.

Nonpresumption

Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved using any presumption against any party hereto, whether under any rule of

construction or otherwise. On the contrary, this Agreement has been reviewed by the parties and their counsel and, in the case of any ambiguity or uncertainty, shall be construed according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties hereto, and not against the party who drafted or had its counsel draft this Agreement or any section herein.

ARTICLE 31.

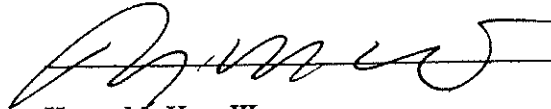
Prevailing Party

The parties hereto agree that should any party hereto prevail in a lawsuit, action or proceeding enforcing any of the terms, covenants or conditions contained herein, said prevailing party shall be reimbursed by the losing party, in addition to any damages that a court of competent jurisdiction may award, for the prevailing party's costs and expenses, including reasonable attorney's fees, associated with such lawsuit, action or proceeding.

IN WITNESS WHEREOF, the parties executed this agreement effective January 15, 2008.

WITNESSES:

STOCKHOLDER:

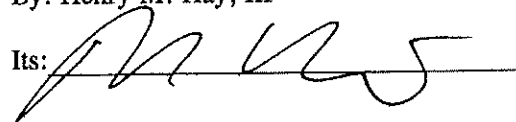

Henry M. Hay, III


Daniel Mahoney

CORPORATION:

The Muhler Company, Inc.

By: Henry M. Hay, III

Its: 

Attest:

Secretary
(Corporate Seal)

THE MUHLER COMPANY, INC.

STOCKHOLDERS' AGREEMENT

EXHIBIT A

Policy Name

Insured

Policy Number

EXHIBIT B

SOUTH CAROLINA

\$ _____, 20__

FOR VALUE RECEIVED, the undersigned Maker promise(s) to pay to the order of _____ at Charleston, South Carolina, in lawful money of the United States of America, the principal sum of _____ (\$ _____) DOLLARS plus simple interest from date at the rate of _____ (%) Percent per annum, with a payment of \$ _____ due on _____ and a second and final payment of \$ _____ due on _____.

Provided, however, that the Maker shall have the right to prepay the within obligation in whole or in part at any time or times without penalty.

If default be made and be continuing for a period of ten (10) days in the performance of or compliance with any of the covenants and conditions of this note, then in any of said events, said principal sum with all accrued interest thereon shall become at once due and payable at the option of the Holder thereof and be collectible without further notice. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

If this note be placed in the hands of an attorney for collection after the same shall for any reason become due, or if collected by legal proceedings or through the probate or bankruptcy courts, then all costs of collection, including a reasonable sum for attorney's fees shall be added hereto as attorney's fees secured and collectible as the principal hereof.

The undersigned expressly agrees to remain and continue bound for the payment of the principal and interest provided for by the terms of this note notwithstanding any extension or extensions of the time of, or for the payment of said principal or interest, or any change or changes in the amount or amounts agreed to be paid under and by virtue of the obligation to pay provided for in this note, or any change or changes by way of release or surrender of any collateral held as security for this note and waive all and every kind of notice of such extension or extensions, change or changes and agree that the same may be made without the joinder of the undersigned.

Presentment, protest, and notice are hereby waived.

Witness the hand and seal of each of the signers hereof.

WITNESS:

(Maker)

By: _____

Its: _____

By: _____

Its: _____

EXHIBIT C

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STOCK PLEDGE AGREEMENT

This Stock Pledge Agreement is made by and between _____
(hereinafter referred to as "Pledgor") and _____ (hereinafter referred to as
"Pledgee").

In consideration of Ten (\$10.00) Dollars, the mutual covenants and promises herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Pledgor and Pledgee agree:

1. Pledgor hereby grants a security interest to Pledgee in the following stock: _____ shares of the common stock of _____ (hereinafter referred to as "Security"), the original certificates for such stock being attached hereto along with an executed blank stock power/assignment(s).
2. Pledgee shall hold the Security as security, for full payment by Pledgor of the principal and interest on that certain promissory note by and between Pledgor and Pledgee, dated of even date herewith (the "Note"), in the original principal amount of _____ (\$ _____) DOLLARS.
3. During the term of this Agreement so long as there has been no default by Pledgor hereunder which remains uncured as described in Section 6 below, Pledgor retains the right to collect all dividends and distributions that may become due on the Security and to vote the Security in all corporate matters.
4. In the event that during the term of this Agreement the issuing corporation shall grant warrants, rights, or options related to the Security, Pledgor can exercise such warrants, rights, or options as deemed best, but any new or additional Security so acquired by Pledgor shall be immediately assigned to Pledgee to be held under the terms hereof in the same manner as the Security originally pledged under this Agreement.
5. Pledgor shall be in default under this Agreement (1) in the event of a failure by Pledgor to comply with any of the terms or provisions of this Agreement or of the above referenced Note, or (2) in the event of a filing, declaration or petition, voluntary or involuntary, of insolvency or bankruptcy of Pledgor from any cause or source whatsoever, or (3) in the event any holder of any obligation of Pledgor shall become entitled to any interest or security in the Security.

6. On any default hereunder by Pledgor and if any default hereunder has not been cured within five (5) business days following written notice of default from Pledgor to Pledgee, all indebtedness owed by Pledgor to Pledgee shall, at the option of Pledgee, become immediately due and payable, and Pledgee shall have all the rights and remedies of a secured party under Section 36-9-101, et. seq., of the Code of Laws of South Carolina, 1976, as amended, and any other laws of the State of South Carolina. Without limiting any of the foregoing, upon a default continuing by Pledgor after the above-mentioned five (5) day cure period, Pledgee is entitled to arrange for the transfer of the Security on the books of the issuing corporation to the name of the Pledgee and may thereafter exercise all rights and privileges in connection with the Security to which a transferee may be entitled as the record owner, including selling, without any previous demand for performance on, or notice to, Pledgor. Upon such a sale of all or any part of the Security, after deducting all legal and other costs, expenses, and charges, including reasonable attorneys' fees, incurred in the collection, sale, delivery, or preservation of the Security, or any part thereof, Pledgee shall apply the residue of such sale proceeds to the payment of the indebtedness of Pledgor to Pledgee hereunder and the interest thereon. Should there be any surplus of such proceeds, such surplus shall be paid to Pledgor.

7. Upon full repayment of all amounts owed to Pledgee by Pledgor under the Note, Pledgee agrees to return the Security and the executed blank stock power/assignment immediately to Pledgor.

8. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by a court of competent jurisdiction in the State of South Carolina, County of Charleston.

9. If any clause or provision herein shall be adjudged invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it shall not affect the validity of any other clause or provision which shall remain in full force and effect.

10. This Agreement shall be governed by the laws of the State of South Carolina.

11. The waiver by either party of a breach of any provision of this Agreement by either party shall not operate or be construed as a waiver of any subsequent breach.

12. This Agreement, together with any amendments hereto, shall be binding upon the parties hereto, their heirs, successors and assigns.

13. The headings or titles of articles, sections and subsections contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

14. This Agreement may not be altered or amended except in writing signed by all parties hereto.

15. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved using any presumption against any party hereto, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by the parties and their counsel and, in the case of any ambiguity or uncertainty, shall be construed according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties hereto, and not against the party who drafted or had its counsel draft this Agreement or any section herein.

16. The parties hereto agree that should any party hereto prevail in a lawsuit, action or proceeding enforcing any of the terms, covenants or conditions contained herein, said prevailing party shall be reimbursed by the losing party, in addition to any damages that a court of competent jurisdiction may award, for the prevailing party's costs and expenses, including reasonable attorney's fees, associated with such lawsuit, action or proceeding.

17. Each party hereto acknowledges that he or she has received, or has had adequate opportunity to receive, the advice of his or her respective tax and legal counsel regarding the transactions contemplated or referenced herein and all related documents.

18. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

WITNESS our hands and seals this ____ day of _____, 20__.

IN THE PRESENCE OF:

PLEDGEE:

By: _____

Its: _____

PLEDGOR:

By: _____

Its: _____

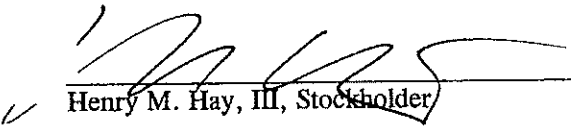
**ACTION OF
THE STOCKHOLDERS
OF
THE MUHLER COMPANY, INC.
WITHOUT A MEETING**

The undersigned, being all of the stockholders of The Muhler Company, Inc. (the "Corporation"), do hereby consent to the following action on behalf of the Corporation pursuant to S.C. Code Ann. §33-7-104 (Law. Co-op. 1990), to the same effect as if said action were taken at a meeting of the stockholders duly called and held for such purpose and at which the following resolution was unanimously adopted:

RESOLVED, that the Corporation enter into the Stockholders' Agreement with its Stockholders and that any one Officer of the Corporation is authorized to execute the Stockholder's Agreement and carry out the obligations of the Corporation contained therein.

No further action was taken on this date.

Dated this 4th day of NOVEMBER, 2008.


Henry M. Hay, III, Stockholder


Daniel Mahoney, Stockholder

_____, Stockholder

THE MUHLER COMPANY, INC.

Stock Ledger

COMMON STOCK

Authorized and Issued Number of Shares as of January 15, 2008

* = Original Issue

<u>Certificate Number</u>	<u>Name of Shareholder</u>	<u>Date of Issue</u>	<u>Number of Shares</u>	<u>Cancellations, Transfers, etc.</u>
*1	Henry M. Hay, III	05/31/96	650	Issued and Outstanding
*2	Henry M. Hay, III	05/31/96	350	Lost and Replaced by Cert #3
*3	Henry M. Hay, III	05/09/01	350	Reissue of Lost Cert #3
4	Daniel Mahoney	10/17/08	333 1/3	Issued and Outstanding

~ Doc# 681198.1 ~

ACTION
OF
THE SHAREHOLDERS
OF
THE MUHLER COMPANY, INC.
WITHOUT A MEETING

Charleston, South Carolina

The undersigned, being all of the shareholders of The Muhler Company, Inc. (the "Corporation"), do hereby consent to the following action on behalf of the Corporation pursuant to S.C. Code Ann. §33-7-104 (Law. Co-op. 1990), to the same effect as if said action were taken at a meeting of the shareholders duly called and held for such purpose and at which the following resolutions were unanimously adopted:

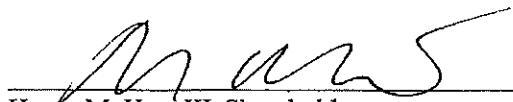
RESOLVED, that the number of authorized shares of the corporation shall be increased from 1,000 to 1,333 1/3; and

FURTHER RESOLVED, that amendment of the Articles of Incorporation shall require the vote of the holders of at least One Hundred (100%) percent of the issued and outstanding shares entitled to vote; and

FURTHER RESOLVED, that Henry M. Hay, III, as President of the Corporation, is hereby authorized to execute and deliver the Articles of Amendment and any other documents necessary, incidental or desirable thereto.

No further action was taken on this date.

Dated effective this 15th day of January, 2008.


Henry M. Hay, III, Shareholder

ACTION
OF
THE SHAREHOLDERS
OF
THE MUHLER COMPANY, INC.
WITHOUT A MEETING

Charleston, South Carolina

The undersigned, being all of the shareholders of The Muhler Company, Inc. (the "Corporation"), do hereby consent to the following action on behalf of the Corporation pursuant to S.C. Code Ann. §33-7-104 (Law. Co-op. 1990), to the same effect as if said action were taken at a meeting of the shareholders duly called and held for such purpose and at which the following resolutions were unanimously adopted:

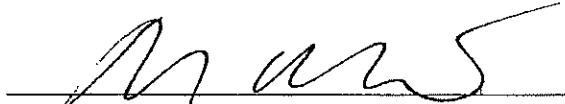
RESOLVED, that the number of authorized shares of the corporation shall be increased from 1,000 to 1,333 1/3; and

FURTHER RESOLVED, that amendment of the Articles of Incorporation shall require the vote of the holders of at least One Hundred (100%) percent of the issued and outstanding shares entitled to vote; and

FURTHER RESOLVED, that Henry M. Hay, III, as President of the Corporation, is hereby authorized to execute and deliver the Articles of Amendment and any other documents necessary, incidental or desirable thereto.

No further action was taken on this date.

Dated effective this 15th day of January, 2008.


Henry M. Hay, III, Shareholder

Muhler Co, Inc. Special Meeting

July 10, 2018

The purpose of the meeting is to vote regarding product offerings and expense allocations as between Muhler and Glasscorp

1-Vote on Product Offerings

In order to avoid a conflict between Glasscorp and Muhler, Glasscorp shall not offer clad-wood doors or windows, vinyl doors or windows, sunrooms, shutters, replacement vinyl or wood windows, or hurricane protection

In favor

Henry Hay (75%)

Dan Mahoney (25%)

Motion carried

2-Vote on Expense Allocation

It is hereby recognized and resolved by the shareholders of Muhler that expense allocations for Dan Mahoney and Henry Hay between Muhler and Glasscorp were originally set by Muhler and should be restored to their original form.

In favor

Henry Hay (75%)

Opposed

Dan Mahoney (25%)

Motion carried

3-It is hereby recognized and resolved that any changes with regard to the allocation of expenses between Muhler and Glasscorp will not be effective until they are reviewed and approved by Muhler in the next 60 days from July 10, 2018.

In Favor

Henry Hay (75%)

Dan Mahoney (25%)

Motion carried

Meeting adjourned

*Notice of a Special Meeting
of the Muhler Company, Inc.*

To: The Stockholders

Notice & Agenda

You are hereby notified that a special meeting of the shareholders of the Muhler Company, Inc. (hereinafter "Muhler") will be held on Tuesday, July 10, 2018, at ~~5:00~~ ^{3 PM} p.m. at 630 Skylark Drive, Suite U, Charleston, SC 29407.

This meeting is called by Henry M. Hay, III, 75% stockholder, for the purpose of a vote regarding product offerings and expense allocations as between Muhler and Glasscorp, Inc.

Notice is provided this 29th day of June, 2018.


Henry M. Hay, III, President

Revised meeting time

ended

6/29/2018

9:41 AM

*Special Shareholders' Meeting
of The Muhler Company, Inc.*

July 10, 2018, 3:00 p.m.

Call to Order, Introductions, Agenda and Rules of Conduct

Chairperson: Good evening, will the meeting please come to order. I would like to welcome all of you to the annual meeting of shareholders of The Muhler Company, Inc. I am Henry Hay, majority shareholder, and I will be presiding as Chair of this meeting.

Proof of Notice of Meeting

I have a copy of the notice and agenda of this meeting. All shareholders received this notice at least 10 days prior to this meeting. The notice is incorporated into the minutes of this meeting.

Calling of Roll and Quorum

All shareholders of record at the close of business on July 9, 2018 are entitled to vote at this meeting. Our first order of business is to determine whether the shares represented at the meeting, either in person or by proxy, are sufficient to constitute a quorum for the purpose of transacting business. All shareholders of record should declare themselves now by stating their name, starting with Dan Mahoney:

Dan Mahoney
Henry Hay

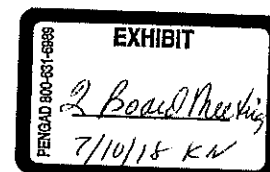
Dan Mahoney — 25% shareholder — and I — 75% shareholder — are present at this meeting. Therefore, we have a quorum and this meeting is duly convened.

Reading and Disposal of Unapproved Minutes

We will now read and dispose of any unapproved minutes. There are no unapproved minutes.

Reading of Reports

Next on the agenda is the reading of any reports of officers and committees. There are no such reports.



Unfinished Business

We will next dispose of any unfinished business. There being none, we will proceed to new business.

New Business

I have here a proposed resolution regarding the product delineation and expense allocation between The Muhler Company and Glasscorp. A copy has been provided to each shareholder. This resolution proposes the allocation and delineation between the companies that was originally conceived.

As part of a vote on these matters, it is necessary that the CEO of Muhler, Dan Mahoney, speak on the record in response to the following question:

How would it be Muhler's best interest to alter the expense allocation in favor of Glasscorp and allow a conflict between itself and Glasscorp with regard to product offerings?

Thank you.

1. Vote on Product Offerings

We will now conduct an oral vote on whether to adopt the resolution regarding a delineation of product offerings as ~~originally~~ conceived between Muhler and Glasscorp.

All in favor, say "aye."

yes HHS
yes DM

Aye.

All against, say "nay."

With support of [75% / 100%] of the voting shares, the vote passes.

2. Vote on Expense Allocation

We will now conduct an oral vote on whether to adopt the resolution regarding an allocation of expenses as originally conceived between Muhler and Glasscorp. - here forward.

All in favor, say "aye."

Aye.

All against, say "nay."

With support of [75% / 100%] of the voting shares, the vote passes.

2a. Vote on Changes to Expense Allocation

1. We will now conduct an oral vote on whether to adopt the resolution establishing that any changes with regard to the allocation of expenses between Muhler and Glasscorp will not be effective until they are reviewed and approved by Muhler.

All in favor, say "aye."

Aye.

All against, say "nay."

With support of [75% / 100%] of the voting shares, the vote passes.

Adjournment

We have concluded the business of this special meeting, which is officially adjourned. The July 10, 2018 special meeting of the shareholders of The Muhler Company, Inc. is closed.

**RESOLUTION OF THE SHAREHOLDERS OF
THE MUHLER COMPANY, INC.**

July 10, 2018

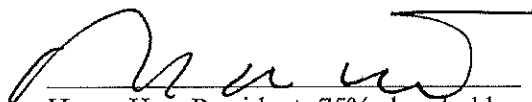
1. It is hereby recognized and resolved by the Shareholders of The Muhler Company, Inc. ("Muhler") that the product offerings by Muhler and Glasscorp LLC ("Glasscorp") be delineated and defined as in conformance with the following:

In order to avoid a conflict between Glasscorp and Muhler, Glasscorp shall not offer clad-wood doors or windows, vinyl doors or windows, sunrooms, shutters, replacement vinyl or wood windows, or hurricane protection.

2. It is hereby recognized and resolved by the Shareholders of Muhler that expense allocations for Dan Mahoney and Henry Hay between Muhler and Glasscorp were originally set by Muhler and should be restored to their original form.

3. It is hereby recognized and resolved that any changes with regard to the allocation of expenses between Muhler and Glasscorp will not be effective until they are reviewed and approved by Muhler. *next 60 days from July 10th.*

IT IS SO RESOLVED, this ____ day of July, 2018.


Henry Hay, President, 75% shareholder


Dan Mahoney, CEO, 25% shareholder

#1 yes Dan
 yes Henry

#2 yes Henry
 yes Dan

#3 yes Dan
 yes Hy

1
2
3 SPECIAL SHAREHOLDERS' MEETING
4 OF THE MUHLER COMPANY, INC.
5
6
7

8 DATE: July 10, 2018

9 TIME: 3:00 p.m.

10 LOCATION: The Muhler Company, Inc.
11 630 Skylark Drive
12 Suite U
13 Charleston, SC 29401

14 REPORTED BY: KAREN NELLIUS, RPR
15
16
17
18

19 A. WILLIAM ROBERTS, JR., & ASSOCIATES

20 Fast, Accurate & Friendly
21

22 Charleston, SC Hilton Head, SC Myrtle Beach, SC
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MUHLER EXH. 3a

1 APPEARANCES

2 Henry M. May, III

3 J. Daniel Mahoney

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5
6 (INDEX AT REAR OF TRANSCRIPT)
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PROCEEDINGS

This is the special shareholders' meeting of The Muhler Company, Inc., July 10th, 2018, 3:00.

Call to order.

Chairperson: Good evening. Will the meeting please come to order. I would like to welcome all to the annual shareholders meeting. I am Henry Hay, majority shareholder and presiding chair of this meeting.

