

11-1613

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

FILED

RYAN CUNNINGHAM

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PLAINTIFF,

CIVIL ACTION No.: 10-C-1269 CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

v.

JUDGE STUCKY

RONALD F. LEGRAND AND
MOUNTAIN COUNTRY PARTNERS, LLC,

DEFENDANTS.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Before the Court are Defendants' Ronald F. LeGrand ("LeGrand") and Mountain Country Partners ("MCP") (collectively "Defendants") Motion to Confirm Arbitration Award and to Enter Judgment on that Award ("Motion to Confirm") and Plaintiff Ryan Cunningham's ("Cunningham") Motion to Vacate Arbitrator's Award ("Motion to Vacate"). Upon consideration of those motions, the complete record tendered to the Court, and the arguments of the parties, the Court issues the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Cunningham instituted this action in the Circuit Court of Kanawha County in July 2010.
2. Because the Operating Agreement of Mountain Country Partners, LLC ("Operating Agreement"), which Cunningham read and understood before signing, mandated that all disputes proceed to arbitration, this Court stayed the civil action pending the resolution of arbitration. See Arbitrator's Final Award ("Award"), attached as Exhibit A, p.4. Section 13.05 of the Operating Agreement provides that disputes that could not be informally resolved "shall be resolved by arbitration in accordance with the CPR Non-Administered Arbitration Rules in effect on the date of this Agreement, by a sole arbitrator The arbitration shall be governed by the Federal Arbitration Act (9 U.S.C. 1-16), and judgment upon the award rendered by the arbitrator(s) may

be entered by any court having jurisdiction thereof. All Members, by their execution of this Agreement, agree the place of arbitration shall be Duval County, Florida. The arbitrator shall be a qualified arbitrator and lawyer licensed in any state of the United States with at least fifteen (15) years experience in the areas of corporations, partnerships, and taxation selected by the parties to the dispute.” Award, p.1.

3. The parties agreed on an Arbitrator that met the qualifications of Section 13.05 of the Operating Agreement and proceeded with discovery.

4. The Arbitrator had jurisdiction over discovery disputes arising during the arbitration. See Protective Order, February 11, 2011, attached as Exhibit B. Among the issues that arose during the arbitration was whether Cunningham, in addition to MCP’s books and records that he had already received, could demand access to MCP’s investor list.

5. West Virginia law, Section 31B-4-408, provides that “(a) A limited liability company shall provide members and their agents and attorneys access to its records, if any, at the company's principal office or other reasonable locations specified in the operating agreement. The company shall provide former members and their agents and attorneys access for proper purposes to records pertaining to the period during which they were members. The right of access provides the opportunity to inspect and copy records during ordinary business hours. The company may impose a reasonable charge, limited to the costs of labor and material, for copies of records furnished. (b) A limited liability company shall furnish to a member, and to the legal representative of a deceased member or member under legal disability: (1) Without demand, information concerning the company's business or affairs reasonably required for the proper exercise of the member's rights and performance of the member's duties under the operating agreement or this chapter; and (2) On demand, other information concerning the company's

business or affairs, *except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.*” (emphasis added).

6. After both parties provided their positions on the dispute, the Arbitrator determined that, pursuant to § 31B-4-408(b)(2), Cunningham’s request for the investor list was “unreasonable and improper under the circumstances” because the information was irrelevant to the claims and counterclaims. Arbitrator’s Order, March 8, 2011, attached as Exhibit C.

7. On April 18-20, 2011, the Parties participated in a three-day arbitration hearing in Jacksonville, Florida as required under the Operating Agreement. Award, p.2. Pursuant to the Operating Agreement, the hearing was held pursuant to CPR Non-Administered Arbitration Rules, effective June 15, 2005 (the “Arbitration Rules”). Award, p.1; a copy of the Arbitration Rules is attached as Exhibit D.

8. Cunningham raised one specific claim at the hearing. The crux of his claim was that MCP, a limited liability company of which Cunningham was an initial member, was being improperly managed by LeGrand and therefore he requested an order reforming the MCP Operating Agreement that would remove LeGrand from control and further providing that either a new manager be elected by majority vote of the members, a receiver be appointed, or Cunningham himself be appointed as manager subject to confirmation or rejection by a majority of the members.

