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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

ALEX KINLAW, JR., Circuit Court Judge

Case No. 2021-001096
Lower Court Case No. 2021-CP-23-02564

Jeremy Wilson, Respondent,

v.

Jeffrey G. Hedges and JH3 Consulting, LLC, Appellants.

FINAL BRIEF OF APPELLANTS

S. Tyler Graves (SC Bar No. 103173)
Logan S. Davis (SC Bar No. 104429)
Graves & Davis, LLC
125E Wappoo Creek Drive, Suite 102
Charleston, South Carolina 29412
Tel: (843) 805-4649
Fax: (843) 620-1047

Attorneys for Appellants

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STATEMENT OF THE ISSUES ON APPEAL

(1) Whether the circuit court erred by finding that Plaintiff's claims do not fall within the scope of the Mediation and Arbitration Provision included in the Agreement?

STATEMENT OF THE CASE

This is an appeal from the circuit court's denial of Defendants' Motion to Dismiss and/or Stay and Compel Mediation and Arbitration. On May 27, 2021, Plaintiff Jeremy Wilson (hereinafter "Plaintiff" or "Respondent") filed his Complaint against Defendants Jeffrey G. Hedges ("Hedges") and JH3 Consulting, LLC ("JH3") (collectively "Defendants" or "Appellants"). (R. pp. 5-13). In the Complaint, Plaintiff alleges the following causes of action: (1) unjust enrichment; (2) promissory estoppel; (3) violation of the South Carolina Unfair Trade Practices Act; and (4) fraud and misrepresentation. (*Id.*) In short, Plaintiff's claims relate to his relationship with Defendants and the alleged failure by Defendants to compensate Plaintiff for services he provided as an independent contractor. (*Id.*) JH3 was served with Plaintiff's Complaint on July 27, 2021, and Hedges was served with Plaintiff's Complaint on August 20, 2021.

Defendants timely filed their Motion to Dismiss and/or Stay and Compel Mediation and Arbitration on August 25, 2021. (R. pp. 36-43). On September 16, 2021, the circuit court heard oral arguments on Defendants' Motion to Dismiss and/or Stay and Compel Mediation and Arbitration. (R. pp. 14-35). On that same day, Defendants received a Form 4 Order denying their Motion to Dismiss and/or Stay and Compel Mediation and Arbitration. (R. pp. 2-4). Defendants timely filed a Notice of Appeal on September 23, 2021, which was served on Plaintiff that day as well. Defendants requested the transcript from the September 16, 2021 hearing and received the transcript on October 26, 2021.

STANDARD OF REVIEW

Whether a claim is subject to arbitration is an issue for judicial determination. *Partain v. Upstate Auto. Grp.*, 386 S.C. 488, 491, 689 S.E.2d 602, 603 (2010). Therefore, "[a]rbitrability determinations are subject to de novo review." *Johnson v. Heritage Healthcare of Estill, LLC*, 416 S.C. 508, 512, 788 S.E.2d 216, 218 (2016) (quoting *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 379, 759 S.E.2d 727, 731 (2014)). "The litigant opposing arbitration bears the burden of demonstrating that he has a valid defense to arbitration." *Id.* (citing *Dean*, 408 S.C. at 379, 759 S.E.2d at 731; *Gen. Equip. & Supply Co. v. Keller Rigging & Constr., S.C., Inc.*, 344 S.C. 553, 556, 544 S.E.2d 643, 645 (Ct. App. 2001)). "The policy of the United States and South Carolina is to favor arbitration of disputes." *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001) (citing *Tritech Elec., Inc. v. Frank M. Hall & Co.*, 343 S.C. 396, 399, 540 S.E.2d 864, 865 (Ct. App. 2000)).

STATEMENT OF THE FACTS

Plaintiff's Complaint alleges that Defendants failed to compensate Plaintiff for services he provided as an independent contractor. Specifically, the Complaint includes the following allegations:

