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
App. No. 2020-000925

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

v.

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

FINAL BRIEF OF APPELLANTS

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Pursuant to S.C. Code § 15-48-200(a)(3), Appellants The Muhler Company, Inc. and Henry M. Hay, III (collectively, "Muhler") appeal from the June 17, 2020 order of the Hon. Bentley Price denying Muhler's motion to confirm an arbitration award. **ROA 0200 (Notice of Appeal)**.

JURISDICTIONAL STATEMENT

This appeal is of an order denying a motion to confirm an arbitration award (**ROA 0001 (June 17, 2020 Order)**), which is immediately appealable to this Court pursuant to S.C. Code § 15-48-200(a)(3) ("An appeal may be taken from: . . . (3) An order confirming or denying confirmation of an award").[1]

ISSUES ON APPEAL

1. Whether, pursuant to S.C. Code § 15-48-120 and 9 U.S.C. § 9, the trial court's denial of a timely motion to confirm an arbitration award was error when no motion to vacate, modify, or correct the award was filed within ninety days of its entry.

2. Whether the use of two separate lawyers by a party in separate lawsuits means that the legal holdings in the first suit are not binding in the second, when both suits are between the same parties and stem from the same facts and circumstances.

STATEMENT OF THE CASE

A. In the Trial Court

Plaintiff/Respondent J. Daniel Mahoney ("Mahoney") filed two separate lawsuits[2] against Muhler relating to his termination as CEO of Muhler in September 2018. Mahoney was

[1] This brief is being filed in this Court and also submitted to the Supreme Court in connection with Supreme Court Appeal Number 2020-000370, given the implications for that appeal of the issues presented in this brief.

[2] Numbers 2018-cp-10-05077 and 2019-cp-10-00178, both in the Court of Common Pleas for Charleston County.

represented by separate counsel in each suit, though the suits were between the same parties, grew out of the same facts and circumstances (Mahoney's financial entitlements stemming from his termination), and involved overlapping issues.

Muhler moved to compel arbitration in each suit (**ROA 0010**, **0016 (Motions to Compel Arbitration)**), and those motions were heard by the same judge, The Hon. Bentley Price, on May 15, 2019 and May 31, 2019, respectively. The motion to compel was granted in the first suit on May 17, 2019. **ROA 0008 (May 17, 2019 Order)**. In the second suit, the trial court "granted" the motion but struck the parties' arbitrator selection clause, implementing its own method of arbitrator selection.[3] **ROA 0006 (June 24, 2019 Order)**.[4]

B. In Arbitration

The arbitration in the first case took place in December 2019, and a unanimous award issued in favor of Muhler on December 12, 2020. **ROA 0021 (Award)**. The second case has not been arbitrated, and the order striking the arbitrator selection method is currently on appeal. S.C. Supreme Court Appellate Case No. 2020-000370.

C. Back in the Trial Court

Mahoney did not move to vacate or modify the arbitration award issued on December 12, 2020. Muhler filed a motion to confirm on March 19, 2020 (**ROA 0018 (Motion to Confirm in**

[3] The state and federal arbitration acts make plain that courts have no discretion to alter arbitrator selection clauses and that such clauses must be enforced. *See* S.C. Code § 15-48-30; 9 U.S.C. § 5.

[4] To emphasize the point, in two different suits between the same parties relating to Mahoney's termination, identical motions to compel arbitration were decided differently by the same Judge. *See infra.*

5077)), and the award was confirmed by Judge Price in case number 2018-CP-10-05077 on March 27, 2020. **ROA 0004 (March 27, 2020 Order)** .

On May 11, 2020, Muhler filed an identical motion to confirm the award in case number 2019-cp-10-00178 (**ROA 0028 (Motion to Confirm in 0178)**). That motion was also heard by Judge Price but, this time, the motion was denied. **ROA 0001 (June 17, 2020 Order)**. This appeal of that denial was timely served and filed on June 22, 2020. **ROA 0200 (Notice of Appeal)**.

LEGAL STANDARDS

Arbitration awards *must* be confirmed if no motion to vacate, modify, or correct the award is filed within ninety days of delivery of the arbitration award S.C. Code § 15-48-120 ("Upon application of a party, *the court shall confirm an award*, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in Sections 15-48-130 and 15-48-140." (emphasis added)); 9 U.S.C. § 9 ("[A]t any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon *the court must grant such an order* unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title." (emphasis added)).

Under the South Carolina Arbitration Act, arbitration awards may be confirmed in any court within the state. S.C. Code § 15-48-180 ("The term 'court' means any court of competent jurisdiction of this State."). Under the Federal Act, the award may be confirmed either (i) in any court specified in the arbitration agreement or (ii) in a court sitting in the state where the arbitration award was made. 9 U.S.C. § 9.