9. Defendants’ counterclaims included allegations that Cunningham converted MCP assets while acting as a field manager for MCP and violated his implied duty of good faith and fair dealing arising from his contract with LeGrand and MCP.

10. The three-day hearing consisted of argument from the parties, sworn live and deposition witness testimony (which the Arbitrator noted was subject only to a relevance standard), and documentary evidence.

11. The Arbitration Rules provide that “[t]he Tribunal is not required to apply the rules of evidence used in judicial proceedings . . . The Tribunal shall determine the . . . admissibility, relevance, materiality and weight of the evidence offered.” Arbitration Rules, § 12.2.

12. Cunningham’s Counsel never objected to hearsay testimony presented at the arbitration hearing and has admitted that the lack of objections was a “tactical decision.” Cunningham’s Motion to Reopen Hearing for the Purpose of Presenting Rebuttal Evidence on the Issue of Damages (“Motion to Reopen Hearing”), p.5, attached as Exhibit E.

13. Cunningham was not present on the last day of the arbitration hearing. See Cunningham’s Memorandum in Support of Motion to Vacate Arbitrator’s Award, p.8.

14. Neither before the close of the hearing nor before the Award was rendered in Defendants’ favor did Cunningham request that the arbitration proceedings be postponed or re-opened for the taking of additional evidence. See Transcript of Arbitration Hearing, p.677, lines 3-4, attached as Exhibit F.

15. Section 13.05 of the Operating Agreement also states: “The Members agree, by their execution of this Agreement, that the decision of the arbitrator shall be final and binding and enforceable in a court of law.” Award, p.1-2.

16. Despite an arbitration that proceeded according to agreed-upon rules and lacked any indicia or contention of fraud, Cunningham now seeks to vacate the award on the grounds that: (i) the Arbitrator “manifestly disregarded the law” in a preliminary ruling with which Cunningham disagreed; and (ii) the Arbitrator considered hearsay evidence in his decision and

would not reopen the hearing, after an award was issued to Defendants, to consider more evidence.

17. After the Award was rendered in Defendants' favor, Cunningham sought to re-open the proceedings to submit more evidence. See Exhibit E. That motion was denied. See Arbitrator's Order on Claimant's Motion to Reopen Hearing, attached as Exhibit G.

18. On July 5, 2011, Robert L. Cowles issued a final award/statement and ordered that: (1) The claims of Petitioner Ryan Cunningham are DENIED in their entirety; (2) The Counterclaims of the Respondent MCP and LeGrand (only insofar as LeGrand brings his Counterclaims on behalf of MCP as its manager) are GRANTED; (3) Respondent MCP is entitled to an award of damages from Claimant Cunningham in the following amounts: [\$113,717.50]; (4) Cunningham shall immediately return control of the website MCPpetroleum.com to Respondent LeGrand, providing him with all necessary contact information for the hosting and maintenance of the site, together with all passwords and other identifying information necessary for complete control of the site and Cunningham shall further instruct any and all necessary third parties to cooperate in this change in control; (5) Cunningham is to pay Respondents \$162,442.00 in attorneys' fees and costs. Award, p.15-16.

19. On July 11, 2011, Defendants filed in this Court their Motion to Confirm Arbitration Award and to Enter Judgment on that Award.

20. On July 12, 2011, Cunningham filed his Answer of Plaintiff Ryan Cunningham and Motion to Vacate Award and Motion for Continuance of Further Proceedings and an untimely Memorandum in Support of Plaintiff Ryan Cunningham's Motion to Vacate Arbitrator's Award on August 19, 2011.

21. Defendants filed their Response to Plaintiff's Motion to Vacate Award and a hearing on Defendants' motion was held on August 25, 2011.