- JH3, which is solely owned by Hedges, was formed to provide consulting services to chiropractic clinics. (R. p.7, lines 7-8).
- Plaintiff was approached by Hedges to be an independent contractor for JH3, with the promise that he would be compensated for his services. (*Id*. at line 9).
- In order to formalize the independent contractor relationship, JH3 and Wilson entered into an Independent Contractor Agreement ("Agreement"). (*Id*. at line 10).
- The Agreement was signed by Plaintiff on November 22, 2017, and, subsequently, by Hedges on behalf of JH3 on November 27, 2017. (*Id*. at lines 12-13).
- As part of the Agreement, the parties agreed that Plaintiff would recruit new clients and provide onboarding support and assistance to these clients ("Contractor Services") in exchange for financial compensation to be paid to Plaintiff. (*Id*. at line 14).
- After entering into the Agreement Plaintiff provided the Contractor Services pursuant to the terms agreed to by the parties. (R. p.8, line 17).
- In or around April of 2019, Defendants began withholding payments owed to Plaintiff pursuant to the Agreement. (*Id*. at line 19).
- Plaintiff questioned why he was not getting paid for the Contractor Services and was told that he was not to worry and that he would be paid for his services. (*Id*. at line 20).

- On or about April 1, 2019, the parties executed a termination document (the "Termination Document") "under the guise that the parties would execute a new contract" that would replace the Agreement. (*Id*. at line 21).
- After execution of the Termination Document, Plaintiff continued to provide the Contractor Services under the belief that he would be compensated for providing Contractor Services. (*Id*. at line 22).
- Plaintiff provided Contractor Services without any compensation for a period of sixteen months following the execution of the Termination Document. (R. p.9, line 28).
- Plaintiff seeks damages arising out of the alleged nonpayment by Defendants for the Contractor Services that were rendered by Plaintiff.

Of great significance to this appeal, Paragraph 13 of the Agreement includes a mediation and arbitration provision (the "Mediation and Arbitration Provision"). (R. p. 86, line 13). In full, the Mediation and Arbitration Provision reads as follows:

> 13. Mediation and Arbitration. The Parties agree that all disputes that relate to or arise from the relationship between the Contractor and the Company shall first be submitted to mediation. If mediation is unsuccessful, the Parties agree that such disputes shall be resolved through binding arbitration conducted in accordance with the rules of the American Arbitration Association which are then in effect. The arbitrator's decision shall be final and binding, without the right of appeal. Any party may seek to have judgment entered upon the award by a court of competent jurisdiction. The cost of mediation and/or arbitration shall be the joint responsibility of the Parties. Everything related to the mediation and/or arbitration, including without limitation, discovery, the hearing, the record of the proceeding and communications and correspondence regarding the proceeding are confidential and shall not be open or disclosed to any third party or the public except to the extent both parties agree otherwise in writing. The parties understand and agree that their only remedy for any dispute covered by this Agreement shall be through binding arbitration, and that they cannot proceed with such a dispute in court or any similar forum.

(*Id*.) When Plaintiff executed the Agreement, he expressly agreed to the Mediation and Arbitration Provision which sets forth its scope in pertinent parts as follows: "***all disputes that relate to or arise from the relationship between the Contractor and the Company*** shall first be submitted to

mediation...[and, if mediation is unsuccessful,] such disputes shall be resolved through binding arbitration[.]"[1] (*Id.*)

Notwithstanding this Agreement, Plaintiff seeks to circumvent or breach the Mediation and Arbitration Provision and proceed with litigation. This simply should not be allowed by this Court. As discussed in detail below, the Mediation and Arbitration Provision must be enforced, and the Court must compel mediation and arbitration in accordance with the terms set forth in the Agreement. Defendants filed their Motion to Dismiss and/or Stay and Compel Mediation and Arbitration based on the clear language included in the Agreement.

At the hearing, the circuit court denied Defendants' Motion to Dismiss and/or Stay and Compel Mediation and Arbitration. The only basis for the circuit court's denial was simply that "Plaintiff's counsel makes a valid argument." (R. p. 34, lines 6-7). Further, the Form 4 Order provides no additional basis other than "[a]fter hearing the arguments of counsel, the Court is inclined to deny the motion filed." (R. p. 2.) Based on this limited explanation, as well as Defendants' thorough review of the Transcript of Hearing, Defendants can only conclude that the circuit court agreed with Plaintiff's argument that the Arbitration and Mediation provision does not apply for the following reasons:

- Plaintiff's causes of action are equitable claims and specifically do not include a claim for breach of contract and, therefore, the mediation and arbitration provision does not apply. (R. p. 26, lines 7-20).

[1] Of note, the focus of Defendants' arguments is on the enforcement of arbitration as Defendants recognize that mediation is required under South Carolina law. Nonetheless, Defendants would note that this case should first be mediated and, if unsuccessful, resolved via binding arbitration as set forth in the Agreement.