Proof of notice of meeting. I think you want to attach that.

(EXH. 1, NOTICE OF A SPECIAL MEETING OF THE MUHLER COMPANY, INC., was marked for identification.)

MR. HAY: All shareholders of record at the close of business are entitled to vote. Our first order of business is to determine whether the shares represented at the meeting, either in person or by proxy, are sufficient to constitute a quorum for the purpose of transacting business. All shareholders shall now state their names, starting with Dan.

MR. MAHONEY: Dan Mahoney.

MR. HAY: Henry Hay.

1 Dan Mahoney, 25-percent shareholder,
2 and I, 75-percent shareholder, are present at this
3 meeting; therefore, we have a quorum, and this
4 meeting is duly convened.

5 Reading and disposal of unapproved
6 minutes. These are the minutes from the last
7 meeting.

8 MR. MAHONEY: Well, I haven't seen
9 them.

10 MR. HAY: Okay.

11 MR. MAHONEY: At the last meeting I
12 requested the minutes from several previous
13 meetings. I hadn't gotten those. This is the
14 first time I've seen a copy.

15 MR. HAY: Okay. Do you want to take a
16 minute?

17 MR. MAHONEY: So I'm requesting copies
18 of the previous meetings.

19 MR. HAY: Okay.

20 MR. MAHONEY: So this is for me?

21 MR. HAY: Yes.

22 All right. Upon approved meeting, is
23 reading of reports. Next on the agenda is the
24 reading of any reports of officers and committees.
25 No such reports.

1 Unfinished business. I don't think we
2 have any, other than copies of the previous
3 meetings.

4 Okay. New business. I have here
5 proposed a resolution regarding the product
6 delineation and expense allocation between The
7 Muhler Company and Glasscorp. A copy has been
8 provided to each shareholder. This resolution
9 proposes the allocation and delineation between the
10 companies that was originally conceived.

11 I think on page 3, if you want to read
12 that first.

13 And then as part of these matters, Dan,
14 I would like you to speak on how it would be in the
15 best interest of Muhler to alter the expense
16 allocation in favor of Glasscorp and allow a
17 conflict between itself and Glasscorp with regard
18 to product offerings.

19 MR. MAHONEY: Well, let's stick with
20 number one, Henry, and do one at a time.

21 MR. HAY: Okay.

22 MR. MAHONEY: The vote on the product
23 offerings. We will now conduct an oral vote on
24 whether to adopt the resolution regarding a
25 delineation of product offerings as originally

1 conceived between Muhler and Glasscorp. So what is
2 the -- so what is the --

3 MR. HAY: It's right there.

4 MR. MAHONEY: I'm looking for it.

5 Okay. Once again, for board meetings,
6 it would be helpful that this information be given
7 prior to the board meeting, which is typical,
8 usually 48 hours prior to the board meeting, to
9 review and have any questions so that when you get
10 here you are not being forced to try to make a
11 decision in a few seconds. So I feel uncomfortable
12 having to rush through it.

13 MR. HAY: Okay.

14 MR. MAHONEY: One of the things that
15 concerns me, Henry, is that we can have a
16 conversation about how Muhler feels about the
17 delineation, but that doesn't mean the Glasscorp
18 stockholders agree.

19 MR. HAY: Okay. Well, we are here to
20 vote on --

21 MR. MAHONEY: Whether or not this is
22 what we offered to them?

23 MR. HAY: Correct.

24 MR. MAHONEY: I mean, we can probably
25 vote on the fact that you and I agree from a Muhler

1 perspective that this is what we would like the
2 delineation to be, but it takes an agreement by
3 Glasscorp to agree to it.

4 MR. HAY: Okay. We're here to
5 delineate Muhler's opinion.

6 MR. MAHONEY: Right. Our original
7 conversations were clad-wood windows and vinyl
8 windows. That was our original conversation. I
9 have no problem with understanding sunrooms,
10 shutters, replacement vinyl wood or windows. I
11 mean, I have no -- or hurricane protection. Those
12 issues have no problem for me.

13 What I don't know is whether or not in
14 the original conversations we talked about
15 wood-clad doors or windows. I don't have any
16 issues with those. So from my perspective I don't
17 have a problem with this definition, as long as the
18 Glasscorp people agree.

19 MR. HAY: Okay. Well, I think what
20 we're trying to do -- or I'm trying to do is get an
21 agreement on Muhler's end to delineate what our
22 products are that we believe that they should not
23 offer.

24 MR. MAHONEY: Right. Okay. I think I
25 can agree to that.

1 MR. HAY: Okay. So conduct an oral
2 vote to adopt the resolution regarding delineation
3 of the product offerings as originally conceived by
4 Muhler and Glasscorp. All in favor?

5 Aye.

6 MR. MAHONEY: Well, before I vote,
7 because I will vote in a second, try to understand
8 that what we are going on is this is not the
9 original agreement. So the word original isn't
10 accurate. The original agreement that we tried to
11 agree to was wood-clad windows and vinyl windows.
12 That was our original agreement. Somewhere along
13 the line we expanded the scope to include wood-clad
14 doors, sunrooms, shutters, and replacement, and
15 vinyl and wood windows, replacement windows, which
16 was never part of the original conversation. I
17 don't disagree that that's a good delineation. I
18 just don't agree it was the original.

19 MR. HAY: Well, I'm going to leave that
20 in there because we have had several different
21 discussions on windows and doors.

22 MR. MAHONEY: Right.

23 MR. HAY: So I'm going to leave that in
24 there.

25 MR. MAHONEY: Well, you can leave it,

1 but I'm not going to vote on it.

2 MR. HAY: Okay.

3 MR. MAHONEY: Because it's not part of
4 the original conversation. The original
5 conversation was wood-clad windows and vinyl
6 windows, and then it expanded to doors.

7 MR. HAY: There have been many
8 conversations, many lists back and forth.

9 MR. MAHONEY: It's just the word
10 original. That's what's bothering me.

11 MR. HAY: All right. I'm happy to
12 strike original. All right. And then we can say
13 we will now conduct an oral vote on whether --

14 MR. MAHONEY: I vote aye.

15 MR. HAY: Okay. We just struck
16 original. I will give you a copy of this.

17 (EXH. 2, AGENDA AND RESOLUTIONS, was
18 marked for identification.)

19 MR. HAY: Aye.

20 MR. MAHONEY: Aye.

21 MR. HAY: Okay. Second is vote on
22 expense allocation.

23 MR. MAHONEY: Right.

24 MR. HAY: So my resolution is that: It
25 is hereby recognized and resolved by the

10

1 shareholders of Muhler that expense allocations for
2 Dan Mahoney and Henry Hay between Muhler and
3 Glasscorp were originally set by Muhler and should
4 be restored to the original form.

5 And --

6 MR. MAHONEY: Original form of what?

7 MR. HAY: Original form of where they
8 were before y'all changed it.

9 MR. MAHONEY: So you want the
10 allocations in terms of the salary -- percentage of
11 salary to return to 25 and 30 percent?

12 MR. HAY: Correct. To whatever they
13 were originally. That's what they were.

14 MR. MAHONEY: Well, I'm looking here
15 is --

16 MR. HAY: I think they were.

17 MR. MAHONEY: I don't have an original
18 document in front of me, so I can't -- because I
19 believe that's where they were, 25 and 30.

20 MR. HAY: Okay. Well, we can certainly
21 refer back. That's what they originally were.

22 MR. MAHONEY: Once again, we can agree
23 on anything we want, but if the Glasscorp
24 stockholders don't agree, that doesn't give us much
25 to go on.

11

1 MR. HAY: Right.

2 Okay. So I guess we're going to vote
3 on -- we will now conduct an oral vote on whether
4 to adopt the resolution regarding an allocation of
5 expenses as originally conceived by Muhler and
6 Glasscorp --

7 MR. MAHONEY: What's the timeframe,
8 Henry?

9 MR. HAY: Which timeframe?

10 MR. MAHONEY: Well, the timeframe.
11 It's says the allocations between Muhler as
12 originally set, and you want --

13 MR. HAY: That's in relation to the --
14 our expense allocation, yours and mine.

15 MR. MAHONEY: I understand. Are you
16 talking about for the year 2018 or are you talking
17 about forever?

18 MR. HAY: I'm talking about putting
19 them back to where they were until further
20 discussion.

21 MR. MAHONEY: Well, that's not
22 something I can vote on. Just put a date on it.
23 December 31st, 2018.

24 MR. HAY: From here forward.

25 MR. MAHONEY: Well, then, I can't agree

1 to that. That's forever.

2 MR. HAY: Okay.

3 MR. MAHONEY: I just don't think that's
4 fair to anybody.

5 MR. HAY: Okay. All right. So we will
6 now conduct on oral vote on whether to adopt the
7 resolution regarding an allocation of expenses as
8 originally conceived between Muhler and Glasscorp.
9 We need to add for Dan Mahoney's time and Henry
10 Hay's time.

11 All in favor?

12 Aye.

13 Opposed?

14 MR. MAHONEY: Nay.

15 My vote for nay is based upon the fact
16 not that the amount is wrong, is the fact that
17 there is no timeframe attached.

18 MR. HAY: Well, we can add -- I think
19 we can add from here forward.

20 MR. MAHONEY: Once again, there is no
21 timeframe attached, Henry.

22 MR. HAY: Here forward.

23 MR. MAHONEY: That's forever. Forever
24 is too long.

25 MR. HAY: Okay.

1 All right. The third thing we're here
2 for is a resolution that it is hereby recognized
3 and resolved that any changes with regard to the
4 allocation of expenses between Muhler and Glasscorp
5 will not be effective until reviewed and approved
6 by Muhler. That's the expense allocations.

7 MR. MAHONEY: Once again you need to I
8 think put a timeframe on it. Review them and
9 approve them by when? We are halfway through 2018.

10 MR. HAY: Next 60 days. Okay. So
11 we're going to change that to it is hereby
12 recognized and resolved that any changes with
13 regard to the allocation of expenses between Muhler
14 and Glasscorp will not be effective until they are
15 reviewed and approved by Muhler within the next 60
16 days from July 10th.

17 MR. MAHONEY: Once again we can agree
18 on that, but that doesn't mean that the Glasscorp
19 stockholders will.

20 MR. HAY: Okay. All in favor?

21 Aye.

22 All opposed?

23 MR. MAHONEY: All right. I can agree
24 to that, yes.

25 MR. HAY: Okay. I did want to ask you

14

1 your opinion on why it's in our -- why it's in
2 Muhler's best interest to have these allocations
3 changed and why it's in Muhler's interest to have
4 the products as they are. What's your opinion?
5 Why are we trying to change that?

6 MR. MAHONEY: Which subject are we
7 talking about?

8 MR. HAY: Let's talk about the
9 allocations. Why would we change those, and why
10 would we change the product offerings?

11 MR. MAHONEY: Well, in terms of the
12 allocations, we first have to recognize the fact
13 that Glasscorp is a standalone separate company
14 that is not owned by Muhler Corporation, and that
15 in the spirit of how we set up the company,
16 Glasscorp buys from Muhler certain services and
17 assets to be utilized, and pays for those. As we
18 have -- as the company has grown and as it moves
19 towards its own independence, it will start to
20 absorb more and more of those expenses
21 independently, such as increased rent, such as copy
22 machines, computers. It will start to adopt and to
23 accept those expenses independently of Muhler, and
24 not utilizing Muhler's facilities -- or Muhler's
25 assets. As a result of that, it's not reasonable

15
1 to expect that Muhler will continued to be paid for
2 things that it doesn't provide to Glasscorp, as
3 Glasscorp becomes more independent and stands on
4 its own.

5 It's certainly not to Muhler's
6 financial benefit because, obviously, we have
7 enjoyed revenues, split those expenses over the
8 years. But as the companies grow and the need for
9 more people and more space for both companies
10 occur, you have to be fair in terms of the
11 allocation. A perfect example of those are when
12 Michael moves to his own facility, he has to have
13 his own copy machines; so, therefore, we can't
14 expect to have him pay Muhler for the copy machines
15 that he has been paying for. In fairness, he has
16 been paying for the Muhler copy machines for
17 Muhler. He has been paying the full expense for
18 those machines as opposed to his fair share.

19 He has to pay for his own computer
20 systems, his own telephone systems. Those things
21 are all independent. Those are additional expenses
22 to be borne by Glasscorp, and those are services no
23 longer being purchased from Muhler. So the
24 allocations -- and the stockholders for Muhler and
25 Glasscorp are similar, with the exception of one,

1 and so even though the revenue shifts from one
2 place to the other, it's still not a detriment to
3 the stockholders. It is less revenue for Muhler
4 because, in fairness, we are selling less services.
5 So I do not see that the change in the allocations
6 are unfair.

7 MR. HAY: And in terms of allocations
8 for our time?

9 MR. MAHONEY: In the allocations for
10 our time, you know, as the company goes, you know,
11 once again it was not my personal opinion as to
12 what percentages were. They put that into the
13 budget for discussion purposes, and it was
14 discussion purposes. In fairness, the company is
15 growing, and they are using less and less of our
16 time, personal time, and it's a matter of
17 negotiating. I don't think we got to the
18 negotiating. It was more of a heated conversation.
19 But that's what Michael, who was running the
20 company, felt was fair, and he and the controller
21 put a budget together for us to consider. It
22 wasn't firm. It was a budget to be considered,
23 which is what we are doing right now.

24 But in fairness, you know, I think when
25 I saw that, I felt that my time -- I certainly

17

1 spent more time at it, and I felt that he had
2 lowered my time to a number that was less. But as
3 time goes by, they are going to need us less and
4 less and less, and the allocations will change. I
5 mean, they are going to bear all the expenses on
6 their own at some point in time.

7 MR. HAY: Okay. What about in terms of
8 opinion on product delineation?

9 MR. MAHONEY: I think that on the
10 product delineation, it's fair to not be in
11 competition with one another. I believe that to be
12 true. I always have. The product delineation I
13 think is going to cause problems at some point, and
14 I think the problem being is that sometimes it may
15 make sense for one company to do the job versus the
16 other company to the extent that the customer only
17 wants to buy from one person. But I don't see it
18 as a conflict. I don't think that we should be in
19 competition with one another. So I'm good with it,
20 the delineation.

21 As far as the commercial business goes,
22 on Glasscorp's position, basically they are in -- I
23 see those windows as fabricated windows with glazed
24 -- putting the glaze in. I don't see them buying
25 windows. Now, in some cases that's the case. And

1 I think that the original conversation between
2 everybody was on a per-case by per-case basis. If
3 it makes sense, I think people should sit around
4 the table and say we have got a chance here. There
5 is \$32,000 worth of windows. We have to install
6 them. Maybe Glasscorp should do it. Maybe they
7 shouldn't do it. But I think it should be a
8 conversation between stockholders. But I'm okay
9 with the noncompete issue. I always have been.

10 MR. HAY: Okay.

11 MR. MAHONEY: As far as the product
12 delineation, it just needs to be simple. Like, for
13 instance, they are not in the sunroom business, nor
14 should they ever be in the sunroom business. They
15 are not in the shutter business, nor should they
16 ever be in the shutter business. They are not in
17 the replacement window business. That's not their
18 job. So the only place that's ever been of contest
19 for me even to consider would be the clad windows
20 and the vinyl windows, and even then on some
21 commercial jobs there are exceptions to that. I
22 just think that reasonable people can deal with the
23 exceptions. But I don't have a problem with the
24 delineation.

25 MR. HAY: Okay.

1 MR. MAHONEY: Which is one of the
2 reasons why I worked with Michael to convince him
3 that was okay.

4 MR. HAY: Okay. Thank you.

5 I think we have concluded all the
6 business, and we are officially adjourned.

7 MR. MAHONEY: Okay.

8 MR. HAY: I'll get you copies of the
9 minutes of the other meetings.

10 MR. MAHONEY: Appreciate it.

11 (The meeting was concluded at 3:25
12 p.m.)

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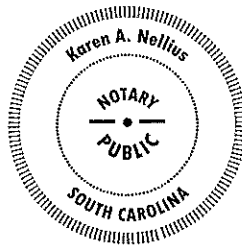
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CERTIFICATE OF REPORTER

I, Karen Nellius, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 14th day of July, 2018 at Charleston, Berkeley County, South Carolina.



Karen Nellius

Karen Nellius, RPR
My Commission Expires
November 14, 2024

I N D E X

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REQUESTED INFORMATION INDEX

(No requested information.)

E X H I B I T S

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Glasscorp Special Meeting August 14th, 2018

Meeting was held at 630 Skyark Drive

Members Present

Purpose of meeting, discussion of Delineation of Products

Michael Herlocker (44 %)

Henry Hay (42%)

Dan Mahoney (14%)

Motion was put forth by Henry Hay:

"In order to avoid conflict between Glasscorp and Muhler I propose that Glasscorp shall not offer clad wood windows and doors, vinyl doors and windows, sunrooms, shutters, replacement vinyl or wood windows, or hurricane protection, which is basically what Muhler does"

Opposed:

Michael Herlocker (44 %)

Dan Mahoney (14%)

In favor:

Henry Hay (42%)

The motion did not carry

Meeting was adjourned

Submitted by Henry Hay, III

Henry Hay

From: Dan Mahoney
Sent: Wednesday, August 08, 2018 5:43 PM
To: Henry Hay
Cc: Michael Herlocker
Subject: Re: notice of meeting

Works for me.

Sent from my iPhone

On Aug 8, 2018, at 2:47 PM, Henry Hay <hhay@muhler.com> wrote:

Michael/Dan,

See if that works with your schedules...
Next Tuesday 3pm

Thanks

Henry

Henry M. Hay, III
President
The Muhler Company, Inc.
630 Skylark Dr., Suite U
Charleston, SC 29407
843-572-9727 Office
843-572-9726 Fax

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*Notice of a Special Meeting
of Glasscorp LLC*

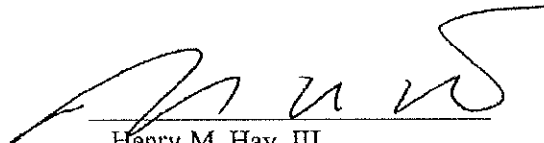
To: The Stockholders

Notice & Agenda

You are hereby notified that a special meeting of the shareholders of the Glasscorp LLC (hereinafter "Glasscorp") will be held on Tuesday, August 14, 2018, at 3:00 p.m. at 630 Skylark Drive, Suite U, Charleston, SC 29407.

This meeting is called by Henry M. Hay, III, 42% stockholder, for the purpose of a vote regarding the product delineations between Glasscorp and the Muhler Company, Inc.

Notice is provided this 8th day of August, 2018.



Henry M. Hay, III

*Special Shareholders' Meeting
of Glasscorp LLC*

August 14, 2018, 3:00 p.m.

Call to Order, Introductions, Agenda and Rules of Conduct

Chairperson: Good evening, will the meeting please come to order. I would like to welcome all of you to this special meeting of shareholders of Glasscorp LLC. I am Henry Hay, 42% shareholder, and I will be presiding as Chair of this meeting.

Proof of Notice of Meeting

I have a copy of the notice and agenda of this meeting. All shareholders received this notice at least 72 hours prior to this meeting. The notice is incorporated into the minutes of this meeting.

Calling of Roll and Quorum

All shareholders of record at the close of business on August 14, 2018 are entitled to vote at this meeting. Our first order of business is to determine whether the shares represented at the meeting, either in person or by proxy, are sufficient to constitute a quorum for the purpose of transacting business. All shareholders of record should declare themselves now by stating their name, starting with Dan Mahoney:

Dan Mahoney
Michael Herlocker
Henry Hay

Dan Mahoney, Michael Herlocker, and I represent a quorum, and this meeting is duly convened.

New Business

Now, onto new business. I called this meeting for a vote regarding the product delineation and expense allocation between The Muhler Company and Glasscorp.

