STATE OF NORTH CAROLINA WAKE COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 24CV002218-910
ASHLEY-NICOLE RUSSELL, Plaintiff, v. BENJAMIN T. MCLAWHORN and SEAGALITY HOLDINGS, LLC, Defendants.	**ORDER ON DEFENDANT'S EQUITABLE MOTION TO CONFIRM ARBITRATOR**

1. **THIS MATTER** is before the Court following the 29 April 2025 filing of *Defendant's Equitable Motion to Confirm Arbitrator* (the Motion). (ECF No. 82 [Mot.].)

2. Defendant Benjamin T. McLawhorn (Mr. McLawhorn), through the Motion, requests that the Court confirm that the parties' chosen arbitrator, Amy Richardson, Esq. (Ms. Richardson), has the power to continue as arbitrator to resolve the arbitration. (Mot. 1.) In the alternative, Mr. McLawhorn requests that the Court order that Ms. Richardson may decide whether she has been terminated as arbitrator and if she must name a new arbitrator. (Mot. 1.)

A. Relevant Background

3. Plaintiff Ashley-Nicole Russell (Ms. Russell) and Mr. McLawhorn are the two member-managers of Seagality Holdings, LLC. (Memo. Supp. Mot. 1, ECF No. 83 [Memo. Supp.].)

4. Ms. Russell and Mr. McLawhorn are also the sole member-managers of McLawhorn & Russell, PLLC (M&R), a law firm formed by them to practice law together. (Memo. Supp. 1–2.)

5. The M&R and Seagality operating agreements each contain the following arbitration clause:

> 11.16 Arbitration. Any controversy or claim arising out of, or relating to, this Agreement or the negotiation or breach thereof, shall be settled by binding arbitration in accordance with the expedited Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Arbitration shall be held in North Carolina, and shall be conducted before a single arbitrator mutually agreeable to the parties hereto, or, if no agreement can be reached, before an arbitrator selected by the American Arbitration Association. The provisions of this Section 11.16 shall not be deemed to preclude any party from seeking preliminary injunctive or other equitable relief.

(ECF Nos. 5.2, 5.4.)

6. In March 2024, the parties, pursuant to these arbitration provisions, jointly chose Ms. Richardson, a practicing attorney, to serve as their arbitrator to resolve a number of disputes, financial and otherwise, arising from disagreements between them regarding their financial and legal practice matters. (*See* Mot. Ex. 1, ECF No. 83.1 [Arb. Ltr.].)

7. In a letter addressed to counsel for Mr. McLawhorn and former counsel for Ms. Russell, Ms. Richardson confirmed her selection by the parties as arbitrator. (Arb. Ltr. 1.) The letter states, in relevant part, that

> You will have the right to terminate this agreement at any time upon written or e-mail notice. We also will have the right to withdraw from

> this agreement upon written or e-mail notice for any reason for which withdrawal is authorized or required by law.

(Arb. Ltr. 1.)

8. On 9 September 2024, Ms. Russell formally commenced an arbitration proceeding against Mr. McLawhorn. (Memo. Supp. 2.) In response, Mr. McLawhorn asserted counterclaims against Ms. Russell in the arbitration proceeding. (Memo. Supp. 2.)

9. After substantial discovery had occurred in the arbitration proceeding, including document production, and after initial rulings had been made by Ms. Richardson as arbitrator resolving discovery disputes between the parties, on 22 April 2025, Ms. Russell sent an email to Ms. Richardson and counsel for Mr. McLawhorn which stated, "I will unfortunately need to enact the termination clause of the arbitration contract[,]" and indicated Ms. Russell's intention to terminate the then existing arbitration proceeding and enter into another arbitration proceeding. (Mot. Ex. 5, ECF No. 83.5.)

10. On the same date, Ms. Richardson responded to Ms. Russell's email, copying the language of the termination provision to the email and stating, "I will leave the parties to interpret that language, but I will stop work and send the parties my outstanding fees and costs as soon as I have them." (Mot. Ex. 6, ECF No. 83.6.)

11. On 23 April 2025, counsel for Mr. McLawhorn sent an email to Ms. Russell and Ms. Richardson in which counsel provided their interpretation of the language of the termination provision to permit termination only upon mutual agreement as opposed to unilateral termination of the arbitration. (Mot. Ex. 7, ECF No. 83.7.)

Counsel for Mr. McLawhorn also noted that "[e]ven if [Ms. Russell] could unilaterally terminate the arbitrator, the arbitration proceeding would continue" as Mr. McLawhorn had asserted counterclaims. (Mot. Ex. 7, ECF No. 83.7.)