- The Termination Document effectively precludes the Mediation and Arbitration provision from applying to future claims between the parties. (R. pp. 26-28, 31)

It is from the denial of this motion that Defendants appeal.

ARGUMENT

The circuit court committed error in ruling that Plaintiff's argument at the hearing was valid, effectively finding that Plaintiff's causes of action fall outside the scope of the Mediation and Arbitration Provision included in the Agreement at issue. (R. pp 2-4.) The circuit court's Order denying Defendants' right to compel this dispute to arbitration must be reversed for several reasons.

As an initial matter, overarching this entire dispute is a strong and emphatic policy in favor of enforcement of arbitration provisions in both state and federal courts that must be applied here. It is undisputed that an enforceable contract was entered into by the parties that includes a mediation and arbitration provision. (R. pp. 7-8; R. pp. 27-26). The broad language of the Mediation and Arbitration Provision clearly encompasses the claims set forth in Plaintiff's Complaint based on the significant relationship and continued Contractor Services rendered by Plaintiff throughout the relationship. Further, the Mediation and Arbitration Provision survives the Termination Document entered into by the parties. Accordingly, a valid and enforceable Mediation and Arbitration Provision was included in the Agreement and, therefore, the circuit court's decision must be reversed, and the parties must be compelled to arbitration.

The circuit court's denial of Defendants' Motion to Dismiss and/or Stay and Compel Mediation and Arbitration is immediately appealable and subject to de novo review. *See, e.g., Johnson*, 416 S.C. 508, 512, 788 S.E.2d 216, 218 (2016); *Towles v. United HealthCare Corp.*, 338 S.C. 29, 34, 524 S.E.2d 839, 842 (Ct. App. 1999). Under the de novo standard, the party opposing arbitration "bears the burden" to demonstrate "a valid defense to arbitration." *Johnson*, 416 S.C. at 512; 788 S.E.2d at 218. This is a burden Plaintiff cannot carry.

I. THE CIRCUIT COURT ERRED BY FINDING THAT PLAINTIFF'S CLAIMS DO NOT FALL WITHIN THE SCOPE OF THE MEDIATION AND ARBITRATION PROVISION.

The sole question before the circuit court as to scope was whether Plaintiff's claims fall within the broad language of the Mediation and Arbitration Provision included in the Agreement. The circuit court missed the mark in finding that Plaintiff's claims fell outside the scope of the Mediation and Arbitration Provision. This Court must reverse the circuit court's ruling and compel the parties to arbitration.

A. This Court's Analysis is Subject to a Strong Policy in Favor of Arbitration.

To begin, "there is a strong presumption in favor of the validity of arbitration agreements because both state and federal policy favor arbitration of disputes." *Herron v. Century BMW*, 387 S.C. 525, 531, 693 S.E.2d 394, 397 (2010); *see also, e.g., Towles,* 338 S.C. at 34, 524 S.E.2d at 842 (noting the strong presumption that should be applied in South Carolina state courts). Of note, the Supreme Court has repeatedly underscored the "emphatic federal policy in favor of arbitral dispute resolution" embodied in the Federal Arbitration Act ("FAA"). *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 631 (1985); *see also*, *e.g.*, *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011). Underlying this policy is Congress's view that arbitration constitutes a more efficient dispute resolution process than litigation. *See Brantley v. Republic Mortgage Ins. Co.*, 2004 U.S. Dist. LEXIS 28831 (D.S.C. 2004), *aff'd* 424 F.3d 393 (4th Cir. 2005); *see also Hightower v. GMRI*, Inc., 272 F.3d 239, 241 (4th Cir. 2001) (same). The United States Supreme Court decisions reflect a determination that "there are real benefits to the enforcement of arbitration provisions." *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 122-123 (2001). "The advantages of arbitration are many: it is usually cheaper and faster than litigation; it can have simpler procedural and evidentiary rules; it normally minimizes hostility and is less disruptive of ongoing and future business dealings among the parties; it is often more flexible in

regard to scheduling of times and places of hearings and discovery devices. . . ." *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 280 (1995) (quoting H. R. Rep. No. 97-542, p. 13 (1982)).

