IN THE CIRCUIT COURT OF LAFAYETTE COUNTY, MISSISSIPPI

JONES, FUNDERBURG,
SESSUMS, PETERSON & LEE, LLC — PLAINTIFFS

VS. — CAUSE NO. L2007-135

RICHARD SCRUGGS, INDIVIDUALLY;
DON BARRETT, INDIVIDUALLY;
SCRUGGS LAW FIRM; BARRETT
LAW OFFICE; NUTT & MCALISTER;
& LOVELACE LAW FIRM — DEFENDANTS

OPINION

This cause arises out of a joint venture by plaintiff's and defendant law firms set out in this cause for the purpose of persuading claims of insureds against their windstorm carriers as a result of Hurricane Katrina. Settlements of many claims were made and disputes arose over the fees due plaintiff law firm leading to the file of this cause on March 15, 2007, and a first amended complaint on March 28, 2007.

Defendants filed their Answer and Demand for Arbitration and also filed their motion to stay proceedings and compel Arbitration on April 10, 2007. Plaintiff filed its motion to stay Arbitration on April 16, 2007.

Subsequently, several motions and pleadings have been filed including a Motion to File Second Amended Complaint, Motion for Sanctions, Motion for Court Order, Control of Partnership Assets, and Protective Relief Injunction, Motion to Continue hearing of all motions set for January 14, 2008.

Following a telephonic hearing on January 9, 2008, all pending motions were continued pending a hearing on the Motion to Compel Arbitration and Motions to Quash Subpoenas.

The joint venture contract contains a provision for arbitration: "Disputes – Any dispute arising under or relating to the terms of this agreement shall be resolved by *mandatory binding arbitration,* conducted in accordance with the guidelines of the American Arbitration Association."

The Mississippi Supreme Court has held numerous times that arbitration is desirable and Courts should not intervene when the agreement is clear and the parties are aware or should have been aware of its contents. All parties involved in this joint venture were highly qualified, sophisticated trial attorneys with a high degree of experience in litigation practice and all were clearly aware of the consequence of this provision.

Defendants argue that the scope of the arbitration is one for the arbitrators to decide under the AAA Rules of Procedure and that the Court should leave the scope of arbitration to the arbitrators.

Plaintiffs counter that this dispute is outside the scope of arbitration and to be decided by the Court.

In contract law, parties are presumed to have read or should have read any written contract to which they are a party and be aware of its provisions. This legal fiction or presumption should certainly apply to the instant parties, all of whom are highly skilled trial lawyers.

Defendant further argues that if they are incorrect as to this threshold issue, then the motion should be granted for failure of plaintiffs to follow the AAA procedure to initiate arbitration.

Plaintiffs counter that repeated attempts were made requesting arbitration and that the defendant would not respond, and thus, waived the right to arbitration. These attempts are detailed in the transcript of proceedings before presiding Judge Henry Lackey on the 17th day of July of 2007.

Plaintiffs further seek to avoid arbitration arguing that there are matters for the Court to decide outside the perimeters of the arbitration clause and that the defendants have waived arbitration by attempting to bribe the Circuit court Judge. Although no motion had been filed for summary judgment, the contention is that an agent for defendants presented a proposed order granting such summary judgment to defendants but later decided to proceed and pay the Judge to grant the Motion to Arbitrate.

Having heard arguments and considered all the evidence, I am of the opinion and so find:

1 – That Plaintiffs freely entered into the joint venture knowing that the fee dispute would be determined by arbitration under the provision of the Rules and Procedure of the American Arbitration Association.

2 – That the Plaintiffs knew or should have known of the provisions of the AAA Rules. By agreeing to be bound by the Rules of the AAA, the parties deemed to have made these provisions a part of the agreement. The rules provide that parties may initiate arbitration by filing with the AAA a written request setting out the facts in dispute, the parties, etc. This was followed by Defendants

subsequent to the filing of the suit. That Plaintiffs failed to initiate arbitration as required in tbe AAA Rules.

3 - That the scope of arbitration should be determined by the arbitrators for matters arising out of the fee dispute.

4 – That the failure, if any, to respond to Plaintiff's request for arbitration does not constitute an intention permanently to waive the right to arbitration. As set forth in my opinion on the Motion to Quash Subpoenas, alleged attempts to bribe the presiding Circuit Court Judge does not fall within the meaning of "litigation" in issues of arbitration.

5 – That the Motion for Sanctions filed by Plaintiff raises issues not arising out of the dispute for fees and is, therefore, not within the scope of arbitration. That motion should be heard by the Court. In their many requests for sanctions, Plaintiff appears to argue that denial of arbitration could be within the authority of the Court as a sanction.

6 – That the referral of the cause to arbitrators should be delayed until the Motion for Sanctions is heard and decided.

Therefore, the Motion to Compel Arbitrators would normally be granted at this point; however, an order will be held in abeyance until a decision on the Motion for Sanctions.

This the 15th day of January, 2008.

WILLIAM F. COLEMAN
SPECIAL CIRCUIT COURT JUDGE