I started this business. Originally, Muhler did not do commercial glazing. It was my idea to get into commercial glazing, I hired the people to make it happen and we went forward. Eventually, as you know, we spun that off into a new company, Glasscorp. Since that time, Muhler ceased all commercial glazing business. Muhler has not competed with Glasscorp, and I do not expect Glasscorp to compete with Muhler, nor would it be right.

Specifically then, in keeping with the original conception of Muhler and Glasscorp and in order to avoid a conflict between Glasscorp and Muhler, I propose Glasscorp shall not offer:

- clad-wood doors or windows,
- vinyl doors or windows,
- sunrooms,
- shutters,
- replacement vinyl or wood windows, or
- hurricane protection.

1. Vote on Product Offerings

We will now conduct an oral vote on whether to adopt this proposal regarding the delineation of product offerings as between Muhler and Glasscorp.

All in favor, say “aye.”

All against, say “nay.”

With support of [____ %] of the voting shares voting “aye,” the proposal [**passes / fails**].

Adjournment

We have concluded the business of this special meeting, which is officially adjourned. The August 14, 2018 special meeting of the shareholders of Glasscorp LLC is closed.

Glasscorp Special Meeting August 14th, 2018

Meeting was held at 630 Skylark Drive

Members Present

Purpose of meeting, discussion of Delineation of Products

Michael Herlocker (44 %)

Henry Hay (42%)

Dan Mahoney (14%)

Motion was put forth by Henry Hay:

"In order to avoid conflict between Glasscorp and Muhler I propose that Glasscorp shall not offer clad wood windows and doors, vinyl doors and windows, sunrooms , shutters, replacement vinyl or wood windows, or hurricane protection, which is basically what Muhler does"

Opposed:

Michael Herlocker (44 %)

Dan Mahoney (14%)

In favor:

Henry Hay (42%)

The motion did not carry

Meeting was adjourned

Submitted by Henry Hay, III

In the Matter Of:

Special Meeting for Glasscorp, LLC

Special Meeting for GlassCorp, LLC

August 14, 2018



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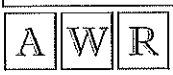
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SPECIAL MEETING
FOR
GLASSCORP, LLC

DATE: August 14, 2018
TIME: 3:03 PM
LOCATION: Glasscorp
630 Skylark Drive
Suite U
Charleston, SC
CONDUCTED BY: Henry M. Hay, III, Chair
REPORTED BY: Priscilla Nay,
Certified Shorthand Reporter

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1 APPEARANCES :

2 HENRY M. HAY, III, CHAIR
3 MICHAEL HERLOCKER, SHAREHOLDER
4 DAN MALONEY, SHAREHOLDER
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15 (INDEX AT REAR OF TRANSCRIPT)
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1 MR. HAY: This is the special
2 shareholders' meeting of Glasscorp, LLC on August
3 the 14th. Call to order. Come to order.

4 I would like to welcome all of you
5 to the special shareholders' meeting of Glasscorp.
6 I'm Henry Hay, 42 percent shareholder. I will be
7 presiding as Chair of this meeting.

8 Proof of the notice of the meeting,
9 I'll give you a copy of that. Proof of notice of
10 the meeting, we're good there.

11 (EXH. 1, Documents concerning notice of
12 the meeting, was marked for identification.)

13 MR. HAY: The calling of the roll. The
14 first order of business is shareholders on record
15 should declare themselves by stating their name.

16 MR. MAHONEY: I'm Dan Mahoney.

17 MR. HERLOCKER: Michael Herlocker.

18 MR. HAY: Henry Hay. Dan, Michael,
19 and I are present. So that's a quorum. So we'll
20 convene.

21 So what we're here to talk about is
22 the delineation of products between Muhler and
23 Glasscorp. You know, when I started Muhler Company
24 in 1992 we were doing clad wood windows and doors
25 and vinyl windows and doors.

1 At some point we decided -- I decided
2 to go into retail and we started doing replacement
3 windows and doors, sunrooms, and RV protection. At
4 some later point I decided that we should take up
5 commercial glazing. We hired the people and we
6 formed the commercial glazing division, which y'all
7 are aware of.

8 Eventually we spun off, commercial
9 glazing off into Glasscorp. Since that time Muhler
10 has not done any commercial glazings, storefront,
11 or curtain wall.

12 My motion is that in keeping with
13 Glasscorp and Muhler's conception in order to avoid
14 conflict between Glasscorp and Muhler I propose
15 Glasscorp shall not offer clad wood windows and
16 doors, vinyl doors and windows, sunrooms, shutters,
17 replacement vinyl or wood windows, or hurricane
18 protection, which is basically what Muhler does.

19 That's my motion. So we can now do an
20 oral vote. All in favor?

21 MR. HERLOCKER: I would say no.

22 MR. HAY: Okay.

23 MR. MAHONEY: Well, I think I have some
24 things to say as opposed to the vote. Before we
25 call for a vote usually we say, is there anybody

1 who has any comments. So I have some comments.

2 MR. HAY: Okay.

3 MR. MAHONEY: Just from a historical
4 standpoint, the reason why -- one of the reasons
5 why we're sitting around the table talking about
6 product delineation has to do with a noncompete
7 concern between Muhler and Glasscorp. That
8 noncompete or product delineation was originally
9 asked for as part of an agreement, Henry, between
10 you and me in terms of a buyout.

11 You know, we tried to facilitate that.
12 I think we got to a point where, you know, Michael
13 had agreed to some form of noncompete between the
14 two companies in order to help facilitate that. So
15 where are we on that?

16 MR. HAY: Well, this does not have
17 anything to do with that. The purpose of Glasscorp
18 when it was formed was to do commercial,
19 storefront, and curtain wall specifically.

20 It doesn't have anything to do with
21 the buyout or anything. This has to do with the
22 delineation of products.

23 MR. MAHONEY: Okay. My vote is no.

24 MR. HAY: Okay. I vote yes. So the
25 vote does not carry. So it is 44, 42, 14.

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MR. HERLOCKER: Uh-huh.

MR. HAY: So it is 58 percent. So the motion does not carry. So we are going to conclude the meeting. The meeting is adjourned.

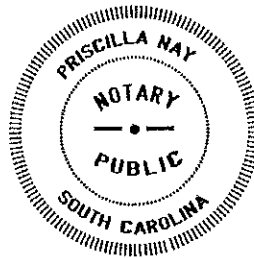
(The meeting was adjourned at 3:08 PM.)

CERTIFICATE OF REPORTER

I, Priscilla Nay, Court Reporter and
Notary Public for the State of South Carolina, do
hereby certify that the foregoing transcript is a
true, accurate, and complete record.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto
affixed my official seal this 21st day of August,
2018 at Charleston, Charleston County, South
Carolina.

*Priscilla Nay*

Priscilla Nay,
Court Reporter
My Commission expires
December 2, 2021

I N D E X

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**RESOLUTION OF THE SHAREHOLDERS OF
THE MUHLER COMPANY, INC.**

It is hereby recognized and resolved by the Shareholders of The Muhler Company, Inc. ("Muhler") that the employment of J. Daniel Mahoney, CEO of Muhler, be terminated with immediate effect and for cause, on the following grounds:

1. As CEO of Muhler, Mr. Mahoney breached his duty of loyalty and fiduciary duty to Muhler by :
 - a. At a recent meeting of Glasscorp LLC's shareholders, Mr. Mahoney voted against a proposal presented by Mr. Hay which would have more clearly establish product delineation between Muhler and Glasscorp. His vote was contrary to the best interests of Muhler.
 - b. At a recent meeting of Glasscorp's shareholders, Mr. Mahoney voted for a budget proposal presented by Mr. Herlocker which reduced the expense allocation from Muhler to Glasscorp. His vote was contrary to the best interests of Muhler.

In both of these votes, Mr. Mahoney did so without consulting Muhler's shareholders. To amplify the above, given the facts, circumstances, and history of Glasscorp and Muhler, Glasscorp can never enter into competition with Muhler. The proposed delineation of products put forth at the Glasscorp meeting was made necessary by Mr. Mahoney's actions to ensure Glasscorp (who has access to all Muhler's information regarding vendors, customers, banking relationships, products, secrets, patents, and all other proprietary information) would not attempt to operate in competition with Muhler. Mr. Mahoney voted against it, contrary to Muhler's best interests.

2. As CEO of Muhler, Mr. Mahoney has neglected his duties by the following non-actions (among others) :

- a. Mr. Mahoney did not form a *working structure between* joint venture arrangement with All American of Florida *as assigned and he is to be as assigned*
 - b. Mr. Mahoney *has no active role in creating an* did not develop a manufacturing plan for the production of *All American* windows and storm protection systems as assigned.
 - c. Mr. Mahoney failed to properly & timely respond to Muhler's banks regarding *changes to* lines of credits *assigned and must rapidly resolve Bank issues.*
- These issues have created cause for doubt that Mr. Mahoney is or will be able to perform his duties in the future.

ACCORDINGLY, Mr. Mahoney's employment is terminated with immediate effect for cause, with his last day of work being September 18, 2018. Mr. Mahoney will receive his final paycheck at the end of the month. His benefits shall expire at the end of the month. His access to Muhler's server and his Muhler email account will be terminated with immediate effect. He

Next Page 1 of 2

I. Vote on Termination

We will now conduct an oral vote on whether to adopt the resolution terminating J. Daniel Mahoney's employment with immediate effect, for cause, with the last day of work being September 18, 2018.

All in favor, say "aye."

All against, say "nay."

With support of [75% / 100%] of the voting shares, the vote passes.

The shareholders having voted to terminate Mr. Mahoney's employment for cause, Mr. Mahoney will receive his final paycheck at the end of the month. His benefits shall expire at the end of the month. His access to Muhler's server and his Muhler email account will be terminated with immediate effect. He must return all devices provided to him through Muhler, including his Apple company cell phone, his company laptop, and iPad to me personally as soon as possible, and in no event later than the close of business on ~~September 19~~ September 21, 2018.

Adjournment

We have concluded the business of this special meeting, which is officially adjourned.

*Notice of a Special Meeting
of the Muhler Company, Inc.*

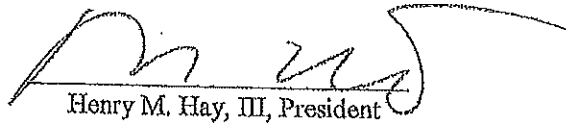
To: The Stockholders

Notice & Agenda

You are hereby notified that a special meeting of the shareholders of the Muhler Company, Inc. (hereinafter "Muhler") will be held on Tuesday, September 18, 2018, at 5:00 p.m. at 630 Skylark Drive, Suite U, Charleston, SC 29407.

This meeting is called by Henry M. Hay, III, 75% stockholder, for the purpose of a vote regarding the employment of Dan Mahoney with Muhler.

Notice is provided this 5th day of September, 2018.



Henry M. Hay, III, President

*Special Shareholders' Meeting
of The Muhler Company, Inc.*

September 18, 2018, 5:00 p.m.

Call to Order, Introductions, Agenda and Rules of Conduct

Chairperson: Good evening, will the meeting please come to order. Welcome to this special meeting of shareholders of The Muhler Company, Inc. I, Henry Hay am the majority shareholder and will be presiding as Chair of this meeting.

Proof of Notice of Meeting

I have a copy of the notice of this meeting. All shareholders received this notice at least 10 days prior to this meeting. The notice is incorporated into the minutes of this meeting.

Calling of Roll and Quorum

All shareholders of record at the close of business on September 18, 2018 are entitled to vote at this meeting. Our first order of business is to determine whether the shares represented at the meeting, either in person or by proxy, are sufficient to constitute a quorum for the purpose of transacting business. All shareholders of record should declare themselves now by stating their name, starting with Dan Mahoney:

Dan Mahoney
Henry Hay

Dan Mahoney — 25% shareholder — and I — 75% shareholder — are present at this meeting. Therefore, we have a quorum and this meeting is duly convened.

Reading and Disposal of Unapproved Minutes

We will now read and dispose of any unapproved minutes. There are no unapproved minutes.

Reading of Reports

Next on the agenda is the reading of any reports of officers and committees. There are no such reports.

In the Matter Of:
Muhler Special Meeting

Special Shareholders' Meeting - Muhler Comp.

September 18, 2018



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In the Matter of:

Special Shareholders' Meeting of

The Muhler Company, Inc.

In Re: J. Daniel Mahoney

MEETING BEFORE Henry M. Hay, III, Chairperson
DATE: September 18, 2018
TIME: 5:01 p.m.
LOCATION: The Muhler Company
630 Skylark Drive, Suite U
Charleston, South Carolina
REPORTED BY: Julie L. Bonomo

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1 APPEARANCES :

2 HENRY M. HAY, III, Chairperson

3 J. DANIEL MAHONEY, Board Member

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1 MR. HAY: This is Muhler Special
2 shareholders meeting September 18, 2018, at 5 p.m.
3 Call to order. Chairperson: Good evening, will
4 the meeting please come to order. Welcome to this
5 special shareholders meeting of the Muhler Company,
6 Inc. I, Henry Hay, am the majority shareholder
7 presiding as chair of the meeting.

8 Proof of notice of the meeting has been
9 given out, a copy of that. Calling of quorum, roll
10 and quorum. All shareholders of record at the
11 close of business September 18, 2018 are entitled
12 to vote at this meeting.

13 Our first order of business is whether
14 to term -- whether the shares represented at this
15 meeting either in person or by proxy are sufficient
16 to constitute a quorum for the purpose of
17 transacting business. All shareholders of record
18 shall declare themselves now by stating their name
19 starting with Mr. Dan Mahoney.

20 MR. MAHONEY: I'm Dan Mahoney.

21 MR. HAY: I'm Henry Hay. Dan Mahoney
22 is a 25 percent shareholder. I, Henry Hay, am 75
23 percent shareholder present at this meeting.
24 Therefore, we have a quorum and the meeting is duly
25 convened.

1 Reading and disposal of unapproved
2 meeting minutes, I have the minutes from the last
3 meeting. Take a minute and take a look at that.

4 MR. MAHONEY: Okay.

5 MR. HAY: The next on the agenda is
6 reading of report of officers and committees.
7 There are no such reports. Okay. That's why we're
8 here.

9 Resolution of shareholders of Muhler
10 Company, Inc. It is hereby recognized and resolved
11 by the shareholders of Muhler Company, Inc. that
12 employment of Dan Mahoney, CEO of Muhler, will be
13 terminated with immediate effect for cause on the
14 following grounds.

15 As CEO of Muhler, Mr. Mahoney, breached
16 his duty of loyalty and fiduciary duty to Muhler by
17 a recent meeting of Glasscorp LLC's shareholders.
18 Mr. Mahoney voted against a proposal presented by
19 Mr. Hay which would have more clearly established
20 product delineation between Muhler and Glasscorp.
21 His vote was contrary to the best interest of
22 Muhler.

23 MR. MAHONEY: Do you have a copy of
24 that for me, Henry?

25 MR. HAY: This is a copy of the



1 Glasscorp meeting.

2 MR. MAHONEY: What you're reading, I
3 mean.

4 MR. HAY: No. I just have one copy.

5 MR. MAHONEY: Well, I'd appreciate a
6 copy.

7 MR. HAY: I can get you one after the
8 meeting. Okay. It's contrary to the best interest
9 of Muhler. At a recent meeting of Glasscorp
10 shareholders, Mr. Mahoney voted for a budget
11 proposal presented by Mr. Herlocker which reduced
12 the expense allocation for Muhler to Glasscorp.
13 His vote was contrary to the best interest of
14 Muhler.

15 In both of these votes, Mr. Mahoney did
16 so without consulting Muhler shareholders. To
17 amplify the above, given the facts, circumstances,
18 and history of Glasscorp and Muhler, Glasscorp can
19 never enter into competition with Muhler. The
20 proposed delineation of products put forth at the
21 Glasscorp meeting was made necessary by
22 Mr. Mahoney's actions to ensure Glasscorp (who has
23 access to all Muhler's information regarding
24 vendors, customers, banking relationships,
25 products, secrets, patents, and all of the



1 proprietary information) would not attempt to
2 operate in competition with Muhler. Mr. Mahoney
3 voted against it, contrary to Muhler's best
4 interests.

5 Additionally, as CEO of Muhler,
6 Mr. Mahoney neglected his duty by the following
7 non-actions. Mr. Mahoney did not perform --
8 provide a working structure between Muhler Company
9 and All American as assigned. Mr. Mahoney took no
10 active role in creating a manufacturing plan for
11 the production of All American Windows as assigned.

12 Additionally, Mr. Mahoney failed to
13 properly and in timely respond to Muhler's banks
14 regarding changes to lines of credit and SunTrust
15 regarding routine banking issues. These issues
16 have created cause for doubt that Mr. Mahoney is or
17 will be or able to perform his duties in the
18 future.

19 MR. MAHONEY: Can we discuss these?

20 MR. HAY: Sure.

21 MR. MAHONEY: Okay. Let's talk about
22 SunTrust. SunTrust is not our bank, so where did I
23 not talk to SunTrust?

24 MR. HAY: SunTrust is our bank. We
25 have a loan with them.



1 MR. MAHONEY: I understand that.

2 MR. HAY: They requested meetings and
3 you did not respond to them.

4 MR. MAHONEY: When?

5 MR. HAY: I can certainly provide you
6 the e-mails where you did not respond to them and I
7 had to keep pestering you to respond to them. Same
8 thing with First Citizens. When I called a
9 meeting, asked for a meeting with them, you didn't
10 respond to any of the e-mails for a couple of
11 weeks. I had to reschedule the meeting. You
12 didn't respond to it.

13 MR. MAHONEY: Did I attend the
14 meetings?

15 MR. HAY: You did.

16 MR. MAHONEY: Okay. Was I asked to
17 respond?

18 MR. HAY: Yes.

19 MR. MAHONEY: I was? Okay. I'm
20 certainly available for the meetings, so I think
21 that's probably not right. To my knowledge, I
22 don't believe that SunTrust -- we have a loan with
23 SunTrust. I think it was paid off and the loan was
24 transferred to Citizens, First Citizens. So to my
25 knowledge, we don't have a loan with SunTrust. We



1 did at one time.

2 MR. HAY: Okay. We may have at one
3 time. The point is SunTrust, at my request, asked
4 to come visit with us. I responded, let me check
5 with Dan. You did not respond to that nor did you
6 respond to the First Citizens e-mails.

7 MR. MAHONEY: So you feel that is
8 derelict of duty, not responding to an e-mail?

9 MR. HAY: I feel it's -- I feel it's
10 cause for concern that you don't respond to e-mails
11 specifically to a banker when we're asking for
12 lines of credit extension in routine banking
13 matters, yes.

14 MR. MAHONEY: Would you say that my
15 relationship with our banker is a good relationship
16 considering the fact that I have a previous
17 relationship with them from another company? And
18 that our relationship probably is that, you know, I
19 have a relationship with the First Citizens Bank.

20 In fact, I was the person that brought
21 the First Citizens Bank into Muhler to arrange for
22 a line of credit with Muhler that took out SunTrust
23 which was a problem because of the real estate
24 issues and arranged not only for a line of credit,
25 but a line of credit without security and without



1 personal guarantees. So I have a good relationship
2 with First Citizens. John Golding and I are on a
3 first-name basis and have known each other for over
4 12 maybe 14 years. So I disagree with the fact
5 that I don't have a relationship with the bank and
6 don't stay in touch with them.

7 MR. HAY: Okay.

8 MR. MAHONEY: So I'm not sure that that
9 is an accurate statement. So let's go back,
10 because I don't have it front of me, so I can't do
11 it from memory, but let's go back to the fact that
12 I disagree that I don't act in the best interest of
13 Muhler because I always do.