Thus, "due regard must be given to the federal policy favoring arbitration, and ambiguities as to the scope of the arbitration clause itself must be resolved in favor of arbitration." *Brantley* at 5 (quoting *Volt Info. Sciences, Inc. v. Bd. of Tr. of Leland Stanford Jr. Univ.*, 489 U.S. 468, 475-76, 109 S. Ct. 1248, 103 L. Ed. 2d 488 (1989)); *see also Towles*, 338 S.C. at 41, 542 S.E.2d at 846 (stating South Carolina courts "must address questions of arbitrability with a healthy regard for the federal policy favoring arbitration"). The United States Court of Appeals for the Fourth Circuit has gone as far as to say that motions to compel arbitration "should not be denied unless it may be said with positive assurance that the arbitration [agreement] is not susceptible of an interpretation that covers the asserted dispute." *Peoples Sec. Life Ins. Co. v. Monumental Life Ins. Co.*, 867 F.2d 809, 812 (4th Cir. 1989) (quoting *United Steelworkers of Am. v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582-83, 80 S. Ct. 1347, 4 L. Ed. 2d 1409 (1960)). The clear language of the FAA is not permissive but instead mandates enforcement of arbitration agreements. Section 4 of the FAA provides in pertinent part as follows:

> The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court ***shall*** make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement.

9 U.S.C. § 4 (emphasis added). "By its terms, the [] [FAA] leaves no place for the exercise of discretion by a [] court, but instead mandates that [] courts shall direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed." *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985).

Dismissal in this case is warranted under both state and federal law, which intersect when courts evaluate arbitration agreements. Federal law controls because the FAA's purpose and effect is to "create a body of federal substantive law of arbitrability, applicable to any arbitration agreement" within the scope of the statute. *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983). The FAA is a congressional declaration of a liberal federal policy favoring arbitration agreements, notwithstanding any state substantive or procedural policies to the contrary." (*Id.*) The protection of the FAA is available to a litigant wrongfully haled into court when four elements are present: (1) a dispute; (2) a written agreement with an arbitration provision purporting to cover the dispute; (3) interstate commerce; and (4) a failure to arbitrate. *Galloway v. Santander Consumer USA, Inc.,* 819 F.3d 79, 84 (4th Cir. 2016) (citing *Rota-McLarty v. Santander Consumer USA, Inc.*, 700 F.3d 690, 696 n.6 (4th Cir. 2012)). Here, as in most cases where arbitration clauses are litigated, the element of whether an arbitration clause governs the dispute is the main issue in dispute.[2]

The FAA establishes the foundational policy lens through which Defendants' Motion to Dismiss and/or Stay and Compel Mediation and Arbitration must be viewed. The FAA places arbitration agreements "on equal footing with all other contracts" by making them "valid, irrevocable, and enforceable." *AT&T Mobility LLC*, 563 U.S. at 333. Under the FAA, a court may not refuse an arbitration agreement unless the party opposing arbitration establishes "a generally applicable contract defense," and not some defense that singles out arbitration agreements. (*Id.*) Congress enacted the FAA to replace an "ancient judicial hostility to arbitration" with an "emphatic federal policy" in favor of arbitration that requires courts to "generously construe[]" the

[2] The existence of (1) a dispute in this case, over (3) a transaction with a relationship to interstate commerce, that (4) Plaintiff has failed to arbitrate, will not be meaningfully contested. *See Galloway*, 819 F.3d at 84.

"intention of the parties" in accordance with the "strong presumption" in favor of arbitration. *Mitsubishi Motors Corp.*, 473 U.S. at 626. A strong presumption in favor of arbitration is also a well-settled policy in South Carolina. Specifically, South Carolina appellate courts have consistently recognized that arbitration agreements "enjoy a strong presumption of validity" arising from "the strong policy favoring arbitration" under both federal and state law. *Towles*, 338 S.C. at 35, 524 S.E.2d at 842. In sum, both the FAA and South Carolina law require that courts resolve any doubt in favor of enforcing arbitration.

Here, the FAA governs the Agreement at issue. However, the circuit court did what the FAA prohibits: it applied a heightened standard for interpreting the scope of the Mediation and Arbitration Provision in the Agreement at issue. (R. pp. 2-4). In doing so, the circuit court failed to acknowledge the FAA's guiding policy in favor of arbitration agreements. (*Id.*) The correct approach, unlike what the circuit court applied, requires deference to the "emphatic federal policy" establishing a "strong presumption" in favor of arbitration when determining the scope of the Mediation and Arbitration Provision in the Agreement.