SUMMARY OF ARGUMENT

The trial court's denial of the motion to confirm an arbitration award was error because Respondent filed no motion to vacate, modify, or correct the award within ninety days of the award's issuance. The arbitrators' findings are binding upon these parties in all other actions between them, because the arbitration was "final and binding" and the issues decided in the arbitration were properly submitted to the panel without objection.

ARGUMENT

Two cases between identical parties, stemming from and involving the same facts and circumstances, and identical motions to compel arbitration filed in each case and heard by the same judge; two different results. Identical motions to confirm an arbitration award filed in each case and heard, again, by the same judge, and again, two different results.

This is confusing, not least because the State and Federal arbitration acts are unambiguous with regard to each issue. Arbitrator selection clauses *must* be enforced. S.C. Code § 15-48-30;[5] 9 U.S.C. § 5.[6] Arbitration awards *must* be confirmed if no valid basis for vacating or modifying the award is presented to the court within 90 days of the award's issuance. S.C. Code § 15-48-120;[7] 9 U.S.C. § 9.[8]

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[5] "If the arbitration agreement provides a method of appointment of arbitrators, *this method shall be followed*." (emphasis added)

[6] "If in the agreement provision be made for a method of naming or appointing an arbitrator or arbitrators or an umpire, *such method shall be followed*." (emphasis added)

[7] "Upon application of a party, *the court shall confirm an award*, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in Sections 15-48-130 and 15-48-140." (emphasis added)

[8] "[A]t any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon *the court must grant*

This brief addresses the latter question, confirmation. The arbitration award was entered by the arbitrators on December 12, 2020. The award was favorable to Appellants, and no motion was filed by Respondent attempting to vacate or modify the award. The unanimous award was confirmed in case number 2018-cp-10-05077 on March 27, 2020, and judgment entered thereupon.

Appellants then moved to confirm the award in case number 2019-cp-10-00178, so that judgment may be entered in that case too, as the award conclusively determines a dispositive issue in the case. There was no valid basis for the denial of the motion, as no motion to vacate, modify, or correct the award was filed by Mahoney within the proscribed time.

The acts do not limit a court's ability to confirm an award to a particular case; in fact, confirmation is not even limited to a particular court. The trial court's denial of the motion to confirm was error and must be vacated with instruction to confirm the award.

A. The State and Federal Acts Require Confirmation of the Award

No authority was presented by Respondent in the trial court in support of his contention that confirmation of the award was not required by statute in this case (**ROA 0041 (Mahoney Opposition)**, **0173 (June 16, 2020 Hearing Transcript)**).[9] No authority or reasoning was provided in the Court's Form 4 order denying the motion (**ROA 0001 (June 17, 2020 Order)**) or during the hearing.[10]

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such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title." (emphasis added)

[9] Nor has Appellant been able to locate any authority in support of this contention.

[10] MR. MCCULLOUGH: They are just trying to do an end run. They didn't like your ruling. They have tried to block us moving forward. And now they are trying to get around it by doing this. So it was not a primary piece of the litigation in the employment case. It was a

Neither the Acts nor the arbitration provision limit confirmation of an arbitration award to a single case or court. The Acts provide that the award may be confirmed in any court in the state of South Carolina. The arbitration provision states that arbitration awards are final and binding and may be confirmed in "any court having jurisdiction." **ROA 0205 (Arbitration Provision)**. There can be no disputing that the trial court sits in South Carolina and had jurisdiction over the motion to confirm, doubly so given that Judge Price's orders on the motions to compel arbitration both specifically retained jurisdiction. **ROA 0008 (May 17, 2019 Order)**, **0006 (June 24, 2019 Order)**. Accordingly, Judge Price had jurisdiction to confirm the award and was required by statute to do so.

That the award was previously confirmed in a prior case does not alter the court's obligation pursuant to the statute.

B. The Enforceability of the Stockholder Agreement Was Properly Submitted to and Ruled Upon by the Arbitrators

Arbitration awards are binding as to any matter that was or even could have been submitted to the arbitration panel for a decision. *Palmetto Homes, Inc. v. Bradley*, 357 S.C. 485, 495–96, 593 S.E.2d 480, 485–86 (Ct. App. 2004).

The issue of whether the employment and stockholder agreements drafted by Mahoney were acts of self-dealing in breach of his fiduciary duty to Muhler and therefore unenforceable was submitted to and decided by the arbitrators. Muhler raised the question in its pretrial brief,

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> throwaway line. And it has – it should have absolutely no impact on our lawsuit.
>
> THE COURT: I agree. I will deny the motions.