14 MR. HAY: Okay.

15 MR. MAHONEY: As far as the product
16 delineation goes, this has been an issue that
17 started off as a leverage point from a stock
18 buyout, okay, where you asked for a product
19 delineation which you have gone through multiple
20 iterations of that.

21 When we got into a product delineation,
22 it changed, and the vote that you're talking about
23 that took place at Glasscorp that I explained this
24 already to you in another meeting. In that
25 particular vote, we came in and pushed it -- pushed

1 the vote and without conversation, without
2 explanation, and I didn't vote for it because it
3 was greater than what was originally discussed with
4 Michael and we didn't have a chance at the
5 Glasscorp meeting to discuss that, which was why I
6 voted the way I did.

7 It wasn't in Muhler's worst interest
8 because there has never been an agreement ever
9 between Muhler and Glasscorp that Glasscorp would
10 never compete with Muhler. You know, that may have
11 been in your head, but it's never be an agreement
12 that anybody has talked about.

13 I don't disagree with it. And you
14 know, I think that we could have gotten to an
15 agreement instead of coming in with a draconian
16 method of, you know, pushing through a vote, you
17 know, a stockholder vote, and we had talked about
18 it, we probably could've mediated that thing that
19 day. I think we could've done that.

20 So I don't believe I was derelict in
21 duty on that. I absolutely do not, and I disagree
22 with that. And one of the things that you have to
23 remember is that when you work on multiple boards
24 and you are stockholders in multiple companies,
25 when you're functioning in a company for that

*Had I
in his
power
to protect
Muhler
interests
& don't
vote*

11
1 company, you have to wear that hat, and that is the
2 day I was wearing that hat, the Glasscorp hat.

3 I certainly maintain the interest of
4 Muhler and I have for ten years. So to be
5 dismissed like this a, first of all, disgraceful.

6 MR. HAY: Okay.

7 MR. MAHONEY: And it's also obviously
8 without dignity and I'm really appalled by the
9 immediacy of it.

10 MR. HAY: Okay.

11 MR. MAHONEY: And to be told that I was
12 derelict in my duty or negligent in my duty as the
13 CEO. For ten years I helped build this company out
14 of the ashes of almost a bankruptcy. So I think,
15 you know, for you to take this position is really
16 just not right.

17 MR. HAY: Okay.

18 MR. MAHONEY: It doesn't feel right,
19 Henry.

20 MR. HAY: Okay. Well --

21 MR. MAHONEY: If you wanted me to leave
22 the company, there would have been another way to
23 do that.

24 MR. HAY: Okay. Well, you know, we had
25 the Glasscorp meeting where you-all, you and

1 Michael changed the allocations without my
2 knowledge, slid it under the table with no
3 discussion. So we're not --

4 MR. MAHONEY: The allocations -- the
5 allocations --

6 MR. HAY: So we're not going to discuss
7 how these meetings are held because y'all did the
8 exact same thing to me. You discussed Muhler
9 business with Michael. He is not a shareholder of
10 Michael -- of Muhler Company. Y'all changed the
11 allocations without conversation with me, without
12 knowledge.

13 MR. MAHONEY: Let me correct you.

14 MR. HAY: Presented them at the meeting
15 with no communication and no discussion. So --

16 MR. MAHONEY: Let me correct you on the
17 accuracy of that. What we did was we established a
18 budget for Glasscorp. Okay. The budget was
19 submitted and it has -- the budget has never been
20 approved by the stockholders of Glasscorp because
21 every time it comes up, people get angry. So it
22 has -- the budget has never been approved, so we
23 have been functioning off a budget.

24 MR. HAY: Okay. But that budget is
25 actually in effect.



1 MR. MAHONEY: It's in effect, however,
2 it hasn't been accepted by anybody.

3 MR. HAY: Okay. But it's been accepted
4 because it's in effect and you working with Michael
5 changed those allocations against my wishes,
6 against the vote of Muhler Company, and that it was
7 tabled at the last Glasscorp meeting. So you
8 clearly changed the allocations without my consent
9 or discussion after we discussed -- after we voted
10 to not do that.

11 MR. MAHONEY: We never voted to not
12 change the allocations. If you remember in that
13 last meeting, I said we can vote, and I voted
14 against the allocation issue because I said we
15 cannot have that conversation without Michael being
16 present. And I said, if I can't vote for an
17 allocation against another shareholder without him
18 being in the room, which was only fair. And that
19 is if you look back -- these are your notes, this
20 is not the transcript. I made an absolute case for
21 that.

22 MR. HAY: Okay.

23 MR. MAHONEY: You know, at the meeting
24 where I specifically said that it would be unfair
25 for me to vote in favor of that without everybody

1 -- that is a Glasscorp meeting, not a Muhler
2 meeting.

3 MR. HAY: No. The allocations are from
4 Muhler to Glasscorp. It is not a Glasscorp issue.

5 MR. MAHONEY: Glasscorp I told you in
6 the last meeting that we had that the allocations
7 have to be accepted by Glasscorp. And you know, we
8 have not resolved. We have still not, as three
9 partners, sat around the table --

10 MR. HAY: However, you --

11 MR. MAHONEY: -- and resolved the
12 allocations.

13 MR. HAY: However, you and Michael have
14 changed that allocation and are functioning with a
15 lower allocation.

16 MR. MAHONEY: That doesn't mean that it
17 doesn't get paid back.

18 MR. HAY: Okay. Well --

19 MR. MAHONEY: It just means that the
20 budget has not been accepted and it hasn't been
21 accepted by -- we as Glasscorp have not accepted --

22 MR. HAY: Then it never should have
23 been changed. It should have been left as it was.
24 That resolution passed whether you supported it or
25 not. It passed. It was a Muhler resolution and it

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1 shouldn't have been changed.

2 MR. MAHONEY: Well, I don't think that
3 just because I voted against it doesn't mean that
4 I'm in derelict of my duties.

5 MR. HAY: Okay.

6 MR. MAHONEY: You know, Henry, I mean,
7 let's get down to real stuff here. Ten years ago
8 you and I met, you couldn't afford me. I offered
9 to work for the company to help you turn the
10 company around and sal -- and save your company for
11 25 percent interest in the company which at the
12 time was worth nothing.

13 Ten years later, you now have a company
14 that's worth money, that generates cash. You have
15 just had the greatest billing month in the last ten
16 years of the company. You now have made more
17 profit this year than we have already budgeted for
18 this year. The company is in excellent shape and
19 you are basically just throwing my ass out the door
20 basically is what you're doing.

21 MR. HAY: Okay.

22 MR. MAHONEY: And I can't walk out this
23 door without any kind of dignity because I am
24 fired.

25 MR. HAY: Okay.



1 MR. MAHONEY: I have never been fired
2 in my career.

3 MR. HAY: Well, you have had ample --

4 MR. MAHONEY: And I tell you as a
5 gentleman, which --

6 MR. HAY: You have had ample
7 opportunity to work with me on these issues. You
8 sat at that desk. You were supposed to work with
9 Michael on the allocations and the thing, and when
10 I brought it up, you said you had deal fatigue.
11 And I said, well, you're the one that is supposed
12 to resolve it.

13 MR. MAHONEY: The deal fatigue -- the
14 deal fatigue that I said that I had --

15 MR. HAY: Okay.

16 MR. MAHONEY: -- had to do with the
17 buyout.

18 MR. HAY: Okay.

19 MR. MAHONEY: And not with the -- not
20 with the Glasscorp thing. I mean, Henry --

21 MR. HAY: Okay. It's clear that
22 Muhler's position including votes and my position
23 as shareholder that there can be no competition
24 between Muhler and Glasscorp, that that is
25 counterproductive to the value of Muhler and the

1 existence of Muhler and to the creation of
2 Glasscorp. That does not change. You're opposed
3 to that. That's --

4 MR. MAHONEY: I am not opposed to that.

5 MR. HAY: You voted against it.

6 MR. MAHONEY: Henry, what I'm saying to
7 you is that was never your original -- that was
8 never the original agreement that we -- that
9 Glasscorp would never complete against Muhler.

10 MR. HAY: Okay. Well the --

11 MR. MAHONEY: I mean, originally --

12 MR. HAY: That would be -- that would
13 be the --

14 THE COURT REPORTER: One at a time,
15 please.

16 MR. HAY: Okay. I'm sorry.

17 MR. MAHONEY: I just want to make sure
18 that I remind you, Henry, that when we originally
19 talked about this, the very first thing and the
20 only thing you were concerned with in the
21 noncompete issue was casement windows. And when I
22 put you and Michael in a room, that was the
23 conversation that you and Michael had was over
24 casement windows.

25 The next time you came into a room, you



1 had casement windows plus vinyl window. And the
2 next time you came into the room you had that
3 entire last description of all the things you
4 didn't want Glasscorp to compete against. Which,
5 by the way, is no really big deal. But the point
6 is, you keep adding things to it. The original --
7 the original thing that you asked me for was to
8 work out something with Michael so that we didn't
9 compete against casement windows on commercial
10 jobs.

11 That's what you asked me to do and
12 that is exactly what I did. And I got him to agree
13 to that. And by the way, when you two guys sat
14 across the table, that is what the two of you
15 agreed to.

16 MR. HAY: Okay. It's --

17 MR. MAHONEY: I just feel that --

18 MR. HAY: That's what you say. You
19 know that Glasscorp was formed out of Muhler to
20 support Michael to do commercial glazing and
21 storefront. You --

22 MR. MAHONEY: Glasscorp was formed --

23 MR. HAY: Glasscorp opened up an
24 account with our prime vendor without my permission
25 or consent. Never was asked, never was given



1 consent. Our two largest accounts, you opened up
2 accounts with them.

3 MR. MAHONEY: I didn't open the
4 accounts.

5 MR. HAY: Who knows whose credit they
6 used because Glasscorp didn't have any credit, so
7 how did they establish credit? So you opened up --
8 this came out when this whole thing came up. That
9 is why it is an evolving decision here.

10 MR. MAHONEY: I wanted to --

11 MR. HAY: There is no reason Glasscorp
12 should do anything other than what they were
13 established to do as a company that I started and
14 was spun off. There is no reason they should be
15 competing with us, because I dug into it deeper and
16 found that you had established accounts.

17 MR. MAHONEY: I didn't do that.

18 MR. HAY: You had knowledge of it. You
19 had knowledge of that. You had knowledge of the
20 allocation change, you meet with Michael, you
21 caused Michael to be in every meeting related to
22 every trade secret, vendor relationship. He
23 certainly --

24 MR. MAHONEY: That's not true. He
25 served on the management team with Muhler for

1 years.

2 MR. HAY: And he was never excused.
3 You excused him from that role and you excused him
4 from that sales role without my knowledge or
5 permission.

6 MR. MAHONEY: I didn't do that. I did
7 not excuse him from the sales role. He excused
8 himself from it because he is not paid by Muhler.
9 He is paid by Glasscorp. And he chose to run the
10 company that he is being paid to run.

11 MR. HAY: Okay.

12 MR. MAHONEY: I didn't make that
13 decision.

14 MR. HAY: Okay.

15 MR. MAHONEY: Where we are here, Henry,
16 let's boil it down. When this door opens here, I
17 have got to walk out of here with absolutely no
18 dignity and in total disgrace that I just got my
19 ass fired.

20 MR. HAY: Okay.

21 MR. MAHONEY: For what I don't believe
22 are reasonable reasons. I believe the reason why
23 I'm being fired is because you're pissed off about
24 Glasscorp. I want to remind you why there is a
25 Glasscorp. Michael Herlocker resigned from this



1 company, was going to leave, which left us with no
2 commercial business at all and nobody that could
3 run it, and you came to me and said, I don't know
4 anything about the commercial business. And we
5 cracked a deal with Michael to start, you know, to
6 start a spinoff company and gave him ownership so
7 that we could keep that company. That is why there
8 is a Glasscorp. There is not a Glasscorp because,
9 you know, Henry decided --

10 MR. HAY: That's your opinion. The
11 reason there is a Glasscorp was because Michael
12 wanted to have a spinoff of some sort. I asked you
13 repeatedly if you were working with him because he
14 was showing me signs that he was unhappy. Taking
15 vacations, you said there was nothing wrong with
16 Michael. Everything was fine.

17 MR. MAHONEY: He told me it was.

18 MR. HAY: And he walked out the next
19 day. You had the relationship with Michael, not
20 me. You caused Glasscorp to spin off like it did.
21 We brought -- we salvaged the best we could. There
22 was never any -- there was never any intent of
23 Glasscorp being anything other than a commercial
24 glazing company. Your ownership with Glass --

25 MR. MAHONEY: That's what it is now.



1 MR. HAY: Your ownership -- no. They
2 have already established trade accounts with our
3 two biggest customers, some vendors, without my
4 knowledge or consent. So you have knowledge of
5 that.. That's not in Muhler's interest.

6 MR. MAHONEY: So, but you're good.
7 You're okay with me walking out the door absolutely
8 fired and disgraced after putting ten years in for
9 you? That's the way you're going to treat me.

10 MR. HAY: You have had ample
11 opportunity to review these and support me on this.
12 You had the opportunity. You actually said you
13 didn't like the way I presented it.

14 MR. MAHONEY: I didn't. It was
15 terrible.

16 MR. HAY: And I was saying, and I said
17 to you, you know, I don't like the way you-all hid
18 the allocation change underneath a piece of paper,
19 didn't put it on the agenda, a \$100,000 change.
20 You never mentioned it. Y'all came up with it,
21 never mentioned it to me, slid it under the paper
22 without bringing it -- so let's not talk about the
23 methods.

24 You're creating a situation where
25 you're allowing Glasscorp to compete with Muhler



1 which will never happen and you've changed
2 allocations. Additionally, you told me that I had
3 to have you here for manufacturing. You have done
4 nothing in the manufacturing realm.

5 MR. MAHONEY: How can you say that? I
6 have met with the attorneys. I created the
7 documentation. I created the Delaware (ph)
8 account. I have sat down with meetings with you
9 and Craig and talked about structure. How can you
10 say I'm not involved?

11 MR. HAY: The structure was just last
12 week and you brought no structure. There was no
13 structure. There is no structure. There is no
14 structure other than the LLC that was formed. That
15 has been in place for two years. There is no
16 manufacturing processes. There is none of that.

17 MR. MAHONEY: Henry, that's your --
18 that's your baby. You're the manufacturing guy.

19 MR. HAY: No, no, no. You told me that
20 I needed you for the manufacturing.

21 MR. MAHONEY: When did I tell you that?

22 MR. HAY: You told me that when you
23 said you wanted to continue to work because I
24 needed you to do manufacturing.

25 MR. MAHONEY: No. I said that I think



1 you needed me to help you run this company keeping
2 it on the financial track.

3 MR. HAY: Well, you had every ample
4 opportunity to work in Muhler's best interest and
5 you clearly didn't.

6 MR. MAHONEY: Well, that is your
7 opinion.

8 MR. HAY: Anything else to say?

9 MR. MAHONEY: No. I just want a copy
10 of that.

11 MR. HAY: Okay. We can make, run a
12 copy of it.

13 MR. MAHONEY: I feel very, very sad
14 that you've taken this position, Henry. I really
15 am.

16 MR. HAY: Well, I feel sad too, Dan,
17 that you put me in the position where I had to
18 protect my interest.

19 MR. MAHONEY: I put you in a position
20 of a shit load of money. This company is worth a
21 ton of money thanks to a lot of my efforts. Not
22 just mine, but yours, too. But I have worked very,
23 very hard for you for ten years.

24 MR. HAY: Okay.

25 MR. MAHONEY: And this is my reward.



1 MR. HAY: You had your chance to
2 resolve this.

3 MR. MAHONEY: No. I had your chance to
4 give you what you wanted out of Glasscorp.

5 MR. HAY: You chose to not do it. You
6 chose to try to bully me and intimidate me --

7 MR. MAHONEY: Take a look at where the
8 bully comes from. It's not from me.

9 MR. HAY: So we have had --

10 MR. MAHONEY: I'm a 25 percent interest
11 owner here. I can't bully you to do anything.

12 MR. HAY: And in nine and a half years
13 we have had no meetings where anything was voted
14 other than this -- okay. Do you have anything else
15 to say?

16 MR. MAHONEY: No. I just feel very
17 badly that you treated me this way.

18 MR. HAY: Okay. I'm sorry you feel
19 that way. Okay. Now, I'll take a vote on
20 termination. We will now conduct an oral vote on
21 whether to adopt the resolution terminating J. Dan
22 Mahoney's employment with immediate effect for
23 cause with the last day of work being September
24 18th. All those in favor? Aye. Nay?

25 MR. MAHONEY: Opposed.



1 MR. HAY: Dan opposed. Shareholders
2 have voted to terminate Mr. Mahoney's employment
3 for cause. Mr. Mahoney will receive his final
4 paycheck at the end of this month. His benefits
5 shall expire at the end of the month. His access
6 to Muhler's server and e-mail account will be
7 terminated with immediate effect. You must turn in
8 all devices provided to him from Muhler including
9 applicable company cell phone -- is that your
10 phone?

11 MR. MAHONEY: It's a company phone, but
12 it's my number. So you'll have to give me time to
13 get it changed.

14 MR. HAY: I can understand that.
15 Laptop iPad to me personally as soon as possible in
16 the event no later than the close of day, September
17 19th.

18 MR. MAHONEY: Tomorrow is not quick
19 enough. It's too quick.

20 MR. HAY: For?

21 MR. MAHONEY: Well, I have to get all
22 of that stuff over here.

23 MR. HAY: What date do you need?

24 MR. MAHONEY: Before Friday.

25 MR. HAY: September 21st. September

1 21, 2018. We have concluded the business of
2 special meeting which is officially adjourned.
3 Would you like a copy of this?

4 MR. MAHONEY: Oh, yeah.

5 (The meeting concluded at 5:25 p.m.)
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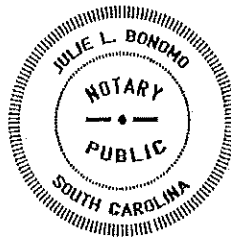


CERTIFICATE OF REPORTER

I, Julie L. Bonomo, Court Reporter and
Notary Public for the State of South Carolina at
Large, do hereby certify that the foregoing
transcript is a true, accurate, and complete
record.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto
affixed my official seal this 1st day of October,
2018, at Charleston, Charleston County, South
Carolina.



Julie L. Bonomo
Court Reporter
My Commission expires
July 28, 2027



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REQUESTED INFORMATION INDEX

(No Information Requested)

ATTACHMENT

Meeting Agenda

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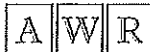
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IN THE MATTER OF ARBITRATION BETWEEN:

J. Daniel Mahoney,

Plaintiff,

vs.

The Muhler Company and Henry Hay, Sr.
in his individual capacity,

Defendants.

**PLAINTIFF'S RESPONSES TO
DEFENDANTS' FIRST SET OF
INTERROGATORIES**

The Plaintiff, though the undersigned counsel, responds to Defendants' First Set of Interrogatories as follows:

General Objections

1. By providing information in response to these Interrogatories, Plaintiff does not concede the accuracy of Defendants' definitions, assumptions or allegations. Nor does Plaintiff concede that any of the information sought is admissible, material or relevant in these proceedings. Plaintiff does not waive any general or specific objections by providing a response to any of the Interrogatories.

2. Plaintiff has made a reasonable, good-faith inquiry into the subject matter of each Interrogatory. Plaintiff's responses are based on the facts reasonably ascertainable to Plaintiff. Plaintiff reserves the right to modify or amend these responses at any time and as discovery proceeds.

3. Plaintiff objects to these Interrogatories to the extent that they call for information that is protected by the attorney-client privilege, the work product doctrine, or any other privilege or protection recognized by law.

4. Plaintiff objects to these Interrogatories to the extent they attempt to impose burdens and requirements beyond those required by the South Carolina Rules of Civil Procedure.

