

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN

Case No. 2021-CP-02-01306

REGIONS BANK, an Alabama banking
corporation,

Claimant,

vs.

CDIC DEVELOPMENT COMPANY,
LLC, a South Carolina limited liability
company,

Respondent.

RECEIVED

Apr 27 2022

SC Court of Appeals

**ORDER DENYING RESPONDENT'S MOTION
TO DISMISS AND CONFIRMING
ARBITRATION AWARD AND FOR ENTRY
OF JUDGMENT**

This matter came before the Court on January 31, 2022, for oral argument on Respondent CDIC Development Company, LLC's ("CDIC" or "Respondent") Motion to Dismiss. Claimant Regions Bank ("Regions Bank" or "Claimant") brought this petition pursuant to S.C. Code Ann. § 15-48-120 petitioning the Court for an Order to confirm and enroll, as the judgment of this Court, the arbitration award issued in favor of Regions Bank and against CDIC. On September 7, 2021, Respondent filed a Response to Regions Bank's petition and Motion to Dismiss.

At the hearing, Regions Bank was represented by Jonathan D. Klett, Esquire, and CDIC was represented by Ian Ford, Esquire, and Ainsley Tillman, Esquire. After carefully considering the matters of record including the Response to Regions Bank's petition and Motion to Dismiss, the memorandum supporting the Motion, the memorandum opposing the Motion and the parties' arguments, the Court denies CDIC's Motion to Dismiss, Confirms the Arbitration Award, and enters Judgment in favor of Regions Bank.

BACKGROUND

Regions Bank is a banking corporation that made a loan in the principal amount of \$250,000.00 to CDIC on or about January 10, 2008 (the “Note”). CDIC defaulted on the Note by failing to pay amounts due and owing under the Note. The Note expressly provides:

Collection Costs. Lender may hire or pay someone else to help collect this Agreement if Borrower does not pay. Borrower will pay Lender that amount. This includes Lender’s reasonable attorneys’ fees in an amount not less than fifteen percent (15%) of the amount owing on this Agreement and Lender’s legal expenses whether or not there is a lawsuit, including reasonable attorneys’ fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. If not prohibited by law, Borrower also will pay any court costs, in addition to all other sums provided by law.

The Note also contained a provision requiring that any dispute, claim, and controversy arising from the Note be submitted to binding arbitration. In accordance with the Note, the dispute between Regions Bank and CDIC was submitted to arbitration. Thereafter, on June 27, 2019, the arbitrator approved the parties’ Joint Stipulation and issued a written award, awarding Regions Bank \$220,309.81 as of June 21, 2019, and interest at the per diem default rate of interest of \$28.18 accruing thereafter (“Arbitration Award”). Regions Bank petitioned the Court to confirm and enroll, as the judgment of this Court, the Arbitration Award on June 22, 2021.

ANALYSIS

CDIC moved to dismiss Regions Bank’s petition for confirmation and enrollment of the Arbitration Award pursuant to 9 U.S.C. § 9 of the Federal Arbitration Act (“FAA”). CDIC argues that confirmation of the Arbitration Award is barred because Regions Bank failed to seek confirmation of the Arbitration Award within one year. Conversely, Regions Bank argued that the FAA does not apply to the procedural confirmation of an arbitration award in South Carolina State Court and, even if it was applicable, that the FAA’s confirmation language is permissive rather than mandatory. *Sverdrup Corp. v. WHC Constructors, Inc.*, 989 F.2d 148 (4th Cir. 1993).

Regions Bank petitions the Court to confirm and enroll, as the judgment of this Court, the Arbitration Award pursuant to S.C. Code Ann. § 15-48-120. That statute provides:

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 §§ 15-48-130 and 15-48-140.

Further, S.C. Code Ann. § 15-48-150, which also applies to this action, provides:

Upon the granting of an order confirming, modifying or correcting an award, judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent thereto, and disbursements may be awarded by the court.