B. The parties agreed in November 2017 to arbitrate their disputes.

Plaintiff entered into the Agreement on November 22, 2017, in order to work as an independent contractor for JH3. (R. p. 7, lines 10-14; *see also*, R. pp. 82-87). The Agreement was subsequently entered into by Hedges on behalf of JH3 on November 27, 2017. (*Id.*) Further, at the hearing, Plaintiff's counsel asserted there is no dispute that the Agreement is a valid and enforceable contract between the parties (R. p. 27, line 24 – p.28, line 1). The Agreement governing the relationship between Plaintiff and Defendants clearly requires that any dispute concerning the relationship be submitted to arbitration: "The Parties agree that ***all disputes that relate to or arise from the relationship between Contractor and the Company shall first be***

submitted to mediation. If mediation is unsuccessful, the Parties agree that ***such disputes shall be resolved through binding arbitration*** conducted in accordance with the rules of the American Arbitration Association which are then in effect." (R. p. 86, line 13) (*emphasis added*).

Plaintiff is violating the mandatory arbitration provision in the Agreement by bringing this lawsuit. As case after case has made clear, the language of the Mediation and Arbitration Provision is a "particularly comprehensive" formulation of the typical arbitration clause. *Greenville Hosp. Sys. v. Employee Welfare Ben. Plan for Employees of Hazelhurst Mgmt. Co.*, 628 Fed. Appx. 842, 846 (4th Cir. 2015). Specifically, the parties agreed in November 2017 to arbitrate any disputes "***that relate to or arise from***" the relationship between Plaintiff and JH3. Plaintiff attempts to extract his claims from the Mediation and Arbitration Provision by narrow pleading. In his Complaint, Plaintiff alleges equitable claims arising out of Contractor Services provided by the Plaintiff and, specifically, does not include a claim for breach of contract. (R. pp. 9-12; R. p. 26, lines 7-13). Further, Plaintiff argues that the Termination Document limits the time frame, which he argues allows the claims to fall outside the Mediation and Arbitration Provision. However, Plaintiff does not avoid the Mediation and Arbitration Provision by his "artful pleading." Rather, the broad language of the Mediation and Arbitration Provision found in the Agreement applies to Plaintiff's claims even so: under South Carolina and Fourth Circuit law, where parties with a straightforward contractual relationship agree to arbitrate their disputes using language like the parties used in the Agreement, the parties are agreeing to arbitrate ***all*** of their disputes within the scope of their relationship, not just disputes that arise under the particular contract containing the arbitration clause. Here, the Mediation and Arbitration Provision applies to ***all*** disputes arising within their Contractor Services relationship – including the claims in this case, which all relate to

Contractor Services as defined in the Agreement and/or the continued conduct of providing the same Contractor Services even after the Termination Document was executed.

i. *The Mediation and Arbitration Provision governs Plaintiff's claims because the provision is "particularly comprehensive" under federal and state law.*

The arbitration clause at issue here is a sweeping one: the Fourth Circuit has repeatedly characterized identical language – applying arbitration to "any controversy or claim arising out of or related to" the agreement containing the provision – as "broad" and "capable of an expansive reach." *Am. Recovery Corp. v. Computerized Therm. Imag., Inc.*, 96 F.3d 88, 93 (4th Cir. 1996) (citing *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 398 (1967)). "Even before we apply the presumption in favor of arbitration… we start here with a particularly comprehensive agreement to arbitrate." *Greenville Hosp. Sys.*, 628 Fed. Appx. at 846. South Carolina cases characterize this language the same way. *See Carlson v. S.C. State Plastering, LLC*, 743 S.E.2d 868, 874 (S.C. Ct. App. 2013) (quoting *Landers v. FDIC*, 739 S.E.2d 209, 213-14 (S.C. 2013) (citing *Prima Paint Corp.*, 388 U.S. 395)).

The critical phrase is "related to."[3] The Fourth Circuit has held that in interpreting the language at issue here – disputes that "relate to or arise from" the parties' contract – it is "immaterial" whether the dispute in question actually arises out of the contract containing the arbitration clause; the arbitration provision applies if the dispute merely "relates to" that contract even if it arises under a different contract. *See Drews Distributing, Inc. v. Silicon Gaming, Inc.,* 245 F.3d 347, 350 (4th Cir. 2001) (reversing district court and compelling arbitration of breach of "letter" contract and related claims where arbitration provision was found only in subsequent, non-

[3] By contrast, an arbitration clause that merely covers disputes "arising under the Agreement" or "arising hereunder" are "relatively narrow as arbitration clauses go." *Am. Recovery Corp.*, 96 F.3d at 93.