5. Plaintiff's responses shall not be construed in any way as an admission that any definition provided by Defendants is either factually correct or legally binding upon Plaintiff or a waiver of any of Plaintiff's objections regarding relevancy, discoverability and admissibility.

6. Plaintiff reserves the right to supplement these responses and objections.

RESPONSES TO INTERROGATORIES

1. Identify with specificity the basis for your assertion that Plaintiff's termination as CEO of the Muhler Company, Inc. ("Muhler") was without cause.

RESPONSE: Pursuant to Plaintiff's Employment Agreement which renewed automatically every year, Plaintiff worked part time for Defendant Muhler Company. It was expressly acknowledged in the Employment Agreement that "Executive has other business, consulting and board of directors commitments and responsibilities outside of the Company that will continue while he is employed by the Company, and such activities shall not be considered a conflict or distraction from his duties as CEO, nor shall they be viewed in a negative manner by the Company." While he worked for Defendant Muhler, Plaintiff was a shareholder and served on the Board of GlassCorp, another company that Defendant Hay was involved with as a majority shareholder. On September 18, 2018, as the majority shareholder of The Muhler Company, Defendant Hay called a corporate meeting, prepared a Corporate Resolution, and then voted in support of his Corporate Resolution to end Mr. Mahoney's employment. The only other shareholder eligible to vote was Plaintiff. The Corporate Resolution Defendant Hay prepared and

provided to Plaintiff indicated Plaintiff's termination was not for cause. The day before Plaintiff was terminated by Defendant Hay, for the first time in ten (10) years Defendant Hay sent Plaintiff an email stating Plaintiff's performance was "poor." Defendant Hay's statement about Plaintiff's performance was false and not supported by any performance evaluations or write-ups over the course of ten (10) years. Further, "poor performance" is not a basis for termination for cause under Paragraph 8 c. of Plaintiff's Employment Agreement. None of the reasons cited in the Corporate Resolution written by Defendant Hay to allegedly justify Plaintiff's wrongful termination support a termination for cause as that term is defined in Plaintiff's Employment Agreement. Plaintiff's Employment Agreement specifically allows Plaintiff to engage in outside business activities while employed by The Muhler Company. To the extent Defendant Hay told Plaintiff that he was not happy with Plaintiff's business activities related to GlassCorp, such concerns cannot affect Plaintiff's employment status with The Muhler Company per the express terms of Plaintiff's Employment Agreement.

2. Identify with specificity your contention of how EBITDA is to be determined pursuant to Mulder's Stockholder Agreement.

RESPONSE: Plaintiff objects to this Interrogatory as it has nothing to do with this lawsuit which has one cause of action- a South Carolina Payment of Wages Act (SCPWA) claim.

3. Describe in detail your knowledge regarding the drafting of Muhler's Stockholder Agreement and your employment agreement with Muhler.

RESPONSE: Plaintiff objects to this Interrogatory to the extent it asks about a Stockholder Agreement as that has nothing to do with this lawsuit which has one cause of action- a South Carolina Payment of Wages Act (SCPWA) claim. Regarding Plaintiff's Employment Agreement, Brian Hellman, at the time with Nelson Mullins, prepared an initial draft and Defendant Hays' attorneys reviewed and revised the draft Agreement.

4. Identify the date upon which you contend payment for you shares came due following your termination as CEO of Muhler.

RESPONSE: Plaintiff objects to this Interrogatory as it has nothing to do with this lawsuit which has one cause of action- a South Carolina Payment of Wages Act (SCPWA) claim.

5. Identify all actions you took or communications (written, via email, via text message, orally, or otherwise) you had with any other person regarding the October 2016 amendment to Muhler's bylaws.

RESPONSE: Plaintiff objects to this Interrogatory as it has nothing to do with this lawsuit which has one cause of action- a South Carolina Payment of Wages Act (SCPWA) claim. Notwithstanding this objection, Plaintiff answers, none, other than communications with Counsel.

6. Identify all loans and/or capital contributions you made to Muhler.

RESPONSE: Plaintiff objects to this Interrogatory as it has nothing to do with this lawsuit which has one cause of action- a South Carolina Payment of Wages Act (SCPWA) claim.

7. Identify all loans and/or capital contributions to Muhler made by Henry Hay of which you are aware.

RESPONSE: Plaintiff objects to this Interrogatory as it has nothing to do with this lawsuit which has one cause of action- a South Carolina Payment of Wages Act (SCPWA) claim.

8. Identify your basis for contending that Hay's loans to Mulder relating to Silverline are not relevant to the determination of EBITDA, if you so contend.

RESPONSE: Plaintiff objects to this Interrogatory as it has nothing to do with this lawsuit which has one cause of action- a South Carolina Payment of Wages Act (SCPWA) claim.

9. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

RESPONSE: Plaintiff, Henry Hay, and Michael Herlocker, whose addresses all already known to Defendants.

10. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

RESPONSE: Plaintiff will testify about his employment contract, his job performance and duties, his wrongful termination, conversations he had with Defendant Hay, and the amount of accrued leave and wages owed to him; Henry

Hay may testify about Plaintiff's employment contract and why he refused to pay Plaintiff the wages owed to him; Mike Herlocker will testify that Plaintiff acted in the best interest of GlassCorp and that his vote (along with Mike Herlocker's similar vote) did not cause a major problem for Muhler as both companies shared jobs together, each providing different components for various projects. Additionally, Mr. Herlocker will testify that at the time of the vote, GlassCorp was not selling the products that Defendant Hay wanted to restrict them from selling in the future so there was no damage to Muhler at all.

11. Set forth the names and addresses of all insurance companies which have liability, directors and officers, errors and omissions or other professional insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided In each policy.

RESPONSE: Not applicable; Plaintiff was an employee, not an employer.

12. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

RESPONSE: None. No expert is needed in this case as the SCPWA only addresses the issue of wages owed under a contract which does not require expert testimony.

13. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by Plaintiff.

RESPONSE: Plaintiff was owed wages under his contract at the time of his termination without cause. Specifically, Plaintiff is entitled to a severance under the contract equal to an additional ten (10) months of his base salary (\$120,000.00), as well as payment of his accrued leave for nine (9) days at \$1,000 per day, or a total of \$129,000.00,

plus pre judgment and post judgment interest, treble damages, and attorney fees under the SCPWA.

14. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the hearing of this matter.

RESPONSE: See Response to Interrogatory No. 12 above.

15. For each person known to the Plaintiff or Plaintiff's counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform Defendants of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

RESPONSE: See Response to Interrogatory No. 10 above.

BLOODGOOD & SANDERS, LLC



Nancy Bloodgood, SC Bar No.: 6459
Lucy C. Sanders, SC Bar No.: 78169
242 Mathis Ferry Road, Suite 201
Mt. Pleasant, SC 29464
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Email: nbloodgood@bloodgoodsanders.com
lsanders@bloodgoodsanders.com

Attorneys for Plaintiff

Charleston, South Carolina

Date: 8-9-19



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EMPLOYEE NON-DISCLOSURE AGREEMENT

FOR GOOD CONSIDERATION, and in consideration of being employed by The Muhler Company, the undersigned employee hereby agrees and acknowledges:

1. That during the course of my employ there may be disclosed to me certain trade secrets of the Company; said trade secrets consisting but not necessarily limited to:

(a) Technical information: Methods, processes, formulae, compositions, systems, techniques, inventions, machines, computer programs and research projects.

(b) Business information: Customer lists, pricing data, sources of supply, financial data and marketing, production, or merchandising systems or plans.

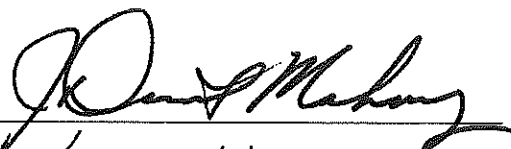
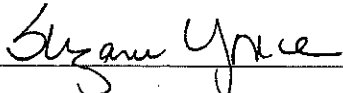
2. I agree that I shall not during, or at any time after the termination of my employment with The Muhler Company, use for myself or others, or disclose or divulge to others including future employees, any trade secrets, confidential information, or any other proprietary data of The Muhler Company in violation of this agreement.

3. That upon the termination of my employment from The Muhler Company:

(a) I shall return to The Muhler Company all documents and property of the Company, including but not necessarily limited to: drawings, blueprints, reports, manuals, correspondence, customer lists, computer programs, and all other materials and all copies thereof relating in any way to the Company's business, or in any way obtained by me during the course of employ. I further agree that I shall not retain copies, notes or abstracts of the foregoing.

(b) The Muhler Company may notify any future or prospective employer or third party of the existence of this agreement, and shall be entitled to full injunctive relief for any breach.

(c) This agreement shall be binding upon me and my personal representatives and successors in interest, and shall inure to the benefit of the Company, its successors and assigns.

Employee 
Witness 

Signed this 15 day of January, 2008

MUHLER EXH. 7

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
J. Daniel Mahoney,	)	CASE NO. 2019-CP-10-00178
	)	
PLAINTIFF,	)	TRANSCRIPT OF RECORD
	)	
VS.	)	ORIGINAL
	)	
The Muhler Company, Inc. and	)	
Henry Hay, III,	)	
	)	
DEFENDANTS.	)	
	)	

June 16, 2020

Charleston, South Carolina, via Zoom

B E F O R E:

The Honorable Bentley Price

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

Clayton B. McCullough, Esquire
For the Plaintiff

Jaan G. Rannik, Esquire
For the Defense

Certified Transcript Provided For: Jaan G. Rannik, Esq.

Phyllis Norton, CVR-Master, Nationally Certified Verbatim Court Reporter
636 Long Point Road, Unit G, #74, Mt. Pleasant, South Carolina 29464
PNorton@sccourts.org

I N D E X

HEARING - Defendant's Motion -- 03

EXHIBITS - None Proffered

CERTIFICATION OF TRANSCRIPT -- 11

If you need an additional copy of this transcript or a sealed transcript or if opposing counsel requires a copy of the transcript, you should contact the court reporter.

Certification will satisfy Rule 80, Stenographic Report of Transcript as Evidence.

1 THE COURT: We will just start with the plaintiff. If
2 you will just introduce yourself and the parties you
3 represent, and if it is your motion tell me what it is.

4 MR. MCCULLOUGH: Hey. This is Clay McCullough. I am
5 here on behalf of Dan Mahoney, the plaintiff.

6 MR. RANNIK: And good morning, Judge. This is Jaan
7 Rannik; and I am here on behalf of defendants, the Muhler
8 Company and Henry Hay, III. And it is my motion to confirm an
9 arbitration award that is before the court this morning.

10 THE COURT: Did y'all send me something on this?

11 MR. RANNIK: Yes, Judge, there was -- I think I filed
12 something on Sunday afternoon with apologies that it was so
13 late.

14 THE COURT: That is right. Yeah, okay. I read it. So
15 it apparently -- did I -- was I the one that forced everybody
16 to go to arbitration, or no?

17 MR. RANNIK: Yes, Judge. And maybe if I can just give a
18 quick little bit of background as to how we got here that -- I
19 hope that might be helpful.

20 THE COURT: Sure.

21 MR. RANNIK: So, Judge, Dan Mahoney, the plaintiff in
22 this case, was the CEO of Muhler until he was terminated in
23 September of 2018. He then filed two separate lawsuits
24 relating to his termination, an employment suit and a
25 stockholder suit.

1 Now we moved to compel each of these to arbitration. And
2 in the employment suit it was indeed this court who granted
3 the motion. And arbitration has occurred now based -- you
4 know, with the panel constituted as provided for in the
5 arbitration agreement.

6 In the stockholder suit this court ordered arbitration as
7 well, but it struck the arbitrator selection clause and said
8 that it needed to be -- the arbitration panel needed to be
9 constituted in a different way. That issue is currently up on
10 appeal, and we are in front of the Supreme Court at present.

11 And, Judge, the court's concern about the arbitrator
12 selection clause was that it might be unfair to Mr. Mahoney
13 because it required using the company's CPA as one of the
14 arbitrators. We had provided an affidavit by Mr. Hay saying,
15 well, actually, no, it is Mr. Mahoney who had the close
16 relationship with the CPA. So rather than it being unfair on
17 him it really would tilt the balance more in his favor.

18 But in any event, the employment case was arbitrated with
19 the CPA and Muhler prevailed. Unanimously. It was a 3-0
20 decision. The CPA, who Mr. Mahoney is close with, ruled
21 against him; and his own arbitrator ruled against him too.

22 Now, Judge, bringing us more towards this motion. In
23 that arbitration Mahoney was arguing that he was terminated
24 without cause and that entitled him to certain payouts. One
25 of the reasons the panel rejected that is that they looked at

1 the employment agreement and they looked at the stockholder
2 agreement that Mahoney's lawyer had drafted and, Judge, they
3 found that the agreements were so one-sided that they were
4 actually a breach of Mahoney's fiduciary duty to Muhler and to
5 his partner Henry Hay.

6 This question was put squarely before the panel in the
7 pre-arbitration briefing. There was testimony on it. There
8 was no objection to this issue being in front of the panel.
9 And the panel ruled on it and said this stockholder agreement
10 is unenforceable.

11 Now the stockholder agreement, that is the basis -- that
12 provides the basis of the claims in this suit, in the
13 stockholder's suit.

14 So what we have, Judge, is an arbitration award between
15 these same parties that determines an issue central to the
16 stockholder dispute. There was no motion to vacate or modify
17 that award filed within 90 days of it, and so the state and
18 federal acts both say that this award has to be confirmed.
19 And so we would move the Court for this relief, and we ask
20 that our motion be granted and the Court hold that the prior
21 arbitration is res judicata and binding on Mr. Mahoney.

22 THE COURT: All right. Mr. McCullough.

23 MR. MCCULLOUGH: Good morning. May it please the Court.
24 I will be brief. Your Honor will recall that we did have a
25 hearing. We objected to the arbitration selection of the --

1 that was placed in the documentation, and Your Honor ruled
2 with us.

3 Our case is an entirely separate case. I was not
4 involved in the employment case. After Your Honor granted
5 their motion to compel arbitration but modified the
6 arbitration selection clause they have done everything in
7 their power to avoid that process proceeding.

8 They moved to reconsider before Your Honor. They
9 appealed that decision. They -- the motion -- I filed a
10 motion to dismiss their appeal which was granted in the Court
11 of Appeals. They moved to reconsider that decision, to which
12 the Court of Appeals denied. And then they have moved to the
13 Supreme Court for a cert on that decision.

14 So our lawsuit filed in January of 2019 is no further
15 along than it was the day we filed it. And what they are
16 trying to do and what they have tried to do for a year and a
17 half is to block Mr. Mahoney's day in arbitration or in court
18 on the very clear terms of the agreement which says he should
19 be bought out whether he is terminated, quits or leaves for
20 any reason, at four times adjusted EBITDA. And so we have
21 asked from January of last year to move that process along.

22 We were not involved in the arbitration on the
23 employment. The issues that are -- these are separate civil
24 actions. They are entirely separate lawsuits. They are
25 separate counsel. We had different outcomes in the two

1 motions to compel arbitration before Your Honor.

2 The South Carolina Arbitration Act most certainly does
3 not say what was just presented to you; it does not say that
4 you are compelled to grant -- or to confirm this arbitration
5 award. This is an entirely separate case, separate facts,
6 separate lawyers, based on -- it will be separate arbitrators.
7 And so this is a continued effort of Muhler and Mr. Hay to
8 block Dan Mahoney's efforts and have a fair and reasonable
9 outcome and hearing on the interest that he is owed; and so we
10 could not disagree with their position any more.

11 We understand that that arbitration award has been
12 confirmed as it applies to employment; but it has nothing to
13 do with our case, and it most certainly should not be
14 confirmed in our civil action number under other -- under our
15 current lawsuit, if and when they ever let us proceed with it.

16 THE COURT: All right. Who is the attorney that is
17 representing the employment arbitration?

18 MR. MCCULLOUGH: Nancy Bloodgood.

19 THE COURT: Where's Nancy?

20 MR. MCCULLOUGH: Nancy doesn't object to the confirmation
21 of the -- and I think you have already ordered the arbitration
22 to be enrolled in her case. And so there's -- that has
23 already happened.

24 THE COURT: Oh, but you -- my confusion came when you
25 said that there was two motions to ---

1 MR. MCCULLOUGH: Yes, sir, back in -- we had two separate
2 hearings. There were two motions to compel arbitration.
3 Nancy filed her employment lawsuit and you granted that
4 motion, and then in our lawsuit you granted the motion to
5 compel arbitration but modified the arbitration panel.

6 THE COURT: Oh, so you haven't -- you haven't even
7 arbitrated your portion of the claim?

8 MR. MCCULLOUGH: They have been -- we have been stuck in
9 the Court of Appeals and the Supreme Court since -- we haven't
10 done anything.

11 THE COURT: Okay. All right. Well, what -- then I
12 guess, Mr. Rannik, the question is I can't do anything, you
13 have appealed me and it is in the Supreme Court.

14 MR. RANNIK: Judge, I am not sure that that is right. I
15 think what -- the appeal -- the effect of the appeal is to of
16 course take jurisdiction away from this court as to anything
17 that is at issue in the appeal. The only thing that is on
18 issue in appeal is whether the arbitration's selection clause
19 has to be enforced as it was written. That is a narrow issue.
20 That is on appeal.

21 That is why we have resisted this arbitration going
22 forward because we feel what is going to happen is very clear
23 law in South Carolina that says arbitration selection
24 provisions have to be enforced. So what we are worried is
25 going to happen is we are going to go through with this

1 arbitration, there's going to be an appeal, and the appeal --
2 on appeal the court is going to say, yep, you are right, this
3 arbitration panel was improperly constituted, you guys have
4 got to go back and do it all over again.

5 We don't want to arbitrate the thing twice. We are
6 trying to just make sure that is resolved before we go through
7 with an arbitration to be employed.

8 But, Judge, no, I think regardless of whether the
9 arbitration has occurred in this case with different lawyers,
10 that is not what matters. What matters is that the exact same
11 parties had the exact same issue in front of -- in prior
12 proceedings. The same issue was was the stockholder's
13 agreement enforceable, and it was determined in the prior
14 arbitration that the stockholder agreement is not enforceable.
15 As a result, that is done; that is binding; Your Honor has
16 confirmed that award. And I -- there is a judgment in place
17 that confirms it.

18 So what we are trying to do here is confirm the award in
19 this case so that there could be no doubt, there could be no
20 argument, that this is res judicata and it is binding on Mr.
21 Mahoney.

22 THE COURT: All right. Anything further, Mr. McCullough?

23 MR. MCCULLOUGH: They are just trying to do an end run.
24 They didn't like your ruling. They have tried to block us
25 moving forward. And now they are trying to get around it by

1 doing this. So it was not a primary piece of the litigation
2 in the employment case. It was a throwaway line. And it
3 has -- it should have absolutely no impact on our lawsuit.

4 THE COURT: I agree. I will deny the motions. Anything
5 further?

6 MR. RANNIK: No, sir.

7 THE COURT: All right. We will do a Form 4, okay.

8 (WHEREUPON, the hearing concluded.)

(NOTE: Please contact the court reporter for additional copies or certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth 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 proceedings had and evidence introduced in the captioned case, relative to appeal, in the court for South Carolina, on June 16, 2020.

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

A handwritten signature in dark ink, reading "Phyllis Norton". The signature is cursive and stylized, with the first name "Phyllis" written in a more decorative, flowing script and the last name "Norton" in a slightly more upright but still cursive style.