The Federal Arbitration Act, at 9 U.S.C. § 9, provides:

If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, *then at 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 (emphasis added).

Regardless of the applicable provision, Regions Bank prevails. “The general rule is that the FAA does not preempt state *procedural* law relating to arbitration.” *Henderson v. Summerville Ford-Mercury, Inc.*, 405 S.C. 440, 448, 748 S.E.2d 221, 225 (2013). “The FAA’s substantive provisions apply to arbitration in federal or state courts, but a state’s procedural rules apply in state court unless they conflict with or undermine the purpose of the FAA.” *Id.* at 450, 748 S.E.2d at 226-27.

If South Carolina procedural rules govern, then the controlling statute is S.C. Code Ann. § 15-48-120. This statute provides that a “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 §§ 15-48-130 and 15-48-140.” S.C. Code Ann. 15-48-120. Respondent has not moved to vacate, modify or correct the Arbitration Award within the time limits of §§ 15-48-130 and 15-48-140.

Further, if the Federal Arbitration Act governs, the permissive language found in 9 U.S.C. § 9 does not require the confirmation of an arbitration award within one year. *See Sverdrup* at 156. Therefore, CDIC's argument fails under the FAA, as well.

Based on the foregoing, the Court denies Respondent's motion to dismiss and confirms the Arbitration Award. Under any applicable law, CDIC's motion to dismiss must be denied and the arbitration award must be confirmed.

CONCLUSION

Based on the foregoing findings and analysis, Respondent's Motion to Dismiss is denied. It is therefore,

ORDERED, ADJUDGED AND DECREED that Respondent CDIC Development Company, LLC's Motion to Dismiss is **DENIED**.

IT IS FURTHER ADJUDGED that the Arbitration Award is **CONFIRMED**.

IT IS FURTHER ADJUDGED that Claimant Regions Bank is entitled to judgment in the amount of: (i) \$220,309.81, plus (ii) interest at the per diem rate of interest of \$28.18 accruing from as of June 21, 2019 through the date of entry of the judgment.

IT IS FURTHER ADJUDGED that Claimant Regions Bank is entitled to the reasonable costs incurred of \$437.06 to confirm the award and enter judgment against Respondent CDIC Development Company, LLC, which costs shall be included in the judgment amount.

IT IS FURTHER ADJUDGED that Claimant Regions Bank is entitled to move for its reasonable attorneys' fees and costs associated pursuant to the terms of the Note against Respondent, including supplemental proceedings pursuant to *Raynor v. Byers*, 422 S.C. 128, 810 S.E.2d 430 (Ct. App. 2017).

IT IS SO ORDERED.

The Honorable Clyburn Pope, Presiding Judge
Second Judicial Circuit

_____, 2022
_____, South Carolina

[JUDGE'S ELECTRONIC SIGNATURE PAGE TO FOLLOW]

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the

Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
REGIONS BANK, an Alabama banking corporation	CDIC DEVELOPMENT COMPANY, LLC, a South Carolina limited liability company	\$220,309.81 as of June 21, 2019, plus interest at the per diem default rate of interest of \$28.18 through the entry of judgment and at the judgment rate thereafter, plus costs of \$437.06
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

Judge Code

Date

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The “Information for the Judgment Index” section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the “Judgment in Favor of” column, enter the name of the party to whom the judgment is awarded. In the “Judgment Against” column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the “Judgment Amount” column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate “N/A” in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section “For the Clerk of Court Office Use Only” should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through “Circuit Court Judge” and indicate “Arbitrator” in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title “Circuit Court Judge” below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the “Judgment Amount To Be Enrolled” box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.



Aiken Common Pleas

Case Caption: Regions Bank An Alabama Banking Corporation VS Cdic
Development Company Llc, A South Carolina Limited Liab
Case Number: 2021CP0201306
Type: Order/Judgment and Form 4

So Ordered

The Honorable Courtney Clyburn Pope