identical "distributor" contract) (citing *Kvaerner ASA v. Bank of Tokyo-Mitsubishi, Ltd.*, 210 F.3d 262, 265 (4th Cir. 2000) (affirming that arbitration provision in construction agreement applies to action for breach of separate construction financing guaranties)). An agreement to arbitrate disputes "related to" a contract isexpansive; it is made between parties that want to arbitrate their disputes in any aspect of their business relationship, not litigate them.

ii. *The parties intended to arbitrate Plaintiff's claims because the claims bear a significant relationship to the Agreement.*

The Fourth Circuit has repeatedly held that the broad arbitration language used by the parties mandates arbitration of claims like those at issue here, which are squarely within the parties' relationship. Where, as here, an arbitration clause in a contract applies to "any claim or controversy arising out of, or relating to" that contract, the clause "embraces 'every dispute between the parties having a *significant relationship* to the contract regardless of the label attached to the dispute.'" *Wachovia Bank, N.A. v. Schmidt*, 445 F.3d 762,767 (4th Cir. 2006) (quoting *Am. Recovery*, 96 F.3d at 93; *J.J. Ryan & Sons v. Rhone Poulenc Textile, S.A.*, 863 F.2d 315, 321 (4th Cir. 1988); *see also Long v. Silver*, 248 F.3d 309, 316-17 (4th Cir. 2001) (holding that "governing standard" is the "significant relationship" test); *Stone v. Wells Fargo Bank, N.A.*, 361 F. Supp. 3d 539, 556 (D. Md., Jan. 17, 2019) (citing "significant relationship" test). This means that the Mediation and Arbitration Provision applies to disputes *outside* the Agreement, so long as the dispute at issue has a "significant relationship" to the Agreement. *Am. Recovery*, 96 F.3d at 94 ("[T]he test for an arbitration clause of this breadth is *not whether a claim arose under one agreement or another,* but whether a significant relationship exists between the claim and the agreement containing the arbitration clause.") (citing *J.J. Ryan*, 863 F.2d at 321) (emphasis added).

South Carolina courts and the Fourth Circuit apply the "significant relationship" test with a consistent theme: where parties have an arbitration clause within a particular contractual

relationship that could foreseeably give rise to certain types of disputes, the court finds a "significant relationship" between the arbitration clause and that type of dispute – and compels arbitration even where the dispute arises outside the contract containing the arbitration clause.[4] The "significant relationship" test requires a court to look at the factual allegations underlying the claims, regardless of their legal labels, and to "[b]ear[] in mind the strong federal policy in favor of arbitration." *Am. Recovery Corp. v. Comput. Thermal Imaging, Inc.*, 96 F.3d 88, 93 (4th Cir. 1996). "The scope of an arbitration clause in one contract can extend to a dispute arising under a second contract, provided that the dispute 'significantly relates' to the first agreement." *Gen. Elec. Capital Corp. v. Union Corp. Fin. Grp.*, 142 F. App'x 150, 152 (4th Cir. 2005). Courts have found that an arbitration clause may encompass more than claims arising under the terms of the specific contract containing it where the clause contains "broad" language like the provision here – "all disputes that relate to or arise from the relationship between Contractor and the Company." *See Prima Paint Corp.*, 388 U.S. at 398 (labeling as "broad" a clause that required arbitration of "[a]ny controversy or claim arising out of or relating to this Agreement"); *Great Am. Ins. Co. v. Hinkle Contracting Corp.*, 497 F. App'x 348, 353 (4th Cir. 2012) (similar); *Whitaker v. Protective Life Ins. Co.*, No. 6:10-02314-HFF, 2011 WL 13217968 at *3 (D.S.C. August 18, 2011) ("any

[4] As noted, South Carolina courts apply the "significant relationship" test, and the Supreme Court of South Carolina has made the foreseeability theme explicit. In *Aiken v. World Fin. Corp. of S.C.*, 644 S.E.2d 705, 709 (S.C. 2007), the court "refuse[d] to interpret any arbitration agreement as applying to outrageous torts that are unforeseeable to a reasonable consumer in the context of normal business dealings." (*Id.*) The Court declined to compel arbitration where a customer sued his consumer finance company for intentional torts relating to the misuse of his personal financial information, and articulated its rationale broadly: "To interpret an arbitration agreementto apply to actions completely outside the expectations of the parties would be inconsistent with this goal [of promoting arbitration in a commercially reasonable manner]." (*Id.* at 710); *see also Partain v. Upstate Auto. Group*, 689 S.E.2d 602, 605 (S.C. 2010) ("Only where the claim presented was clearly not within the contemplation of the parties will a court decline to enforce an otherwise proper arbitration agreement.") (applying *Aiken*).

controversy" language connotes a broad arbitration agreement). The Mediation and Arbitration Provision relating to this Agreement fits that description precisely, requiring that "all disputes that relate to or arise from the relationship" between Plaintiff and Defendants be submitted to mediation and then arbitration.