PHYLLIS NORTON, CVR

Date: June 22, 2020

Certified Transcript Provided For: Jaan G. Rannik, Esq.
Certification Reference #2020-0622 Original

IN RE: SHAREHOLDERS MEETING

DATE: November 16, 2016

TIME: 5:00 PM

LOCATION: The Muhler Company, Inc.
630 Skylark Drive
Charleston, SC

REPORTED BY: TERRI L. BRUSSEAU, RPR, CRR

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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EXHIBIT

D

Exhibit No. 5208

1 APPEARANCES:

2 Henry M. Hay, III

3 J. Daniel Mahoney

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1 MR. HAY: This is a special meeting of
2 Muhler Company board November 16th, 2016. Proof of
3 notice of meeting, there are actually three in this
4 little pile, there's one original of November 7th
5 which was rescheduled to November 8th which was
6 rescheduled to today and that's all three of those.
7 All right. Calling of roll, pretty easy, Henry Hay
8 and Dan Mahoney.

9 MR. MAHONEY: Right.

10 MR. HAY: Partners. Reading and
11 disposal of unapproved minutes or minutes. You've
12 got a copy of the minutes from last week. I can
13 read them briefly. It's so quick, I can go ahead
14 and do that. Annual shareholders for fiscal 2017
15 Muhler Company held October 25th, 2016, five
16 o'clock, at Muhler's places of business. Purpose
17 of the meeting to elect corporate officers and vote
18 on an amendment to the corporate bylaws.
19 Shareholders present -- representing 100 percent of
20 shares of the company were present at meeting,
21 constituting of a quorum. The following actions
22 were taken by a majority vote of the shareholders,
23 election of Henry Hay as president of Muhler,
24 election of Dan Mahoney as CEO of Muhler, an
25 amendment of the corporate bylaws to include an

1 arbitration provision.

2 MR. MAHONEY: My comment to the minutes
3 is that the minutes are relatively short and they
4 don't reflect the conversation or the fact that
5 there was a vote against the arbitration by the
6 minority stockholder.

7 MR. HAY: Okay.

8 MR. MAHONEY: And I think there was a
9 conversation that took place where the notes do not
10 include the fact that the minority shareholder
11 objected to the fact that he hadn't gotten the
12 information prior to the meeting.

13 MR. HAY: Okay.

14 MR. MAHONEY: And didn't have an
15 opportunity to study that.

16 MR. HAY: Okay.

17 MR. MAHONEY: Prior to the vote.

18 MR. HAY: Okay. Would you like to make
19 a motion to fully -- to amend to fully include the
20 comments from the last shareholders meeting?

21 MR. MAHONEY: I would.

22 MR. HAY: Okay.

23 MR. MAHONEY: And under new business
24 and when we get to it, I'll cover that under --
25 under the old business.

1 MR. HAY: All right. Well, do you want
2 to -- do we want to not accept -- do we want to
3 vote to accept these meetings and then you -- these
4 minutes and then you bring that up as new business?

5 MR. MAHONEY: Well, yeah, under -- in
6 the last meeting -- I mentioned during the last
7 meeting that I needed an opportunity to look at the
8 suggested arbitration language and that I would
9 make comments, you know, on that at the next
10 meeting.

11 MR. HAY: Okay.

12 MR. MAHONEY: Which I intend to do.

13 MR. HAY: Okay. All right. Well, do
14 you want to vote to accept these minutes or would
15 you like to make a motion I guess to --

16 MR. MAHONEY: Well, I'd like to make a
17 motion to the fact that the minutes don't include
18 all of the comments that were made at the last
19 meeting and they perhaps should.

20 MR. HAY: Okay, I think there's a
21 motion from Dan to amend or more fully include
22 the -- reflect the --

23 MR. MAHONEY: Objections of
24 the minority stockholder --

25 MR. HAY: -- objections of --

1 MR. MAHONEY: -- at the last meeting to
2 not having the information in advance and not
3 having enough time to study before the vote.

4 MR. HAY: Okay. I think that's -- we
5 get that as a motion.

6 MR. MAHONEY: And the minutes
7 doesn't -- the minutes do -- should not -- should
8 reflect the fact that the majority stockholder
9 voted for the arbitration provision and the
10 minority stockholder voted against it.

11 MR. HAY: Okay. I think that could be
12 a motion.

13 MR. MAHONEY: Yeah, I think that's
14 fair.

15 MR. HAY: Do you call it a vote?

16 MR. MAHONEY: Yep. I'm for it.

17 MR. HAY: For it. And I would be for
18 doing that. We can do that. Okay. All right, I
19 think that handles the minutes.

20 MR. MAHONEY: Okay, I think -- can we
21 move, Henry, into the unfinished business, you
22 know, which would be the amendments --

23 MR. HAY: Yeah, well, reading of any
24 annual reports, I don't think we have any --

25 MR. MAHONEY: We don't have any.

1 MR. HAY: -- so we can waive that --

2 MR. MAHONEY: Yep.

3 MR. HAY: -- unfinished business.

4 Okay. Do you have --

5 MR. MAHONEY: Yeah, I have a document
6 that I brought --

7 MR. HAY: Okay.

8 THE MAHONEY: -- for everyone.

9 Actually, I'll give you a copy as well.

10 COURT REPORTER: Thank you.

11 MR. MAHONEY: And basically it's just a
12 letter to you, Henry, that says, you know, as you
13 know, at our last stockholders meeting of October
14 14th, 2016 I presented for the first -- I was
15 presented for the first time at the meeting with an
16 amendment for the bylaws of The Muhler Company
17 October 16th arbitration language. I expressed my
18 objection for the proposed amendment and the fact
19 that I had not been given an advanced copy of the
20 proposed changes to review prior to the meeting. I
21 requested additional time in which to review the
22 arbitration language. You called a vote and as a
23 minority share -- you know, you called a vote and
24 as a minority shareholder in a statutory closed
25 corporation, I voted against the arbitration

1 language.

2 With time to review the arbitration
3 language, my concerns as are follows: Section 1 of
4 the arbitration language addresses any and all
5 disputes, claims or controversies and is not
6 limited solely to the issue related to value of
7 shares. Therefore, I believe it makes no sense to
8 require that three arbitrators be certified public
9 accountants.

10 Certified public accountants would be
11 useful in a strictly valuation situation but this
12 language involves any and all disputes and the
13 arbitrators should be attorneys or some other
14 neutral party with understanding of corporate law.

15 In addition, the arbitration language
16 in Section 2 indicates that the third arbitrator
17 shall be an employee of the corporation's
18 accountant which I feel that these restrictions on
19 the arbitrators would be unfairly prejudicial to me
20 as a minority stockholder.

21 I intend to bring this up in our next
22 stockholders meeting under old business which was
23 rescheduled until today.

24 As usual, I appreciate everybody's
25 understanding but I -- I move the fact that the

1 arbitration should be studied and it should be
2 altered to take into consideration my comments.

3 MR. HAY: Okay. Well, I can take a
4 minute and look at this.

5 MR. MAHONEY: You know, I think,
6 Henry -- I don't think that we should make any kind
7 of decision here today. I think you ought to study
8 this and, you know, I think you probably got advice
9 on it before it, I just suggest that maybe perhaps
10 we go back and take a look at it and explain, you
11 know, the arbitration.

12 MR. HAY: Okay. Do you want to make a
13 motion related to this --

14 MR. MAHONEY: You know, I mean, I can.
15 I'd like to have a motion that my comments be
16 considered and, you know, to the extent that you
17 have an opportunity to look them over and maybe
18 perhaps we talk about amending the arbitration
19 language that was previously voted on.

20 MR. HAY: Okay. I think I might want
21 to amend that motion a little bit if that's okay.

22 MR. MAHONEY: Sure. That's okay with
23 me.

24 MR. HAY: I think I would say that
25 we -- we did have a motion, it was passed, Dan is

1 voicing concerns and that while it was passed, I
2 will review his concerns --

3 MR. MAHONEY: Yeah, sure, that's fair.

4 MR. HAY: -- and we can address it in
5 the next meeting but I do want to make sure we know
6 that it was passed on the previous meeting over his
7 objection.

8 MR. MAHONEY: Um-hum. Right.

9 MR. HAY: If that works.

10 MR. MAHONEY: Cool.

11 MR. HAY: Okay. New business is
12 repayment of Silverline proceeds to Henry. Dan,
13 you got a copy of that right there and I'll read
14 this. It's memorandum on the disbursement of
15 Silverline proceeds. In 2008, Shareholders Dan
16 Mahoney and Henry Hay agreed that the proceeds
17 expected from a pending lawsuit Silverline
18 settlement between Defendants Silverline Building
19 Company Products, LLC and Anderson Corporation and
20 the Plaintiff Muhler Company would be set aside to
21 be paid to Henry Hay personally. See Mahoney
22 e-mail dated 8/22/08 which is attached back in the
23 back. You have got a copy of that as well. Okay.
24 The total amount of the Silverline settlement was
25 654,059 as shown on the schedule below. In 2008,

1 2009 and several years thereafter, Muhler incurred
2 operating losses and/or lacked sufficient working
3 capital to pass the Silverline proceeds on to Hay.
4 However, Muhler has recently returned to
5 profitability and has sufficient working capital to
6 pay Hay the Silverline proceeds including interest.
7 A five-year schedule is shown below.

8 Below it shows the three Silverline
9 payments, total of 654, total of the sheet with
10 interest and totals 856, interest is 4 percent and
11 propose to pay it. And I think we should note as
12 long as profitability continues to pay it in five
13 equal installments starting November 15th or
14 thereabouts of 189,256 for a total of 856,367. Do
15 you have a copy of that in there? This. Do you
16 have this?

17 MR. MAHONEY: This.

18 MR. HAY: Okay.

19 MR. MAHONEY: Comments? Is it time for
20 my comments?

21 MR. HAY: Yeah, sure.

22 MR. MAHONEY: Okay. I prepared a
23 comment --

24 MR. HAY: Okay.

25 MR. MAHONEY: -- in anticipation of

1 this although I hadn't seen the information so --

2 MR. HAY: Okay.

3 MR. MAHONEY: -- so that I'm not
4 misquoted. What basically I've said, I have
5 received the notice, you know, of the meeting with
6 Muhler and so forth. The notice indicates the
7 meeting is called for the purpose of a vote on a
8 repayment by Muhler of certain advances made by
9 Henry Hay to Muhler Company and a cash distribution
10 to stockholders.

11 I would like to address the issue
12 concerning repayment of certain advances made by
13 Henry Hay in advance to make the following points.

14 The first point is, as a minority
15 shareholder I have not been provided with any
16 detailed information about the advances such as the
17 dates or amounts prior to today or taking a vote.
18 So I just got it today, no chance to study it or
19 review it.

20 As we have discussed over the last few
21 years, I have not agreed with the -- with the
22 assertion that you've made advances to the company
23 that were not capital infusions to the company.

24 Thirdly, the issue is that the
25 company's reviewed financial statements do not

1 reflect any advances made by Henry Hay. There are
2 no loans due to shareholders, no notes due or any
3 other amounts due to shareholders.

4 Any such debt would have had to have
5 been approved by a hundred percent of the
6 shareholders by the terms and conditions of the
7 stockholders agreement. No such vote or approval
8 has been taken place to my knowledge.

9 The monies that have been referred to
10 in the past stem from the money that was part of a
11 settlement in litigation with Silverline Products.
12 All of the litigation against Silverline was
13 brought by The Muhler Company and not by Henry Hay
14 personally. Therefore, any and all net proceeds
15 from that litigation would have belonged to the
16 Muhler Company.

17 There cannot be a vote on a repayment
18 of personal advances when it's clear that the money
19 is under consideration today for a vote, were not
20 personal advances but were rather revenue from
21 litigation or capital contributions.

22 Again, I feel that treating any company
23 assets or shareholder capital contributions or
24 advances or loans would be unfairly prejudicial to
25 me as a minority shareholder.

1 MR. HAY: Okay. I get that. You got
2 that? All right. I call for a vote on the
3 repayment schedule of the Silverline debts.

4 MR. MAHONEY: In addition -- in
5 addition -- before you do that, in addition to my
6 notes here there has never been to my knowledge any
7 conversation about interest on anything --

8 MR. HAY: Okay.

9 MR. MAHONEY: -- so that's -- that's
10 brand new.

11 MR. HAY: Okay. I again call for a
12 vote on the repayment of the Silverline debt to
13 Henry Hay with interest and I vote yes. Dan?

14 MR. MAHONEY: I vote no. Minority
15 stockholder votes no.

16 MR. HAY: Okay. All right. Next order
17 of business is the vote on the shareholders
18 distribution proposal and I will read that.
19 Shareholder distribution for 2017. It is suggested
20 that shareholders vote for a cash distribution to
21 the shareholders for the year of 2017 in the amount
22 of 250,000 dollars.

23 The company should experience a
24 profitable year for 2017, approximately 430 --
25 463,126 dollars which will mark the fifth

1 consecutive year of profitability for the Muhler
 2 Company. The combined profitability for the five
 3 years should exceed 2.9 million with no
 4 distributions and profits to the shareholders with
 5 the exception of those funds necessary to pay
 6 federal and state taxes.

7 And would that -- I think that in
 8 itself would be a motion, correct?

9 MR. MAHONEY: Correct. Right.

10 MR. HAY: I vote no.

11 MR. MAHONEY: I vote yes.

12 MR. HAY: Okay. That's it.

13 MR. MAHONEY: It's passed. Pretty
 14 quick.

15 MR. HAY: And that's it. We're
 16 adjourned. Thank you.

17 (WHEREUPON, the proceedings concluded
 18 at 5:14 PM.)

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CERTIFICATE OF REPORTER

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I, Terri L. Brusseau, Registered
Professional Reporter and Notary Public for the
State of South Carolina at Large, do hereby certify
that the foregoing transcript is a true, accurate,
and complete record.

I further certify that I am neither related
to nor counsel for any party to the cause pending
or interested in the events thereof.

Witness my hand, I have hereunto affixed my
official seal this 21st day of November, 2016 at
Charleston, Charleston County, South Carolina.

Terri L. Brusseau, RPR, CRR
My Commission expires
April 5, 2026.

RECEIVED

Jun 22 2020

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM Charleston COUNTY
Court of Common Pleas for the Ninth Circuit

The Honorable Bentley Price, Circuit Court Judge

Case No.: 2019-CP-10-00178

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

v.

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

NOTICE OF APPEAL

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

June 22, 2020
Charleston, South Carolina

EPTING & RANNIK

/s/ Jaan G Rannik
Jaan G. Rannik
46A State Street,
Charleston, SC 29401
Phone: 843-377-1871
Fax: 843-377-1310
jgr@epting-law.com

ATTORNEY FOR DEFENDANTS/APPELLANTS

RECEIVED

Jun 22 2020

SC Court of Appeals

EXHIBIT A

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP1000178

J Daniel Mahoney
PLAINTIFF(S)

Muhler Company Inc The et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

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

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Charleston Common Pleas

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

Case Number: 2019CP1000178

Type: Order/Electronic Form 4

IT IS SO ORDERED!

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

Electronically signed on 2020-06-17 11:47:22 page 3 of 3

**AMENDMENT TO BYLAWS
THE MUHLER COMPANY, INC.
October 14, 2016**

The following is hereby added to the Bylaws of The Muhler Company, Inc. dated May 31, 1996.

ARTICLE XIII - ARBITRATION

1. Procedures for Arbitration of Disputes. Any and all disputes, claims, or controversies (i) relating to the Corporation, (ii) brought against the Corporation by or on behalf of any third party or any shareholder of the Corporation, or (iii) between shareholders of the Corporation (hereinafter "Disputes"), shall, upon the demand of any party to such Dispute, be resolved via binding and final arbitration in accordance with the South Carolina Uniform Arbitration Act, S.C. Code §§ 15-48-10 et seq. (the "UAA").

For purposes of this Article, "shareholder" shall mean any shareholder of record, any beneficial owner of shares of the Corporation, or any former shareholder of record or beneficial owner of shares of the Corporation.

This provision applies, regardless of whether the Dispute is brought on the shareholder's own behalf, on behalf of the Corporation, or on behalf of any series or class of shares of the Corporation or shareholders of the Corporation against the Corporation or any Director, officer, manager, agent, or employee of the Corporation, including Disputes relating to the meaning, interpretation, effect, validity, performance, or enforcement of the Articles of Incorporation or these bylaws or relating in any way to such a Dispute or Disputes. For the avoidance of doubt, and not as a limitation, Disputes are intended to include derivative actions against the Corporation or its Directors, officers, or managers and class actions by shareholders against those individuals or entities and the Corporation. For the avoidance of doubt, a Dispute shall include a Dispute made derivatively on behalf of one party against another party.

2. Arbitrators. There shall be three arbitrators, each of whom shall be a Certified Public Accountant ("CPA") licensed in the State of South Carolina.

The claimant or claimants shall select one arbitrator within fifteen (15) days following notice of the demand for arbitration; provided, that, if there is more than one claimant, such arbitrator shall be selected by the majority vote of the claimants.

The respondent or respondents shall select one arbitrator within fifteen (15) days following notice of the demand for arbitration; provided, that, if there is more than one respondent, such arbitrator shall be selected by the majority vote of the respondents.

The third arbitrator shall be an employee of the Corporation's accountant. This third arbitrator will be appointed even in the event that the corporation is a claimant or respondent.

3. Place of Arbitration. The place of arbitration shall be Charleston, South Carolina.

4. Discovery. There shall be only limited documentary discovery of documents directly related to the issues in dispute, as may be ordered by the arbitrators.
5. Awards. All matters shall proceed under South Carolina law. Any arbitration proceedings or award rendered hereunder and the validity, effect and interpretation of this arbitration agreement shall be governed by the UAA; provided, however, that, if the UAA should be held inapplicable for any reason, then the Federal Arbitration Act, 9 U.S.C. §1 et seq. shall govern with respect to the foregoing. The Award shall be in writing and may, but shall not be required to, briefly state the findings of fact and conclusions of law on which it is based. Any monetary award shall be made and payable in U.S. dollars free of any tax, deduction or offset. The party or parties to the Dispute shall direct the arbitrators to issue the Award within thirty (30) days of the completion of the arbitration proceedings (subject to payment of the arbitrators as set forth below in Section 6 of this Article X). The party against which the Award assesses a monetary obligation shall pay that obligation on or before the thirtieth (30th) day following the date of the Award or such other date as the Award may provide. Costs and expenses shall be paid equally during the conduct of the proceeding, but shall be allocated by the panel in favor of the prevailing party.
6. Final and Binding. An Award shall be final and binding upon the parties thereto and shall be the sole and exclusive remedy between such parties relating to the Dispute, including any claims, counterclaims, issues, or accounting presented to the arbitrators. Judgment upon the Award may be entered in any court having jurisdiction. To the fullest extent permitted by law, no application or appeal to any court of competent jurisdiction may be made in connection with any question of law arising in the course of arbitration or with respect to any award made except for actions relating to enforcement of this agreement to arbitrate or any arbitral award issued hereunder and except for actions seeking interim or other provisional relief in aid of arbitration proceedings in any court of competent jurisdiction.
7. Beneficiaries. This Article is intended to benefit and be enforceable by the shareholders, Directors, officers, managers, agents or employees of the Corporation and the Corporation and shall be binding on the shareholders of the Corporation and the Corporation, as applicable, and shall be in addition to, and not in substitution for, any other rights to indemnification or contribution that such individuals or entities may have by contract or otherwise.
8. Severability. If any of the provisions, terms or clauses of this Article is declared illegal, unenforceable, or ineffective in a legal forum, those provisions, terms and clauses shall be deemed severable, such that all other provisions, terms, and clauses of this Article shall remain valid and binding upon the applicable parties.

Adopted by vote of the shareholders this 25 day of October 2016.

Attested to by Henry M. Hay, III, 75% stockholder:


Henry M. Hay, III

STOCKHOLDERS' AGREEMENT

THIS AGREEMENT is made and entered into by and among Henry M. Hay, III, and J. Daniel Mahoney, hereinafter referred to collectively as "Stockholders" and each individually as a "Stockholder," and The Muhler Company, Inc., a South Carolina corporation, having its principal place of business at Charleston, South Carolina, hereinafter referred to as "Corporation."