CONCLUSIONS OF LAW

1. Pursuant to both West Virginia law and the Federal Arbitration Act ("FAA"), the Court is compelled to confirm the Award issued in Defendants' favor.
2. Pursuant to West Virginia law, an arbitration award "shall be entered up as the judgment to decree of the court, unless good cause be shown against it at the first term after the parties have been summoned to show cause against it." W.V. Code § 55-10-3.
3. Pursuant to the FAA, "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, 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." 9 U.S.C. § 9.
4. The parties did agree that "judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof." Operating Agreement, §13.05.
5. The FAA provides limited and specifically enumerated grounds for vacatur of awards: "(1) where the award was procured by corruption, fraud, or undue means; (2) where there was evident partiality or corruption in the arbitrators, or either of them; (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or (4) where the arbitrators exceeded their

powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.” 9 U.S.C. § 10(a).

6. The FAA also provides that “In either of the following cases the United States court in and for the district wherein the award was made may make an order modifying or correcting the award upon the application of any party to the arbitration--(a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award. (b) Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted. (c) Where the award is imperfect in matter of form not affecting the merits of the controversy. The order may modify and correct the award, so as to effect the intent thereof and promote justice between the parties.” 9 U.S.C. § 11.

7. Sections 10 and 11 of the FAA “respectively provide the FAA’s exclusive grounds for expedited vacatur and modification.” *Hall St. Assocs., LLC v. Mattel, Inc.*, 552 U.S. 576, 584, 128 S.Ct. 1396 (2008).

8. The Award must be confirmed because good cause has not been shown against it (W.V. Code § 55-10-3) and/or none of the exclusive grounds for vacatur or modification listed in the FAA exist in this case (9 U.S.C. § 9). *See Aero-Smith, Inc. v. Cardinal Air LLC*, 302 Fed. Appx. 141, n.2 (4th Cir. 2008) (noting that West Virginia statutory and case law does not materially differ from the FAA regarding enforcement or arbitration awards).

9. A party challenging an arbitration award is limited not only to the enumerated grounds for vacatur but must also overcome an almost insurmountable standard of review. An arbitration award “is entitled to a special degree of deference on judicial review.” *Upshur Coals Corp. v. United Mine Workers of Am., Dist. 31*, 933 F.2d 225, 228 (4th Cir. 1991). In reviewing

arbitration awards, a court “is limited to determining whether the arbitrators did the job they were told to do—not whether they did it well, or correctly, or reasonably, but simply whether they did it.” *Remmey v. PaineWebber, Inc.*, 32 F.3d 143, 146 (4th Cir.1994); *see also Eureka Pipe Line Co. v. Simms*, 62 W.Va. 628, 59 S.E. 618, 621 (W. Va. 1907) (explaining that arbitrator's “awards are favored in law and reluctantly set aside. Every presumption is made in favor of their fairness”).

10. “[T]he scope of judicial review for an arbitrator’s decision is among the narrowest known at law because to allow full scrutiny of such awards would frustrate the purpose of having arbitration at all—the quick resolution of disputes and the avoidance of the expense and delay associated with litigation.” *Three S Delaware, Inc., DataQuick Info. Sys., Inc.*, 492 F.3d 520, 527 (4th Cir. 2007) (citation and internal quotations omitted).

11. An arbitrator is given even more leeway when it comes to issues of procedure:

The parties contract for an arbitrator, not a procedure. Due process does not necessarily mean Anglo-American legal rules of evidence, nor winner-take-all substantive rules. Furthermore, once the parties have agreed to arbitrate, they ought not to be allowed to re-litigate the same issues in the courts. The system of review of arbitration awards should be set up to avoid delay caused by the losing party in arbitration challenging the award of the arbitrators, especially on mere procedural grounds! The strict rules governing an action at law have never been applicable to an arbitration proceeding, *Boomer Coal & Coke Co. v. Osenton*, 101 W.Va. 683, 133 S.E. 381 (1926). The parties should know this when they agree to arbitrate, and they should not be heard later to complain on an issue of procedure. Arbitration can, and almost inevitably does, decide the substance of the controversy with substantial justice regardless of procedure.

