

IN THE CIRCUIT COURT OF LAFAYETTE COUNTY, MISSISSIPPI

JONES, FUNDERBURG, SESSUMS,  
PETERSON & LEE, LLC

PLAINTIFF

VS.

RICHARD SCRUGGS, Individually;  
DON BARRETT, Individually; SCRUGGS  
LAW FIRM, P.A.; BARRETT LAW  
OFFICE, P.A.; NUTT & McALISTER, PLLC;  
and LOVELACE LAW FIRM, P.A.

CIVIL ACTION NO. L07-135  
LAFAYETTE COUNTY

FILED

JUL 09 2007

Mary Alice Busby  
CIRCUIT CLERK

BY \_\_\_\_\_ D.C. DEFENDANTS

**DEFENDANTS' REPLY TO PLAINTIFF'S  
SUPPLEMENTAL MEMORANDUM BRIEF IN RESPONSE TO  
MOTION TO STAY PROCEEDINGS AND COMPEL ARBITRATION**

A "supplemental memorandum brief" connotes a supplement to a previously made argument based upon a new development or an intervening change in the law rather than a completely new argument, which is directly contrary to an earlier position taken in the same case. Plaintiff's brief falls within the latter category. Plaintiff's untimely "supplemental" memorandum brief is not based upon any new principles of law but is, instead, merely a pretext for plaintiff to make an *ad hominem* argument and unfounded attack on defendants without presenting a meritorious argument with respect to the pending motions.

Plaintiff asserts, for the first time, that some of its claims fall outside the scope of the subject arbitration agreement. Plaintiff's argument is contrary to logic and common sense, and is due to be swiftly rejected.

First, the arbitration agreement at issue in this case provides as follows:

**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.

(Exhibit 1 to Defendants' Motion to Stay Proceedings and Compel Arbitration, p. 3) (underlining added; bold type in original).

Plaintiff's entire supplemental brief is proven incorrect by the foregoing arbitration provision and a single sentence found in paragraph 1 of plaintiff's First Amended Complaint:

**All of these actions developed as a result of a joint venture agreement** entered into among the plaintiff and the defendants.

(Plaintiff's First Amended Complaint, ¶1) (emphasis added).

It is also obvious from an objective reading of the remainder of plaintiff's First Amended Complaint that all of plaintiff's asserted claims "arise under" and/or "relate to" the joint venture agreement and that, as a result, all of plaintiff's claims fall within the scope of the arbitration agreement. In addition, a party cannot avoid arbitration simply by including related claims against individuals who are employed by the signatory parties to the arbitration agreement. *See Greater Canton Ford Mercury, Inc. v. Ables*, 948 So. 2d 417, 419 (Miss. 2007) and *Ford Motor Co. v. Ables*, 207 Fed. Appx. 443 (5<sup>th</sup> Cir. 2006) (claims against individual employees of signatory defendant and claims against a non-signatory defendant were held subject to arbitration). *See also Fradella v. Seaberry*, 952 So. 2d 165, 2007 Miss. LEXIS 184, \*28-29 (Miss. 2007). Indeed, the defendant law firms in this case can only act through their respective attorneys, including Mr. Scruggs and Mr. Barrett, and plaintiff's claims against Mr. Scruggs and Mr. Barrett unquestionably arise under, relate to, and/or touch the Joint Venture Agreement, as plaintiff correctly admits in the very first paragraph of its First Amended Complaint. *See* First Amended Complaint, ¶ 1 ("All of these actions developed as a result of a joint venture agreement entered into among the plaintiff and the defendants."). *See MS Credit Center, Inc. v. Horton*, 926 So.