Background

The Stockholders own all the issued and outstanding capital stock of the Corporation as follows:

<u>NAME</u>	<u>NUMBER OF SHARES</u>
Henry M. Hay, III	1,000
Daniel Mahoney	333 1/3

The parties to this Agreement believe it to be in their mutual interests to provide for continuity in the management and policies of the Corporation by imposing certain restrictions and obligations on themselves and the outstanding capital stock of the Corporation. The Corporation and the Stockholders desire to facilitate liquidation of the stock of any retiring, deceased, disqualified or disabled Stockholder by the creation of a guaranteed market for his stock at a fair value. The Corporation and the Stockholders further desire to impose certain restrictions on the transfer of stock in the Corporation during the lifetime of the Stockholders;

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

ARTICLE 1.

Restrictions on Transfer of Stock

No Stockholder shall at any time during the existence of this Agreement directly or indirectly, voluntarily or involuntarily, sell, assign, transfer, mortgage, encumber, pledge, gift, or otherwise deal with or dispose of all or any part of the shares of stock in the Corporation now owned and hereafter acquired by him without first obtaining the written consent of the Corporation and the other Stockholders or, in the absence of such written consent, without first complying with the terms and conditions of this Agreement. Without limiting the above, under no circumstances shall any transfer be made to any transferee which jeopardizes the Subchapter S status, if applicable, of the Corporation without the prior written consent of all Stockholders. Upon a transfer of any shares to any permitted transferee, the shares shall continue to be subject to this Agreement, and as a condition to the transfer, each proposed transferee shall



execute this Agreement or other documents satisfactory to counsel for the Corporation pursuant to which such proposed transferee becomes bound by the terms and conditions of this Agreement. In the event a proposed transferee shall refuse to execute such documents, such transferee shall not become a stockholder of the Corporation. During the term of this Agreement any action of the Corporation not in the ordinary course of business including specifically but not limited to the incurring of additional debt of greater than \$50,000 or the sale of substantially all of the Corporations' assets shall be approved by a vote by the holders of one hundred (100%) percent of the common stock of the Corporation, unless a higher percentage vote is required in the Articles of the Corporation, the bylaws of the Corporation, this Agreement or the laws of the State of South Carolina.

ARTICLE 2.

Transfer of Stock During Lifetime

A. If a Stockholder desires to gift, transfer (except for estate planning purposes, and only to such Stockholder's spouse or issue), sell, or in any way encumber or dispose of all or any portion of his or her stock in the Corporation, such Stockholder shall first serve notice (hereinafter referred to as "Offer to Sell") to that effect upon the other parties hereto, stating the number of shares desired to be gifted, sold, encumbered, or otherwise disposed of and offering to sell such shares to the Corporation and the other Stockholders in accordance with the terms hereof. The non-selling Stockholders shall have the first right to purchase all or any part of the stock so offered by giving notice of acceptance (specifying the number of shares to be purchased) to the selling Stockholder and the Corporation within fifteen (15) days after completion of the valuation process described in Article 5 below. Each of the non-selling Stockholders shall have an individual pro rata right to purchase the shares of the selling Stockholder based on the following formula: each non-selling Stockholder may agree to purchase stock owned by the selling Stockholder in an amount equal to the total number of common shares of stock owned by the selling Stockholder multiplied by a fraction equal to the number of common shares of stock owned by that particular non-selling Stockholder divided by the total number of common shares of stock owned by all non-selling Stockholders. Should any non-selling Stockholder fail to give the notice of acceptance to the selling Stockholder and the Corporation as described above, then the non-selling Stockholders who have given notice of acceptance shall have the right but not the obligation to increase their purchase of stock of the selling Stockholder by adjusting the denominator of the fraction in the above-described formula to be the total common shares of stock owned by those non-selling Stockholders who desire to purchase the stock of the selling Stockholder. The purchase by any non-selling Stockholder shall occur within thirty (30) days following said fifteen (15) day period.

B. If the non-selling Stockholders shall fail to exercise their right to purchase all of the stock offered by the selling Stockholder, then the Corporation shall have the right to purchase such portion of the stock offered for sale which is not purchased by the non-selling

Stockholders by giving notice of acceptance (specifying the number of shares to be purchased) to the selling Stockholder and the non-selling Stockholders within fifteen (15) days following the close of the aforesaid fifteen (15) day period. The decision of whether or not the Corporation accepts such offer shall be made in the form of a resolution adopted by the Stockholders at a valid meeting. The resolution in favor of the Corporation accepting the offer to purchase such shares shall be adopted by a vote by the holders of sixty-seven (67%) percent of the outstanding shares of the Corporation. The Stockholder who made the Offer to Sell agrees that he or she will vote his or her shares in favor of the Corporation accepting the Offer to Sell. However, notwithstanding the foregoing, if the Corporation and the non-selling Stockholders have elected to purchase only a portion and not all of the stock offered for sale by the selling Stockholder, then the selling Stockholder may elect not to sell such portion to either the Corporation or the non-selling Stockholders but may elect to sell all of the stock included in the Offer to Sell, in accordance with the provisions of Paragraph D of this Article. Any purchase by the Corporation hereunder shall occur within thirty (30) days following said fifteen (15) day period of acceptance for the Corporation.

C. In the event that any stock is to be purchased pursuant to the terms of this Article 2, the following provisions shall apply:

(1) Each share of stock to be purchased pursuant to the terms of this Article 2 shall be purchased at the price specified in Article 5 of this Agreement.

(2) The purchase price of each share of stock to be purchased pursuant to the terms of this Article 2 shall be paid in accordance with the provisions of Article 5 of this Agreement.

D. In the event that the Corporation and the non-selling Stockholders fail or refuse to purchase all of the stock offered for sale, the selling Stockholder shall be free to gift, sell, encumber, or otherwise dispose of the shares of stock in any manner and upon any terms and conditions; provided, however, that such selling Stockholder shall not in fact sell any stock to another person either for a price less than or on terms more favorable than the purchase price or the terms fixed by this Agreement without first offering the Corporation and the non-selling Stockholders the right to purchase at the same price and upon the same terms as such other person. In carrying out the intent of the immediately preceding sentence, the same procedure as specified in Paragraphs A, B, and C above shall again be followed except that the notice served upon the parties to this Agreement shall specify the name and address of the person to whom the selling Stockholder proposes to sell his or her stock and the price and terms of purchase offered by such person for such stock. In the event that the Corporation and the other Stockholders shall then fail or refuse to purchase all the stock offered for sale pursuant to this Agreement, the selling Stockholder shall then be free to sell the shares of unaccepted stock to such other person for the price and upon the terms set forth in such notice; provided, however, that any such sale shall take place within sixty (60) days following the last day that the non-selling Stockholders may give notice of acceptance as provided above, and upon the expiration of such sixty (60) day

period, the provisions of this Agreement shall reattach to all of the stock not sold during said sixty (60) day period.

E. In the event that any stock is not sold but is merely encumbered during the ninety (90) day period specified in Paragraph D above, then the transferee of such encumbered stock shall accept such stock subject to the terms and conditions of this Agreement, subject to any relevant provisions, if any, in the Corporation's Articles of Incorporation.

F. In the event that any stock be involuntarily transferred pursuant to a divorce decree or otherwise, this Article 2 will apply in creating options for the Corporation or the Stockholders to first purchase the stock before such involuntary transfer is deemed to be effective.

ARTICLE 3.

Purchase of Stock Upon the Death or Termination of Mahoney

Upon the death or termination of the employment of Mahoney, the remaining Stockholders shall have the option to buy from Mahoney, or his Estate, as the case may be, all of the stock in the Corporation owned by Mahoney at the time of his departure or death by giving notice of acceptance as described in Article 2, Section A above. Should the remaining Stockholders not elect to exercise this option, based on the pro rata formula described in Article 2, Section A above, then the Corporation shall purchase and the departing or deceased Stockholder shall sell all of the stock in the Corporation owned by the departing Stockholder at the time of his death or departure. The option granted to the remaining Stockholders as described above shall expire fifteen (15) days after the completion of the valuation being made pursuant to Article 5 below, if a stipulated price is not applicable, and if such option lapses, then the Corporation shall purchase such shares of the departing or deceased Stockholder within thirty (30) days after the expiration of such option. The purchase price and terms of sale shall be as specified in Article 5 of this Agreement. Notwithstanding the above, this Article 3 shall not supercede the provisions of Article 2 above regarding the voluntary sale of stock by a Stockholder.

ARTICLE 4.

Reserved

ARTICLE 5.

Purchase Price of Stock

A. The purchase price per share for stock purchased pursuant to this Agreement is hereby stipulated to be the greater of Thirty Dollars (\$30.00) per share or an amount equal to each share's Appraised Fair Market Value. To determine Appraised Fair Market Value, the accountant for the Corporation shall first calculate the total of the Corporation's earnings before interest, taxes, depreciation, amortization, and Stockholders salaries, dividends, bonuses, and benefits (the "Adjusted EBITDA"). Appraised Fair Market Value shall equal the greater of: (i) four times Adjusted EBITDA, divided by the number of outstanding shares, or (ii) the Corporation's Book Value (defined as the sum of the Corporation's retained earnings and paid in capital) divided by the number of outstanding shares of stock. There shall be no reduction in the valuation of stock purchased pursuant to this Agreement for minority interests, lack of control, or any other reason. The purchasing Stockholders, or, if the Corporation is purchasing, the board of directors of the Corporation or the Corporation's authorized representative(s) shall thereupon fix a date, hour and place for the closing, which shall be made known to the selling or disassociated Stockholder. At the closing, such Stockholder shall deliver to the Corporation the certificate or certificates representing all of the common shares of stock of the Corporation held by such Stockholder, regardless of whether or not some part of the purchase price is deferred as hereinafter provided, with the certificates being duly endorsed, and the Corporation shall, upon delivery of the certificate or certificates, pay to such Stockholder the purchase price for such stock as described in Section B below. **Notwithstanding the above, EBITDA shall not include any income derived from the Settlement Agreement between the Corporation and Silverline dated _____, 2008.**

B. The purchase price of stock subject to this Agreement shall be in cash at closing. In the event the Stockholder or Corporation lacks sufficient cash to purchase the stock, the unpaid balance of the purchase price shall be evidenced by a negotiable promissory note payable in equal monthly installments of principal and interest with simple interest at the rate of the then applicable prime rate plus three percent (3%) interest rate per annum, with the first payment due and payable on the 30th day following the closing, and the subsequent payments due and payable at similar time frames thereafter with a final payment of all unpaid interest and principal due on the first anniversary date of the closing. Said note shall be in the form attached hereto as Exhibit B. All of the stock in the Corporation being purchased shall be pledged as collateral security to the Stockholder from whom it was purchased to secure the full payment of the principal and interest on the negotiable promissory note. The form of the stock pledge to be used is attached hereto as Exhibit C.

ARTICLE 6.

Insurance

A. The Corporation or the Stockholders may be the owner of policies of insurance on the lives of the Stockholders as listed in Exhibit A attached hereto and made a part hereof.

B. The Corporation or the Stockholders are or will be the beneficiary of the policies listed in Exhibit A and of any additional policies which may become subject to the terms hereof; and during the continuance of this Agreement, the proceeds of all policies listed on Exhibit A and of all such additional policies shall be payable to the Corporation or the Stockholders in lump sums upon the death of the insureds.

C. The Corporation shall have the right to purchase additional policies of insurance on the lives of any or all of the Stockholders, who are parties hereto, whenever it deems it reasonably necessary to acquire such additional insurance in order to meet its obligations hereunder; and, the Stockholders agree to cooperate in the acquisition of such additional insurance and to perform all acts reasonably necessary and proper in connection therewith, including the submission to such medical examinations as may be required. Any such additional policies of insurance shall become subject to the terms of this Agreement and shall be listed in Exhibit A.

D. The Corporation or the Stockholders shall pay the premiums on all of the insurance policies at any time listed in Exhibit A and shall, if requested in writing, give written proof of such payment to the insured Stockholder within fifteen (15) days after the due date of each premium. If any premium is not paid within fifteen (15) days after its due date, the insured Stockholder shall have the right to pay the premium and be reimbursed therefor by the Corporation or the Stockholders.

E. During the continuance of this Agreement, the Corporation or the Stockholders shall own all the policies at any time listed in Exhibit A and shall have the right to apply the dividends on such policies to the payment of the premiums thereof; however, the Corporation or the Stockholders shall not exercise any of the other rights, powers, or privileges in or under any of the said policies without first obtaining the written consent of the Stockholders who are then parties hereto, except that the consent of the Stockholder whose life is insured by the policy with respect to which the Corporation or the Stockholders seeks to exercise any rights, powers, or privileges shall not be required to consent to such exercise.

F. The Corporation or the Stockholders may, at any time and from time to time, with the written consent of the Stockholders who are then parties hereto, withdraw a policy or policies listed in Exhibit A from the terms hereof or substitute a policy or policies for any policy or policies listed in Exhibit A.

G. No insurance company which has issued a policy of life insurance subject to the terms of this Agreement shall have any obligation to inquire into the terms hereof or to see to the application of the proceeds and benefits of such policy, and a receipt of the Corporation or

the Stockholders to any such insurance company shall be effective to release such company from any liability as a result of such policy, and such release shall be binding upon all the parties hereto.

H. Except as provided in the Agreement, no Stockholder shall have any right, title, or interest in or to any of the policies of insurance on his or her life at any time listed in Exhibit A.

I. Any insurance company that has issued a policy subject to the terms hereof is hereby authorized to provide a Stockholder, upon written request, with any information regarding a policy or policies on his or her life.

J. For the purposes of this Agreement, the term "proceeds" shall include all payments paid on a policy as a result of the death of the insured, including, but not limited to, the face amount of the policy, dividends, and any accidental death benefits.

ARTICLE 7.

Purchase of Insurance Policies

Upon the purchase of his or her entire stock interest in the Corporation as herein provided under this Agreement, whether due to termination of employment or otherwise or upon termination of this Agreement, a selling Stockholder, if living, shall have the right to purchase from the Corporation or non-selling Stockholders all life insurance contracts on his or her life owned by the Corporation or the non-selling Stockholders that are subject to this Agreement for a purchase price equal to the amount of:

(a) The cash surrender value thereof, if any, calculated on a prorated basis to the date of the transaction, exclusive of any dividend, dividend accumulations, or policy loans, but inclusive of the cash value of any paid-up insurance additions, plus

(b) The pro rata portion of any premium paid prior to such date which covers a period extending beyond the date of the transaction, plus

(c) Any dividends or dividend accumulations, and less

(d) Any policy loan plus interest then due. The rights granted in this Article 7 shall lapse unless the selling Stockholder notifies the Corporation or the non-selling Stockholders in writing within thirty (30) days of the termination of his or her employment of his or her desire to purchase all or some of the life insurance contracts on his or her life owned by the Corporation. Any policy or policies not purchased within such thirty (30) day period may be disposed of or otherwise dealt with by the Corporation or the non-selling Stockholders in any

manner they desire; and, the Stockholders agree to execute and deliver such instruments as may be required by the Corporation to dispose of or otherwise deal with such policy or policies. In the event of a sale of a policy or policies pursuant to the terms of this Article, the Corporation or Stockholders shall execute and deliver to the purchaser such instruments as are necessary and proper to transfer full and complete title to such policy or policies.

ARTICLE 8

Corporate Inability to Purchase Stock

If for any reason the Corporation is unable to purchase all or any part of the stock from a Stockholder or a Stockholder's estate, when the Corporation is obligated to make such a purchase pursuant to this Agreement, because of a limitation or restriction imposed by statute, charter, or bylaws, the Corporation shall take, as soon as possible after the acceptance of an offer to sell or the Stockholder's disability or death, such action as may be necessary to permit the Corporation to make the purchase, including, but not limited to, a reorganization of the Corporation and the contribution by the remaining Stockholders of additional assets to the capital of the Corporation. If, notwithstanding the action of the Corporation and the remaining Stockholders, the Corporation is still unable legally to purchase all of a Stockholder's stock when the Corporation is obligated to make such a purchase pursuant to this Agreement, then the remaining Stockholders shall purchase such portion of the stock of the selling Stockholder not purchased by the Corporation.

ARTICLE 9

Reserved

ARTICLE 10.

Mandatory Dividends if an S Corporation

(a) If the corporation elects to be an S corporation and while any Subchapter S election is in effect, the corporation shall make the pro rata distributions to the Stockholders at least equal to the estimated federal and state income taxes attributable to their pro rata share of the corporation's net long-term and Section 1231 capital gains and nonseparately computed income pursuant to Section 1366(a) of the Internal Revenue Code. This estimated tax liability, which shall be computed by the accountant who regularly prepares the corporation's tax returns, shall be computed on the basis of the highest marginal rate applicable to individuals on capital gains and other taxable income for the tax year in question. Unless prevented from making any distributions under applicable state law, or the Stockholders unanimously otherwise agree, these

minimum mandatory distributions shall be declared and paid on a quarterly basis beginning no later than the last day of the third month of a taxable year and shall be based on one fourth of the estimated tax liability for the full taxable year computed as of the declaration date. Any pro rata distributions made during the taxable year in question to Stockholders in excess of the minimum mandatory dividends required by this section can be taken into account in determining the extent of any future minimum mandatory dividends for that particular taxable year.

(b) If any Subchapter S election is revoked or terminated, the corporation shall, except to the extent the Stockholders unanimously agree to the election authorized by Section 1371(e)(2) of the Internal Revenue Code, or unless prevented from doing so by applicable state law, declare and pay pro rata cash distributions during the post-termination transition period equal to the corporation's accumulated adjustments account.

ARTICLE 11.

Specific Performance

The parties hereby declare that it is impossible to measure in money the damages which will accrue to a party hereto, or his or her heirs and assigns or to the personal representative of a deceased or disabled Stockholder by reason of another party's failure to perform any of the obligations under this Agreement. Therefore, if any party hereto or the personal representative shall institute any action or proceeding to enforce the provisions hereof, any person (including the Corporation) against whom such action or proceeding is brought hereby waives the claim or defense therein that such party or such personal representative has or have an adequate remedy at law, and such person shall not urge in any such action or proceeding the claim or defense that such remedy at law exists, and any party hereto may maintain a proceeding despite the claim or defense that such remedy at law exists, and any party hereto may maintain a proceeding to compel the specific performance of the terms and conditions set forth in this Agreement or any other applicable equitable relief.

ARTICLE 12.

Health Insurance

Following the Disassociation of a Stockholder, except for "cause" (which shall be defined as conviction of a felony), such Stockholder shall have the option to continue as a covered member of the Corporation's health insurance plan, if any, to the extent allowed by applicable rules, regulations and laws, by the timely payment to the Corporation of the applicable premiums due on behalf of such Stockholder, with the amount and the timing of such premium payments to be as set by the Corporation's health insurance plan company.

ARTICLE 13.

Invalid Provision

The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions of this Agreement and the Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

ARTICLE 14.

Reserved

ARTICLE 15.

Endorsement of Stock Certificates

Simultaneously with the execution of this Agreement, the Stockholders shall surrender the stock certificates subject hereto to the Corporation and the following endorsement shall be placed on the face of each certificate:

"The sale, encumbrance or other disposition of the shares issued by this corporation may be subject to the terms and conditions of a shareholders agreement, by and among the shareholders of this corporation, with a copy of such an agreement, if it exists, being on file in the office of this corporation and to be furnished without charge to any shareholder upon written request."

After such endorsement, the certificates shall be returned to their respective owners who shall be entitled, subject to the terms hereof, to exercise all rights and interest therein. All stock hereafter issued shall bear the same endorsement. Upon the termination of this Agreement, such certificates shall be surrendered to the Corporation and new certificates without the foregoing endorsement shall be issued in lieu thereof.