Bd. of Educ. of Berkeley County v. W. Harley Miller, Inc., 160 W. Va. 473, 485, 236 S.E.2d 439 (1977) (Neely, J.) (emphasis added, exclamation point in original).

12. West Virginia law limits vacatur to instances where the result provided by the arbitrator is “clearly illegal”:

To the extent that Hughes implied that a court should grant a hearing upon challenges to the arbitration award not amounting to actual fraud, it is overruled, and to the extent that it stands for the enforceability and presumptive regularity of arbitration awards, it is approved. Finally for emphasis we state and endorse syllabus pt. 3 of the Hughes case; “Awards by arbitration are to be favorably and liberally construed and are not to be set aside unless they appear to be founded on grounds clearly illegal.” For an elaboration on such grounds, see *Board of Ed., etc. v. W. Harley Miller, Inc.*, W.Va., 221 S.E.2d 882 (1975), (Neely, J., concurring), which states as follows: “Furthermore, unless there be a clear showing of manifest fraud, corruption, or clerical error, resort to the courts after submission to arbitration should meet with summary judgment in favor of the award. I hasten to add that fraud and corruption are far different animals from procedural irregularity.” *Id.* at 888.

Bd. of Educ. of Berkeley County v. W. Harley Miller, Inc., 160 W. Va. 473, 489 n.7, 236 S.E.2d 439 (1977) (Neely, J.).

13. Cunningham has raised two bases for vacating the Arbitration Award: (i) the Arbitrator “manifestly disregarded the law” in issuing a preliminary ruling with which Cunningham disagrees; and (ii) the Arbitrator considered hearsay evidence in his decision and would not reopen the hearing, after an award was issued to Defendants, to consider more evidence. Neither of these allegations constitute “good cause;” fall among the enumerated bases for vacatur; or are sufficient to overcome the onerous burden facing a party attempting to vacate an arbitration award.

14. Manifest disregard for the law is not among the enumerated bases to vacate an award. *See Hall St. Assocs., LLC v. Mattel, Inc.*, 552 U.S. 576, 584, 128 S.Ct. 1396 (2008); *Ramos-Santiago v. U.P.S.*, 524 F.3d 120, 124 n.3 (1st Cir. 2008) (“We acknowledge the Supreme Court’s recent holding in [*Hall St. Assocs.*] that manifest disregard of the law is not a valid ground for vacating or modifying an arbitral award in cases brought under the [FAA].”).

15. Even if “manifest disregard for the law” were a basis for vacatur, there was no such disregard in the instant case. Cunningham contends that the Arbitrator’s interpretation of West

Virginia law and decision to deny Cunningham the names of investors in MCP constituted “manifest disregard for the law.” As an initial matter, even if the Arbitrator were wrong in his interpretation of W. Va. Code § 31B-4-408 as it applied to the facts of this case, this Court would not vacate the award.

16. A court “is limited to determining whether the arbitrators did the job they were told to do—not whether they did it well, *or correctly*, or reasonably, but simply whether they did it.” *Remmey v. PaineWebber, Inc.*, 32 F.3d 143, 146 (4th Cir.1994) (emphasis added).

17. Although unnecessary to reject vacatur on this basis, it is not clear that the Arbitrator’s resolution of the dispute was wrong. Although Cunningham limits his discussion to §31B-4-408(b)(1), the Arbitrator correctly noted that §31B-4-408(b)(2), allows a limited liability company to refuse to furnish “other information concerning the company’s business or affairs” if “the demand or the information demanded is unreasonable or otherwise improper under the circumstances.”

18. The Arbitrator found that Cunningham’s request for information was unreasonable or improper under the circumstances, and this Court sees no factual or legal basis for overturning that finding.

19. Short of fraud, the Arbitrator’s interpretation of West Virginia law in denying Cunningham’s access to MCP’s investor lists is not subject to review. *See Barber v. Union Carbide Corp.*, 172 W. Va. 199, 202, 304 S.E.2d 353 (1983) (Neely, J.) (“The appellant is inviting us to review the merits of the arbitrator’s decision and, although many courts have been willing to indulge such entreaties, we decline to do so.”). Because there are no direct allegations of fraud, much less anything to substantiate such an accusation, the Court must decline to review the merits of the Arbitrator’s decision.

