



UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

G. Ross Anderson, Jr. Federal Building and United States Courthouse
315 SOUTH McDUFFIE STREET, SECOND FLOOR
ANDERSON, SC 29624

TIMOTHY M. CAIN
UNITED STATES DISTRICT JUDGE

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April 5, 2021

RECEIVED

Apr 05 2021

S.C. SUPREME COURT

The Honorable Daniel E. Shearouse
Clerk of Court
Supreme Court of South Carolina
P.O. Box 11330
Columbia, South Carolina 29211

Re: Curt O. Hall v. UBS Financial Services Inc., et al.
Appellate Case No. 2020-001195
United States District Court Case No. 6:19-cv-3316-TMC

Dear Mr. Shearouse:

Thank you for your letter dated April 2, 2021 regarding the above-captioned case. In response to the South Carolina Supreme Court’s inquiry as to whether the controversy raised in the questions this court certified to the Supreme Court continues to exist, the Court finds that the legal discrepancy in South Carolina precedent continues to exist and will significantly impact the resolution of this case, and respectfully requests that the Supreme Court proceed to answer the certified questions.

The causes of action currently pending before the Court include claims for negligence, breach of the implied covenant of good faith and fair dealing, breach of fiduciary duty, and defamation against Defendant UBS Financial Services Inc. (“UBS”), and claims for tortious interference with a contractual relationship and defamation against Defendant Mary Lucy Reid (“Reid”). (ECF Nos. 1-1 at 9–12; 25 (dismissing Defendant Ryan McLaughlin as fraudulently joined and dismissing Plaintiff’s claim for civil conspiracy)). On December 4, 2019, UBS and Reid filed separate motions seeking dismissal of the respective claims asserted against them. (ECF Nos. 6, 7). While reviewing the motions to dismiss, the Court became aware of the inconsistency in South Carolina precedent regarding whether at-will relationships are considered to be contractual in nature, necessarily impacting the resolution of Plaintiff’s claims for breach of the implied covenant of good faith and fair dealing against UBS and for tortious interference with a contractual relationship against Reid. *See* (ECF No. 36).

When the Court became aware of this disparity, it scheduled an informal telephone conference with the parties' counsel to discuss the issue and the possibility of certifying questions to the Supreme Court for clarification. (ECF Nos. 28, 30). During the conference, neither party indicated any initial objection to the Court proceeding with certifying the questions. Nevertheless, the Court instructed counsel to discuss the matter with their respective clients and inform the court of any objections. Receiving no objections, the Court then sent its proposed Order of Certification to the parties, directing them to file any objections or comments to the Order within fourteen days. (ECF No. 32). Neither party filed any response to the Order; however, the day before objections or comments were due, UBS and Reid withdrew their motions to dismiss (ECF No. 33) and filed a joint motion to stay the proceedings and compel arbitration (ECF No. 34).

The court considered the impact of the Defendants' motion to stay and compel arbitration and the withdrawal of their motions to dismiss, and determined that legal discrepancy regarding how at-will employment relationships should be viewed under the law of South Carolina continues to be a controlling issue in this case. As an initial matter, whether Plaintiff's claims are adjudicated in this Court or through arbitration, these claims cannot properly be resolved without clarification from the Supreme Court as to the nature of parties' at-will employment relationship. Furthermore, although the Court first became aware of the conflicting law on this issue while reviewing Defendants' motions to dismiss, their withdrawal of the same does nothing to eradicate this issue from the case as a whole.

As Defendants pointed out in their brief, it is up to the Supreme Court's discretion whether to rescind its decision to answer a certified question. Rule 244(f), SCACR. The Court respectfully points out that, if the Supreme Court were to rescind its decision in this case, it would merely "kick the can down the road," leaving this Court or an arbitral panel to struggle with reconciling the disparate treatment of at-will relationships under South Carolina law with respect to the claims at issue and how to properly adjudicate the same. Moreover, while this Court may seek to certify these same questions at a later point in the litigation should the Supreme Court rescind its decision, there is no such procedural mechanism or remedy available to arbitrators. Thus, if the Supreme Court rescinds its decision and the Court were to compel the parties to proceed with arbitration, both claims would proceed to arbitration where the arbitrator would be hard-pressed to craft a ruling that did not fundamentally contradict itself as to the nature of the parties' employment relationship or run afoul of long-standing South Carolina precedent.

Therefore, it is this Court's position that the legal controversy which gave rise to the certified questions still exists and that resolution of this case, in any forum, would greatly benefit from the Supreme Court's guidance and clarification on the issues presented in the certified questions. Nevertheless, the Court will certainly defer to the Supreme Court's decision whether to proceed with the certified questions.

I hope and trust that this response adequately addresses the issues raised in your letter. However, should there be any questions, or if additional information is desired, please do not hesitate to call upon me.

Thanking you for your attention to and consideration of these matters, and with kind regards to you and the members of the Supreme Court, I remain,

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy M. Cain". The signature is written in a cursive, slightly slanted style.

Timothy M. Cain

cc: Townes Boyd Johnson, III, Esquire
Ashley Prickett Cuttino, Esquire
Evelyn A. Norton, Esquire