By way of example, in *American Recovery*, the Fourth Circuit held that several business tort and quasi-contract claims bore a "significant relationship" to the parties' general consulting contract, and its arbitration clause, where the disputes were foreseeable in the parties' consulting relationship (*e.g.*, the disputes concerned obligations "that are a logical extension of the services" in the consulting contract or that were previewed in the consulting contract). 96 F.3d at 92-94. Another example, in *Long*, the court found a "significant relationship" between decades-old contracts conferring shareholder and employee status on the plaintiff and his later non-contractual claims for financial improprieties related to that shareholder/employment relationship. 248 F.3d at 317-319. As a final example, in *J.J. Ryan*, the parties had a distribution relationship with an arbitration agreement, but when the relationship later soured and disputes arose that did *not* include a claim for breach of the distributor contracts, the Fourth Circuit still found the claims to be within the core of the parties' distribution relationship. (*Id.* at 316-22.) *See also Drews*, 245 F.3d at 350 ("letter" contract claims arbitrable based on arbitrationclause in subsequent "distributor" contract); *Kvaerner* 210 F.3d 262 at 265 (guaranty claims arbitrable based on arbitration clause in construction agreement).

The "significant relationship" test is dispositive here. The parties have one simple relationship: Contractor Services. That relationship was governed initially by the Agreement and, subsequently, the continued activity of providing Contractor Services after the Termination Document was entered into by the parties. The gravamen of Plaintiff's claims is related to the

relationship between Plaintiff and Defendants and the Contractor Services defined under the Agreement. Specifically, the Complaint alleges that, pursuant to the Agreement, the parties agreed that Plaintiff would provide Contractor Services for JH3 in exchange for compensation. (R. p. 7, lines 14- R. p. 8, line 16). The Complaint alleges that Plaintiff provided the Contractor Services described in the Agreement. (*Id.* at line 17) Further, the Complaint alleges that, in or around April 2019, Defendants began withholding payments that were due to Plaintiff under the Agreement. (*Id.* at line 19) Although the parties entered into the Termination Document, the Complaint alleges that Plaintiff continued to provide the exact same Contractor Services with the understanding that the parties would enter into a new agreement. (R. p. 8, line 21-R. p. 9, lines 23-24). Finally, Plaintiff alleges that Defendants have not paid Plaintiff for the Contractor Services that were provided. It is clear that all of Plaintiff's claims bear a significant relationship to the Agreement because the Complaint is centered around the Contractor Services and failure by Defendant to compensate Plaintiff for such Contractor Services. The Complaint fails to distinguish, for purposes of liability, between the Contractor Services provided under the Agreement and the Contractor Services provided after the Termination Document. In fact, no distinction is made whatsoever between the Contractor Services that were provided under the Agreement and the Contractor Services provided after the Termination Document. One can only conclude that the same Contractor Services were provided at all times and are at issue in this case. As Plaintiff has pleaded his case, Defendants alleged misconduct arises from the same relationship between the parties. Thus, it bears a significant relationship to the subject matter of the Agreement that includes the Mediation and Arbitration Provision.

Plaintiff's claims here are a classic dispute over payment for services rendered that anyone would foresee when agreeing to arbitrate commercial disputes. There is no question that Plaintiff

should have anticipated precisely this type of dispute – where one party believes the other party is entitled to payment for Contractor Services – may arise from the relationship between the parties. Plaintiff's claims are squarely within the scope of the Mediation and Arbitration provision within the Agreement. Indeed, the commercial relationship between the parties was effectively the same while the Agreement was in place and continuing after the Termination Document was in place, in all respects to Contractor Services, except one: temporal. Here, the Parties committed in 2017 to arbitrate future disputes even over past conduct, and that commitment is plainly enforceable under the facts of this case.