20. Cunningham cannot claim, as an end-run around the limited bases for vacatur, that an arbitrator shows “evident partiality” or “manifestly disregarded the law” simply because he disagrees with the decisions rendered. Such a broad interpretation of “evident partiality” or “manifest disregard” would allow courts in every instance to review the merits of the arbitrator’s decision and thereby destroy the three goals of effective arbitration.

21. “If arbitration awards can be challenged in court on any theory other than actual fraud or failure to follow the procedures that were bargained for in the arbitration clause, then the goals of speed, parsimony, and flexibility are all entirely defeated.” *Barber*, 172 W.Va. at 203 (Neely, J.).

22. “[O]nce the parties have agreed to arbitrate, they ought not to be allowed to re-litigate the same issues in the courts.” *Bd. of Educ. of Berkeley County*, 160 W. Va. at 485 (Neely, J.). That is precisely what Cunningham is attempting to do in the instant matter.

23. Confronted with a scope of judicial review that is “among the narrowest known at law,” *Three S Delaware, Inc.*, 492 F.3d at 527, and for all of the reasons stated above, the Court denies Cunningham’s Motion to Vacate for the Arbitrator’s alleged “manifest disregard for the law.”

24. Cunningham’s second and third proposed bases for vacating the Award are that: (i) the Arbitrator allowed and relied on hearsay evidence during the arbitration hearing and (ii) the Arbitrator did not reopen hearing after an award had been issued to allow for further testimony. In essence, Cunningham is making a procedural challenge to the arbitration.

25. “The strict rules governing an action at law have never been applicable to an arbitration proceeding.” *Bd. of Educ. of Berkeley County*, 160 W. Va. at 485 (Neely, J.) (citation omitted).

26. Further, the Arbitration Rules with which Cunningham agreed to comply expressly provide that “[t]estimony may be presented by written and/or oral form as the Tribunal may determine is appropriate. The Tribunal is not required to apply the rules of evidence used in

judicial proceedings, provided, however, that the Tribunal shall apply the lawyer-client privilege and the work product immunity.” CPR Rules for Non-Administered Arbitration, § 12.2.

27. In keeping with the relaxed evidentiary rules that apply to CPR Arbitration, the Arbitrator never stated that he would not accept or would ignore relevant hearsay testimony; “relevance” was the only touchstone.

28. In the portion of the transcript cited by Cunningham, Cunningham’s Counsel stated “I’m not going to object to it because it is arbitration and it’s probably relevant and probative, but I know the difference, right?” and the Arbitrator responded “As I said the very first day, I will take it for what it’s worth and discard it if it’s not relevant.” Transcript, p. 525, lines 3-11 (emphasis added).

29. Cunningham claims that “[a]lthough adherence to the ‘strict’ rules of evidence is not required in arbitration, flagrant disregard for those rules leads to fabulously unjust results.” Motion to Vacate, p.10.

30. It is not this Court’s task on a motion to confirm or vacate an arbitration award to draw an arbitrary line between the acceptable and unacceptable forms of evidence allowed. “The parties should know [that the strict rules governing an action at law have never been applicable to an arbitration proceeding] when they agree to arbitrate, and they should not be heard later to complain on an issue of procedure.” *Bd. of Educ. of Berkeley County*, 160 W. Va. at 485 (Neely, J.).

31. Cunningham’s attack on the introduction of and reliance on certain evidence not only ignores the relaxed evidentiary rules that were clearly understood to apply to the proceeding, but it butts up against the nearly insurmountable hurdle of challenging an arbitration award on procedural grounds.

32. “The parties contract for an arbitrator, not a procedure. Due process does not necessarily mean Anglo-American legal rules of evidence . . . The system of review of arbitration awards should be set up to avoid delay caused by the losing party in arbitration challenging the award of the arbitrators, especially on mere procedural grounds! The strict rules governing an action at law have never been applicable to an arbitration proceeding.” *Bd. of Educ. of Berkeley County*, 160 W. Va. at 485 (Neely, J.) (citing *Boomer Coal & Coke Co. v. Osenton*, 101 W.Va. 683, 133 S.E. 381 (1926)) (exclamation point in original).