ROA 0181-82 (June 16, 2020 Hearing Transcript).

attaching the Stockholder Agreement as an exhibit, noting it was prepared by Mahoney's attorney, and stating:

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

ROA 0047 (Muhler Arbitration Brief); *see also id. at* n.5. Mahoney did not object to this issue being submitted to the Panel for a decision.

Testimony was adduced at trial on the question, also without objection, and the Panel found—in a unanimous decision joined by Mahoney's own party-appointed arbitrator—that two agreements drafted by Mahoney, including the Stockholder Agreement, constituted a breach of his fiduciary duty and were unenforceable:

> We find Mahoney's admission at trial that Exhibits 1 and 2 [employment and stockholder agreements] 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.

ROA 0021 (Arbitration Award).

C. <u>The Arbitration Is Final and Binding</u>

The arbitration occurred pursuant to an arbitration provision stating:

> 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.*

ROA 0206 at § 6 (emphasis added).

This Court has recognized that parties are bound by arbitrators' rulings:

> The award of the arbitrators acting within the scope of their authority determines the rights of the parties as effectually as a judgment secured by regular legal procedure. . . . *[Thus,] [i]f otherwise sufficient, an arbitration award is conclusive and binding . . . as to*

> *all matters submitted to the arbitrators, even though one of the parties neglects to present portions of his claim.*

Palmetto Homes, Inc. v. Bradley, 357 S.C. 485, 495–96, 593 S.E.2d 480, 485–86 (Ct. App. 2004) (quoting 4 Am. Jur. 2d *Alternative Dispute Resolution* § 214 (1995)) (emphasis and alterations in original). Unless the arbitration provision provides otherwise, "when a dispute is submitted to arbitration, the arbitrators shall determine questions of both law and fact." S.C. Code § 15-48-180.

Accordingly, the arbitrators' ruling as to any matter submitted to them—or that *could* have been submitted to them[11]—is final, binding, and the exclusive remedy between those parties as to that issue. The rulings cannot be relitigated in subsequent actions. The arbitrators found that the Stockholder Agreement is unenforceable. This finding binds Mahoney, and his claims founded upon that agreement must fail.

1. Respondent's Argument to the Trial Court

Respondent argued to the trial court that, because there were two separate lawsuits and Mahoney was represented by separate counsel in each, the findings in one action would not be binding in the other. This argument entirely misstates the law. As this Court has noted, it is identity of *parties* and *issues* that matters, not identity of counsel or case number. *Town of Sullivan's Island v. Felger*, 318 S.C. 340, 344, 457 S.E.2d 626, 628 (Ct. App. 1995) ("The doctrine [of *res judicata*] requires three essential elements: (1) the judgment must be final, valid and on the merits; (2) the parties in the subsequent action must be identical to those in the first;

[11] "Under the doctrine of *res judicata,* '[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit.'" *Plum Creek Dev. Co., Inc. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999) (quoting *Hilton Head Ctr. of South Carolina, Inc. v. Pub. Serv. Comm'n of South Carolina*, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987)).

and (3) the second action must involve matter properly included in the first action."). If Respondent's counsel were correct, a party with four related causes of action against a party could file four different suits with four different lawyers and be entitled to four separate sets of factual findings. He could lose the factual dispute in three cases but win it in one, thereby prevailing as to one cause of action when he should not prevail as to any.

This is simply not the law. When an issue between two parties is litigated and finally decided, that decision binds those parties in future actions. *Plum Creek Dev. Co., Inc. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999). It was Mahoney who chose to file separate actions instead of one, using two lawyers instead of one. He is bound by the outcome as to all issues submitted to and ruled on by the arbitrators in the first action.

D. Effect of Confirmation

Muhler moved for confirmation in case 2018-cp-10-05077. The trial court properly confirmed the award as required by the acts, as no motion to vacate or modify the award had been filed. That award is now a judgment of the Court.

Nothing in the arbitration acts prevents an award from being confirmed in multiple cases. In fact, the confirmation in the prior case means the confirmability of the award is itself *res judicata* between these parties, and the trial court's about-face denial of the motion in case number 2019-cp-10-00178 must be reversed on this basis too.

CONCLUSION

No motion to vacate, modify, or correct the arbitration award was filed within 90 days of the award. Accordingly, the State and Federal arbitration acts require that the award be confirmed. The trial court's denial of Appellants' motion to confirm was error and must be vacated, and the award must be confirmed.

This 8th day of March, 2021
Charleston, South Carolina

Respectfully submitted,

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