ARTICLE 16.

Amendment

This Agreement may be amended, altered, or revoked at any time upon the mutual agreement of the Corporation and all of the Stockholders.

ARTICLE 17.

Termination of Agreement

This Agreement shall terminate upon the occurrence of any one of the following events:

- A. The written agreement of the parties hereto or their successors in interest to that effect;
- B. The bankruptcy, receivership, or dissolution of the Corporation;
- C. The complete fulfillment of this Agreement according to its terms upon the happening of whichever of the following events shall first occur:
 - (1) The disposal of all the stock of any Stockholder during his or her lifetime shall terminate this Agreement as to such Stockholder;
 - (2) The sale of the stock upon the disability or death of any Stockholder shall terminate this Agreement as to such disabled or deceased Stockholder and his or her estate; provided, however, that whether or not such stock is sold upon the disability or death of a Stockholder, such Stockholder's estate or other successor in interest to the stock shall be bound by this Agreement.
- D. The death of all Stockholders parties hereto, within thirty (30) days of each other.

ARTICLE 18.

Governing Law

This Agreement shall be subject to and governed by the laws and courts of the State of South Carolina.

ARTICLE 19.

Notice

Any notice required hereunder shall be given in writing and shall be sent by registered or certified mail, return receipt requested, to the parties hereto at the following addresses:

<u>Name</u>	<u>Address</u>
Henry M. Hay, III	_____
Daniel Mahoney	3910 Colonel Vanderhorst Circle Mt. Pleasant, SC 29464

Any notice required to be given hereunder to the estate of a disabled or deceased Stockholder shall be sent to the personal representative at his or her address or, if no personal representative is appointed, to the disabled or deceased Stockholder at his or her last designated address. As soon as practical after being appointed, the personal representative shall notify the other parties hereto of his or her address by notice sent in conformity with the foregoing requirements. Any party from time to time may change his or her address to which notice is to be sent pursuant hereto by sending a notice of such change in conformity with the foregoing requirements to the other parties or the personal representative.

ARTICLE 20.

Indebtedness of Stockholder

In the event that there is a purchase and sale of stock pursuant to the provisions of this Agreement and there is any indebtedness owed by the selling Stockholder or his or her estate to any party to this Agreement, then, notwithstanding the provisions of Articles 2, 3, and 5 hereof relating to the payment of the purchase price for such stock, any amount to be paid for the stock being purchased shall be applied first to reduce any indebtedness owed by the selling Stockholder or his or her estate to any party under this Agreement. If the indebtedness exceeds the total purchase price, then no payment shall be made for the stock and the excess of the indebtedness over the purchase price shall be immediately paid to such party by the selling Stockholder or his or her estate.

ARTICLE 21.

Binding Effect

This Agreement shall be binding upon the parties, their heirs, legal representatives, successors and assigns. In furtherance hereof, each Stockholder may need to execute a will, or codicil to such, directing his or her personal representative to perform this Agreement and to do any and all things necessary to effectuate the Agreement and the purposes hereof, but the failure to execute such will or codicil shall not affect the rights or the obligations of the Stockholders or their respective estates hereunder.

ARTICLE 22.

Gender

All pronouns used herein shall be deemed to include the masculine, the feminine and the neuter, and the singular shall include the plural and vice-versa, whenever the context requires or permits.

ARTICLE 23.

Counsel

Each party hereto agrees and acknowledges that he or she has had ample opportunity and time prior to the execution of this Agreement to seek advice concerning the terms, conditions and effect of this Agreement from independent tax and/or legal advisors.

ARTICLE 24.

Counterparts

This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

ARTICLE 25.

Severability

If any clause or provision herein shall be adjudged invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it shall not affect the validity of any other clause or provision which shall remain in full force and effect.

ARTICLE 26.

Adjudication

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by a court of competent jurisdiction in the State of South Carolina, County of Charleston.

ARTICLE 27.

Waiver

The waiver by either party of a breach of any provision of this Agreement by either party shall not operate or be construed as a waiver of any subsequent breach.

ARTICLE 28.

Entire Agreement

This Agreement constitutes the entire agreement among the parties hereto and supersedes all prior agreements, understandings and negotiations, both written and oral, among and between the parties with respect thereto.

ARTICLE 29.

Headings

The headings or titles of articles, sections and subsections contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

ARTICLE 30.

Nonpresumption

Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved using any presumption against any party hereto, whether under any rule of

construction or otherwise. On the contrary, this Agreement has been reviewed by the parties and their counsel and, in the case of any ambiguity or uncertainty, shall be construed according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties hereto, and not against the party who drafted or had its counsel draft this Agreement or any section herein.

ARTICLE 31.

Prevailing Party

The parties hereto agree that should any party hereto prevail in a lawsuit, action or proceeding enforcing any of the terms, covenants or conditions contained herein, said prevailing party shall be reimbursed by the losing party, in addition to any damages that a court of competent jurisdiction may award, for the prevailing party's costs and expenses, including reasonable attorney's fees, associated with such lawsuit, action or proceeding.

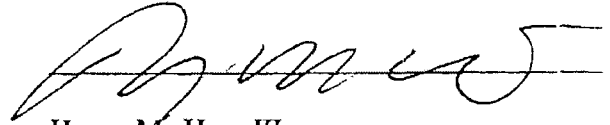
IN WITNESS WHEREOF, the parties executed this agreement effective January 15, 2008.

WITNESSES:

Attest:

Secretary
(Corporate Seal)

STOCKHOLDER:



Henry M. Hay, III



Daniel Mahoney

CORPORATION:

The Muhler Company, Inc.

By: Henry M. Hay, III

Its: 

THE MUHLER COMPANY, INC.

STOCKHOLDERS' AGREEMENT

EXHIBIT A

Policy Name

Insured

Policy Number

EXHIBIT B

SOUTH CAROLINA

\$ _____, 20__

FOR VALUE RECEIVED, the undersigned Maker promise(s) to pay to the order of _____ at Charleston, South Carolina, in lawful money of the United States of America, the principal sum of _____ (\$ _____) DOLLARS plus simple interest from date at the rate of _____ (____%) Percent per annum, with a payment of \$ _____ due on _____ and a second and final payment of \$ _____ due on _____.

Provided, however, that the Maker shall have the right to prepay the within obligation in whole or in part at any time or times without penalty.

If default be made and be continuing for a period of ten (10) days in the performance of or compliance with any of the covenants and conditions of this note, then in any of said events, said principal sum with all accrued interest thereon shall become at once due and payable at the option of the Holder thereof and be collectible without further notice. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

If this note be placed in the hands of an attorney for collection after the same shall for any reason become due, or if collected by legal proceedings or through the probate or bankruptcy courts, then all costs of collection, including a reasonable sum for attorney's fees shall be added hereto as attorney's fees secured and collectible as the principal hereof.

The undersigned expressly agrees to remain and continue bound for the payment of the principal and interest provided for by the terms of this note notwithstanding any extension or extensions of the time of, or for the payment of said principal or interest, or any change or changes in the amount or amounts agreed to be paid under and by virtue of the obligation to pay provided for in this note, or any change or changes by way of release or surrender of any collateral held as security for this note and waive all and every kind of notice of such extension or extensions, change or changes and agree that the same may be made without the joinder of the undersigned.

Presentment, protest, and notice are hereby waived.

Witness the hand and seal of each of the signers hereof.

WITNESS:

(Maker)

By: _____

Its: _____

By: _____

Its: _____

EXHIBIT C

STATE OF SOUTH CAROLINA)
) STOCK PLEDGE AGREEMENT
COUNTY OF CHARLESTON)

This Stock Pledge Agreement is made by and between _____
(hereinafter referred to as "Pledgor") and _____ (hereinafter referred to as
"Pledgee").

In consideration of Ten (\$10.00) Dollars, the mutual covenants and promises
herein contained and other good and valuable consideration, the receipt and sufficiency of which
is hereby acknowledged, Pledgor and Pledgee agree:

1. Pledgor hereby grants a security interest to Pledgee in the following stock:
_____ shares of the common stock of _____ (hereinafter
referred to as "Security"), the original certificates for such stock being attached hereto along with
an executed blank stock power/assignment(s).
2. Pledgee shall hold the Security as security, for full payment by Pledgor of the principal
and interest on that certain promissory note by and between Pledgor and Pledgee, dated of even
date herewith (the "Note"), in the original principal amount of _____
(\$ _____) DOLLARS.
3. During the term of this Agreement so long as there has been no default by Pledgor
hereunder which remains uncured as described in Section 6 below, Pledgor retains the right to
collect all dividends and distributions that may become due on the Security and to vote the
Security in all corporate matters.
4. In the event that during the term of this Agreement the issuing corporation shall grant
warrants, rights, or options related to the Security, Pledgor can exercise such warrants, rights, or
options as deemed best, but any new or additional Security so acquired by Pledgor shall be
immediately assigned to Pledgee to be held under the terms hereof in the same manner as the
Security originally pledged under this Agreement.
5. Pledgor shall be in default under this Agreement (1) in the event of a failure by Pledgor
to comply with any of the terms or provisions of this Agreement or of the above referenced
Note, or (2) in the event of a filing, declaration or petition, voluntary or involuntary, of
insolvency or bankruptcy of Pledgor from any cause or source whatsoever, or (3) in the event
any holder of any obligation of Pledgor shall become entitled to any interest or security in the
Security.

6. On any default hereunder by Pledgor and if any default hereunder has not been cured within five (5) business days following written notice of default from Pledgor to Pledgee, all indebtedness owed by Pledgor to Pledgee shall, at the option of Pledgee, become immediately due and payable, and Pledgee shall have all the rights and remedies of a secured party under Section 36-9-101, et. seq., of the Code of Laws of South Carolina, 1976, as amended, and any other laws of the State of South Carolina. Without limiting any of the foregoing, upon a default continuing by Pledgor after the above-mentioned five (5) day cure period, Pledgee is entitled to arrange for the transfer of the Security on the books of the issuing corporation to the name of the Pledgee and may thereafter exercise all rights and privileges in connection with the Security to which a transferee may be entitled as the record owner, including selling, without any previous demand for performance on, or notice to, Pledgor. Upon such a sale of all or any part of the Security, after deducting all legal and other costs, expenses, and charges, including reasonable attorneys' fees, incurred in the collection, sale, delivery, or preservation of the Security, or any part thereof, Pledgee shall apply the residue of such sale proceeds to the payment of the indebtedness of Pledgor to Pledgee hereunder and the interest thereon. Should there be any surplus of such proceeds, such surplus shall be paid to Pledgor.
7. Upon full repayment of all amounts owed to Pledgee by Pledgor under the Note, Pledgee agrees to return the Security and the executed blank stock power/assignment immediately to Pledgor.
8. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by a court of competent jurisdiction in the State of South Carolina, County of Charleston.
9. If any clause or provision herein shall be adjudged invalid or unenforceable by a court of competent jurisdiction or by operation by any applicable law, it shall not affect the validity of any other clause or provision which shall remain in full force and effect.
10. This Agreement shall be governed by the laws of the State of South Carolina.
11. The waiver by either party of a breach of any provision of this Agreement by either party shall not operate or be construed as a waiver of any subsequent breach.
12. This Agreement, together with any amendments hereto, shall be binding upon the parties hereto, their heirs, successors and assigns.
13. The headings or titles of articles, sections and subsections contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.
14. This Agreement may not be altered or amended except in writing signed by all parties hereto.

15. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved using any presumption against any party hereto, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by the parties and their counsel and, in the case of any ambiguity or uncertainty, shall be construed according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties hereto, and not against the party who drafted or had its counsel draft this Agreement or any section herein.

16. The parties hereto agree that should any party hereto prevail in a lawsuit, action or proceeding enforcing any of the terms, covenants or conditions contained herein, said prevailing party shall be reimbursed by the losing party, in addition to any damages that a court of competent jurisdiction may award, for the prevailing party's costs and expenses, including reasonable attorney's fees, associated with such lawsuit, action or proceeding.

17. Each party hereto acknowledges that he or she has received, or has had adequate opportunity to receive, the advice of his or her respective tax and legal counsel regarding the transactions contemplated or referenced herein and all related documents.

18. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

WITNESS our hands and seals this ____ day of _____, 20__.

IN THE PRESENCE OF:

PLEDGE:

By: _____

Its: _____

PLEDGOR:

By: _____

Its: _____

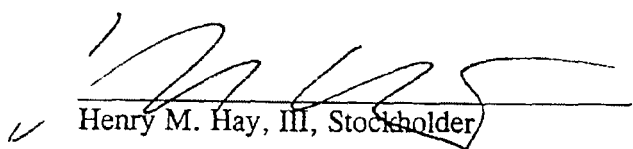
**ACTION OF
THE STOCKHOLDERS
OF
THE MUHLER COMPANY, INC.
WITHOUT A MEETING**

The undersigned, being all of the stockholders of The Muhler Company, Inc. (the "Corporation"), do hereby consent to the following action on behalf of the Corporation pursuant to S.C. Code Ann. §33-7-104 (Law. Co-op. 1990), to the same effect as if said action were taken at a meeting of the stockholders duly called and held for such purpose and at which the following resolution was unanimously adopted:

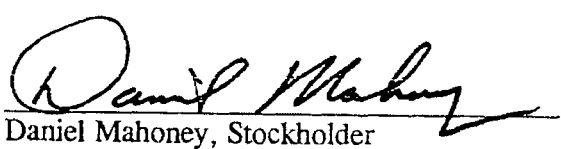
RESOLVED, that the Corporation enter into the Stockholders' Agreement with its Stockholders and that any one Officer of the Corporation is authorized to execute the Stockholder's Agreement and carry out the obligations of the Corporation contained therein.

No further action was taken on this date.

Dated this 4th day of NOVEMBER, 2008.



Henry M. Hay, III, Stockholder



Daniel Mahoney, Stockholder

_____, Stockholder

EMPLOYMENT AGREEMENT

This Employment Agreement (the "Agreement") is dated effective as of the 15th day of January, 2008 (the "Effective Date"), by and between J. Daniel Mahoney (the "Executive") and The Muhler Company, Inc., a South Carolina corporation (the "Company").

WHEREAS, the Company has hired Executive as Chief Executive Officer of the Company and Executive desires to work for Company in such capacity; and

WHEREAS, the parties desire to enter into this Agreement to set forth certain terms of Executive's employment.

NOW, THEREFORE, in consideration of the promises contained herein, the compensation to be paid to Executive, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. **Effective Date.** This Agreement is effective as of January 15, 2008 (the "Effective Date"), and shall continue until Executive's employment relationship is terminated by Executive or the Company.
2. **Position and Duties.** Executive is employed as Chief Executive Officer ("CEO") of the Company and shall have such duties as are related to such position. The Company agrees that Executive shall be allowed to perform his duties as CEO on and off Company premises. All of the time spent working by Executive will be considered as part of the time required by this Agreement, even if such time is spent off Company premises.
3. **Other Responsibilities.** The Company acknowledges and agrees that Executive has other business, consulting and board of directors commitments and responsibilities outside of the Company that will continue while he is employed by the Company, and such activities shall not be considered a conflict or distraction from his duties as CEO, nor shall they be viewed in a negative manner by the Company.
4. **Term.** This Agreement shall begin January 15, 2008 and shall continue until December 31, 2008 (said period being referred to as the "Initial Term"). On or before sixty (60) days prior to the end of the Initial Term, the parties shall review the relationship and the financial results of the Company and negotiate in good faith whether to continue Executive's employment beyond the Initial Term (any continuation beyond the Initial Term shall be referred to as the "Renewal Term") and, if so, the new compensation and benefits Executive shall receive and the number of hours Executive shall work during the Renewal Term. If the parties do not continue Executive's employment beyond the Initial Term and into the Renewal Term, the Company shall redeem at the end of the Initial Term all outstanding stock that Executive owns in the Company pursuant to the terms of the



Stockholders' Agreement dated effective January 15, 2008, between Executive and the Company (the "Stockholders' Agreement").

5. **Compensation and Benefits.** During the Initial Term, the Company shall pay Executive the sum of Ten Thousand Dollars (\$10,000) per month, less applicable state and federal withholdings, to be paid the first day of each month. In return, Executive shall work up to 10 days per month in his capacity as CEO of the Company. In addition, the Company shall pay for, and Executive shall receive, health insurance for Executive and his family (at the Company's expense), a car allowance of Four Hundred Dollars (\$400.00) per month, and any other employee benefits afforded to other executive employees. Should the parties agree to continue Executive's employment beyond the Initial Term and into the Renewal Term, Executive's compensation, benefits, and the number of days per month that Executive must work during the Renewal Term will be negotiated by the Company and Executive as set forth in Section 4 hereof.
6. **Reimbursement of Expenses.** The Company shall reimburse Executive for all expenses he incurs in connection with his position as CEO. Executive shall submit invoices or other documentation evidencing the expenses and the Company shall reimburse Executive within thirty (30) days.
7. **Support to Executive.** Executive shall be provided an office, administrative support and appropriate equipment to perform his duties as CEO.
8. **Termination of Employment.** Executive's employment may be terminated only as follows:
 - a. During the Initial Term, either party may terminate Executive's employment, with or without cause, upon thirty (30) days written notice;
 - b. During the Renewal Term, Executive may terminate Executive's employment upon sixty (60) days written notice to the Company;
 - c. During the Renewal Term, the Company may terminate Executive's employment with Cause at any time. As used herein, "Cause" shall be defined as: breach of Executive's duty of loyalty to the Company; gross negligence or willful misconduct of Executive materially damaging to the Company's business; or a violation of state or federal law in connection with Executive's employment;
 - d. During the Renewal Term, the Company may terminate Executive's employment without Cause upon sixty (60) days written notice to the Executive, provided that the Company pays to Executive upon such termination a severance payment equal to ten (10) months of Executive's base salary, minus applicable withholdings.

Upon termination of Executive's employment for any reason, whether during the Initial Term or the Renewal Term, the Company shall redeem all outstanding stock that Executive owns in the Company pursuant to the terms of the Stockholders' Agreement.

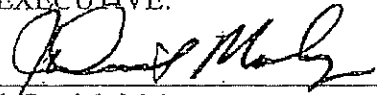
9. **Governing Law.** This Agreement shall be interpreted, construed, and governed according to the laws of the State of South.

10. **Amendments.** No amendments or variation of the terms or conditions of this Agreement shall be valid unless agreed to in writing and signed by the parties.

11. **Entire Agreement.** This Agreement constitutes the entire agreement regarding the subject matter hereof and shall bind and inure to the benefit of Company and Executive and their respective successors, heirs, assigns and legal representatives.

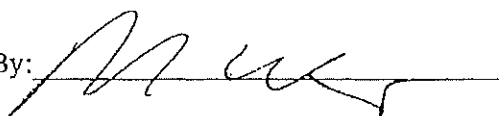
IN WITNESS WHEREOF, the parties hereto set their hands and seals to be effective the day and year first written above.

EXECUTIVE:


J. Daniel Mahoney

COMPANY:

The Muhler Company, Inc.

By: 
Its: _____

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas for the Ninth Circuit

The Honorable Bentley Price, Circuit Court Judge

RECEIVED

Mar 08 2021

SC Court of Appeals

Case No. 2019-CP-10-00178
Appellate Case No. 2020-000925

J. DANIEL MAHONEY Respondent,

v.

THE MUHLER COMPANY, INC. and HENRY M. HAY, III, in his individual capacity,
Defendants/Appellants. Appellants.

CERTIFICATE OF COUNSEL PURSUANT TO RULE 210(g)

The undersigned hereby certifies pursuant to Rule 210(g) of the South Carolina Rules of Appellate Procedure, that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

This 11th day of January, 2021
Charleston, S.C.

Respectfully submitted:

/s/ Jaan G. Rannik

EPTING & RANNIK, LLC

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