33. Cunningham’s third basis for vacating the Award is premised on an alleged “refusal to hear relevant evidence,” which is one of the enumerated grounds for vacatur under the FAA. See 9 U.S.C. § 10(3).

34. However, Cunningham is actually making a two-step argument: (i) the Arbitrator considered hearsay evidence and therefore (ii) the hearing must be reopened to hear additional evidence. The overall success of this argument requires that the Court first conclude that the Arbitrator was wrong in admitting hearsay evidence—which is quite distinct and indeed contradictory to the “refusing to hear evidence” ground for vacatur. Because the Court concludes that there was nothing improper in the admission of hearsay evidence, it is unnecessary to reach the second step of Cunningham’s argument—whether the Arbitrator’s decision not to reopen the hearing after an award had been issued satisfies the “refusal to hear pertinent evidence” standard.

35. However, even if the Court were to reach the issue of whether the Arbitrator’s decision not to reopen the hearing after an initial award had been issued in Defendants’ favor constituted a “refus[al] to hear evidence pertinent and material to the controversy,” the Court would deny Cunningham’s motion.

36. Section 10(a)(3) of the FAA “applies to cases where an arbitrator, to the prejudice of one of the parties, rejects consideration of relevant evidence essential to the adjudication of a fundamental issue in dispute, and the party would otherwise be deprived of sufficient opportunity to present proof of a claim or defense.” *Fairchild Corp. v. Alcoa, Inc.*, 510 F. Supp. 2d 280, 287 (S.D.N.Y. 2007). The facts of this case do not present such a situation.

37. Cunningham had three days to present testimony—he was not deprived of the ability to present evidence at that time. To the extent Cunningham now points to his alleged illness at the final day of the hearing as a potential issue preventing further testimony, he could have, but did not, seek an extension or continuance before the hearing was closed.

38. Indeed, Cunningham has acknowledged that the decision to not seek a postponement was a “tactical mistake” and that “counsel would have been more astute” to do so. See Motion to Reopen Hearing, Ex. E, at p.5.

39. The Arbitrator did not “refuse to hear evidence pertinent and material to the controversy.” Cunningham had every opportunity to present testimony during the hearing and made the conscious decision not to seek a postponement for the introduction of further evidence. After the Arbitrator issued the Award in Defendants’ favor, Cunningham then sought to reopen the hearing. It was well within the Arbitrator’s discretion to deny that request. Indeed, had the Arbitrator reopened the hearing, it would have eliminated the efficiency and finality that parties to an arbitration bargain for in the first place.

40. As a procedural issue, the Arbitrator’s decision not to reopen the hearing after having issued his award is beyond the ken of this Court on review.

41. In reviewing the Plaintiff’s motion to set aside the arbitrator’s award, this Court must apply—and has applied--“the narrowest [standard] known at law” (*Three S Delaware, Inc.*, 492

F.3d at 527) and “reluctantly set aside”--(*Eureka Pipe Line Co.*, 62 W.Va. 628) arbitration awards. Were it any other way and were Cunningham’s argument accepted, “then the goals of speed, parsimony, and flexibility are all entirely defeated.” *Barber*, 172 W.Va. at 203 (Neely, J.).

CONCLUSION

For all of the reasons stated above, Cunningham’s Motion to Vacate the Arbitrator’s Award is DENIED and Defendants’ Motion to Confirm the Arbitration Award is GRANTED. The Court has filed herewith a judgment order confirming the award of the arbitrator and entering it as a judgment of this Court.

ENTERED this 2 day of NOV, 2011

James C. Stucky
HONORABLE JAMES STUCKY

~~STATE OF WEST VIRGINIA~~
COUNTY OF KANAWHA, SS
I, CARRY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 8th
DAY OF NOVEMBER 2011
C. S. Gatson CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA TC