12. In response, Ms. Russell again sent an email to Ms. Richardson and counsel for Mr. McLawhorn which states "[t]he Arbitration has been terminated[,]" and that Ms. Richardson had ratified Ms. Russell's option to terminate, stopped work, and "accepted the termination." (Mot. Ex. 8, ECF No. 83.8.)

13. Thereafter, Ms. Richardson emailed Ms. Russell and counsel for Mr. McLawhorn clarifying that "I did not accept termination of the arbitration or of my position as arbitrator[,]" and reiterating that "I will continue to stop my work until the parties resolve that dispute including determining which decision maker should resolve the issue." (Mot. Ex. 9, ECF No. 83.9.)

14. On 29 April 2025, Mr. McLawhorn filed the Motion.

15. On 16 May 2025, Ms. Russell—who at that time was proceeding *pro se*—filed a Motion for Enlargement of Time, (ECF No. 85), requesting an additional thirty (30) days to respond to the Motion.

16. On 19 May 2025, the Court denied Ms. Russell's Motion for Enlargement of Time for failure to comply with Business Court Rule (BCR) 7.3. (*See* ECF No. 86.) Pursuant to BCR 4.1, by virtue of the Court denying the Motion for Enlargement of Time, Ms. Russell had an additional two business days to file a timely response. However, no response brief was filed.

17. On 27 May 2025, Christopher M. Duggan (Mr. Duggan) noticed his appearance as counsel for Ms. Russell in this action. (*See* ECF No. 87.)

18. On 3 June 2025, one day before the Court was to hear the Motion, Mr. Duggan filed a Memorandum in Opposition to Show Cause Motion and in Support of Appointment of New Arbitrator (the Memorandum in Opposition). (*See* ECF No. 91.) While Mr. Duggan has fashioned this filing as a response in opposition to Mr. McLawhorn's separate and later-filed Motion for Show Cause Order, (ECF No. 88), the filing also includes arguments regarding the issues that are the subject of the Motion.

19. The Court first notes that it is improper for Mr. Duggan to use a response brief filed in opposition to an entirely separate motion as an avenue for presenting arguments to the Court on this Motion. Additionally, as the deadline for a timely response to the Motion has passed without the filing of a timely brief by Ms. Russell and as no motion has been brought requesting consideration of an untimely brief, the Court will not consider any arguments made in the Memorandum in Opposition as it relates to this Motion.

20. The Court conducted a hearing on the Motion on 4 June 2025, at which all parties were represented by counsel (the Hearing). (*See* ECF No. 84.)

B. <u>Analysis</u>

21. This Court has previously held that the contractual interpretation of an arbitrator selection clause in an agreement was "precisely the type of procedural question that lies within the domain of the arbitration panel." *Cold Springs Ventures,*

LLC v. Gilead Scis., Inc., 2014 NCBC LEXIS 59, at **10–11 (N.C. Super. Ct. Nov. 18, 2024). This Court has also noted that "[c]ourts presume that the parties intended arbitrators to decide issues of procedural arbitrability." *Local Soc., Inc. v. Stallings*, 2017 NCBC LEXIS 94, at *14 (N.C. Super. Ct. Oct. 9, 2017).

22. The Court similarly finds that the interpretation of the termination language in the parties' arbitration agreement is a procedural question that is for the arbitrator, not this Court, to decide.

23. Furthermore, at the Hearing, counsel for Mr. McLawhorn and Ms. Russell each acknowledged that Ms. Richardson could interpret the meaning of the termination provision of the parties' arbitration agreement and likewise determine if she should recuse herself as arbitrator.

24. **THEREFORE**, the Court, having determined that it is powerless to grant the relief as requested in the Motion—as a determination of the issues raised in the Motion is for the parties' jointly selected arbitrator, Ms. Richardson—hereby **DENIES** the Motion. The parties may seek resolution of the disputes raised in the Motion by the arbitrator.

25. Further, at the Hearing counsel for Mr. McLawhorn made an oral motion requesting that Mr. McLawhorn be awarded attorneys' fees for expenses incurred by his counsel in litigating the Motion. The Court hereby **DENIES** the oral motion without prejudice to Mr. McLawhorn seeking such relief in the arbitration proceeding.

SO ORDERED, this the 5th day of June, 2025.

/s/ Michael L. Robinson

Michael L. Robinson
Chief Business Court Judge