It is evident that the allegations noted above directly "relate to or arise from the relationship" between Plaintiff and Defendants, which falls squarely withing the scope of the Mediation and Arbitration Provision that is included in the Agreement. Going further, the "sweeping language of broad arbitration clauses" – such as the Mediation and Arbitration Provision here – "applies to disputes in which a significant relationship exists between the asserted claims and the contract in which the arbitration clause is contained." *Landers*, 739 S.E.2d at 214. The Complaint here alleges what amounts to a consistent relationship between the parties over the course of a number of years. There is thus a "significant relationship" included in all of the allegations making the entire dispute subject to arbitration. The law and common sense alike dictate that the dispute over the common course of conduct be resolved in one proceeding, in a single forum, that being arbitration.

Put simply, there can be no serious disagreement that the allegations and claims by Plaintiff do not fall within the scope of the Agreement as they clearly "related to or arise from the relationship" between Plaintiff and Defendants. Plaintiff has alleged a consistent, uniform relationship and seeks to hold Defendants liable for actions arising out of that relationship. The

entirety of the Plaintiff's claims fall within the scope of the Mediation and Arbitration Provision and must be arbitrated together. This Court should submit Plaintiff's claims to binding arbitration in accordance with the terms of the Agreement.

iii. *The Termination Document does void the Mediation and Arbitration Provision.*

Plaintiff argues the events in dispute in this case took place after the Termination Document was executed, and therefore the Mediation and Arbitration Provision no longer governed the parties' relationship. However, the Mediation and Arbitration Provision notes "all disputes that relate to or arise from the relationship between the Contractor and the Company shall be resolved through binding arbitration", and the "[t]he parties understand and agree that their only remedy for any dispute covered under by this Agreement shall be through binding arbitration." Similar language has been held by the Fourth Circuit to "encompass all agreements and any disputes, past and present, especially given that the presumption in favor of arbitration is particularly applicable when the arbitration clause is broadly worded." *Levin v. Alms and Assoc.*, 634 F.3d 260, 267 (4th Cir. 2011). Even though the Termination Document was executed, that does not mean the obligation to arbitrate disputes ended. Under South Carolina law, "[a]rbitration clauses are separable from the contracts in which they are imbedded… the general rule [is] that the duty to arbitrate under an arbitration clause in a contract survives termination of the contract." *Jackson Mills, Inc. v. BT Capital Corp.*, 312 S.C. 400, 403 (S.C. 1994). Therefore, the Mediation and Arbitration Provision is not rendered void by the Termination Document. Here, there is no challenge to the Mediation and Arbitration Provision itself. The controversy clearly arises under the parties' relationship. The circuit court erred in refusing to dismiss and/or stay the present litigation and allow for arbitration.

CONCLUSION

This Court should reverse the circuit court's decision denying Defendants' Motion to Dismiss and/or Stay and Compel Mediation and Arbitration. First, there is a strong presumption that favors arbitration under the FAA that Plaintiff cannot rebut. Next, Plaintiff's claims arise squarely within the scope of the Mediation and Arbitration Provision included in the Agreement and, therefore, Plaintiff is bound to arbitrate this matter in accordance with the terms set forth therein. Finally, the Agreement is a valid and enforceable contract under South Carolina law and Plaintiff expressly agreed to arbitrate when he entered into the Agreement that included the clear language of the Mediation and Arbitration Provision.

For the reasons stated above, Defendants/Appellants respectfully request that this Court reverse the decision of the circuit court and remand this matter back to circuit court with instruction to compel arbitration.

Respectfully submitted,

s/S. Tyler Graves

S. Tyler Graves (SC Bar No. 103173)
Logan S. Davis (SC Bar No. 104429)
Graves & Davis, LLC
125E Wappoo Creek Drive, Suite 102
Charleston, SC 29412
Tel: (843) 805-4649
Fax: (843) 620-1047

Attorneys for Appellants

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

ALEX KINLAW, JR., Circuit Court Judge

Case No. 2021-001096
Lower Court Case No. 2021-CP-23-02564

Jeremy Wilson, Respondent,

v.

Jeffrey G. Hedges and
JH3 Consulting, LLC, Appellants.

CERTIFICATE OF COUNSEL

The undersigned certifies that Appellants' Final Brief complies with Rule 211(b), SCACR.

s/S. Tyler Graves
S. Tyler Graves (SC Bar No. 103173)
Logan S. Davis (SC Bar No. 104429)
Graves & Davis, LLC
125E Wappoo Creek Drive, Suite 102
Charleston, SC 29412
Tel: (843) 805-4649
Fax: (843) 620-1047

Attorneys for Appellants

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