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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE COURT OF COMMON PLEAS
COUNTY OF AIKEN
SECOND JUDICIAL CIRCUIT

Courtney Clyburn Pope, Circuit Court Judge

Appellate Case No. 2022-000546

Circuit Court Case No. 2021-CP-02-1306

REGIONS BANK..... Respondent,

v.

CDIC DEVELOPMENT COMPANY, LLC Appellant.

RECORD ON APPEAL

Volume 1 of 1

FORD WALLACE THOMSON LLC

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Orders and Judgments

1. Order Confirming Arbitration Award and for Entry of Judgment (filed Sept. 27, 2021)1
2. Order Granting CDIC’s Motion Pursuant to Rule 59, SCRCPP (filed Nov. 11, 2021)8
3. Order Denying CDIC’s Motion to Dismiss and Confirming Arbitration Award and Entry of Judgment (filed April 12, 2022)11

Pleadings

1. Petition to Confirm Arbitration Award, and exhibits (filed June 22, 2021)22
2. Affidavit of Service (filed Aug. 25, 2021).....30

Motions and Exhibits

1. CDIC Response to Region Bank’s Petition to Confirm Arbitration Award and Motion to Dismiss (filed Sept. 7, 2021)31
2. CDIC Motion Pursuant to Rule 59, SCRCPP (filed Sept. 28, 2021)36
3. Regions Bank’s Opposition to CDIC Motion Pursuant to Rule 59, SCRCPP (filed Nov. 1, 2021)39
4. CDIC’s Reply to Region Bank’s Memorandum in Opposition (filed Nov. 3, 2021)45
5. Regions Bank’s Opposition to CDIC’s Motion to Dismiss (filed Jan. 27, 2022)52
6. CDIC’s Memorandum in Support of its Motion to Dismiss (filed Jan. 28, 2022).....58

Transcripts

1. Transcript of hearing on Jan. 31, 202266

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
Case No. 2021-CP-02-01306

REGIONS BANK, an Alabama banking corporation,

Claimant,

vs.

CDIC DEVELOPMENT COMPANY, LLC, a South Carolina limited liability company,

Respondent.

ORDER CONFIRMING ARBITRATION AWARD AND FOR ENTRY OF JUDGMENT

This matter having come before the Court on the application of Claimant Regions Bank (“Regions Bank” or “Claimant”) to confirm the arbitration award pursuant to the Stipulated Final Arbitration Award against Respondent CDIC Development Company, LLC (“CDIC” or “Respondent”); and

It appearing the Court that there are good grounds for the requested relief;

IT IS HEREBY ORDERED as follows:

1. Claimant is entitled to the arbitration award confirmed; and thereby to a judgment in the amount of \$220,309.81 as of June 21, 2019, and interest at the per diem default rate of interest of \$28.18 accruing thereafter.

2. Claimant is entitled to the reasonable costs incurred of \$2,148.00 to confirm the award and enter judgment against Respondent.

Presiding Judge,
Second Judicial Circuit

_____, 2021
_____, South Carolina

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the

Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
REGIONS BANK, an Alabama banking corporation	CDIC DEVELOPMENT COMPANY, LLC, a South Carolina limited liability company	\$220,309.81 as of June 21, 2019, and interest at the per diem default rate of interest of \$28.18 accruing thereafter, plus costs of \$2,148.00
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The “Information for the Judgment Index” section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the “Judgment in Favor of” column, enter the name of the party to whom the judgment is awarded. In the “Judgment Against” column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the “Judgment Amount” column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate “N/A” in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section “For the Clerk of Court Office Use Only” should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through “Circuit Court Judge” and indicate “Arbitrator” in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title “Circuit Court Judge” below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the “Judgment Amount To Be Enrolled” box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.



Aiken Common Pleas

Case Caption: Regions Bank An Alabama Banking Corporation VS Cdic
Development Company Llc, A South Carolina Limited Liab
Case Number: 2021CP0201306
Type: Order/Judgment and Form 4

So Ordered

s/ Clifton B. Newman, 2127

Electronically signed on 2021-09-27 11:40:15 page 7 of 7

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

Case No: 2021-CP-02-01306

REGIONS BANK, an Alabama banking
corporation,

Claimant,

v.

CDIC DEVELOPMENT COMPANY,
LLC, a South Carolina limited liability
company,

Respondent.

**ORDER GRANTING RESPONDENT
CDIC DEVELOPMENT COMPANY,
LLC's MOTION
PURSUANT TO
RULE 59, SCRPC**

This matter comes before the Court on respondent CDIC Development Company, LLC's *Motion Pursuant to Rule 59, SCRPC*, filed on September 28, 2021 (the "Motion"). Claimant Regions Bank submitted a memorandum in opposition on November 1, 2021, and the Court held a hearing on the Motion on November 4, 2021. All parties were represented by counsel at the hearing.

Based on the case file, the relevant law, and the arguments of counsel, the Court hereby GRANTS the Motion. The Court hereby VACATES the Court's *Order Confirming Arbitration Award And For Entry Of Judgment* filed on September 27, 2021, and returns this case to its posture before that order was entered. This is done without prejudice to any party, each of whom retains all previous claims and defenses.

SO ORDERED THIS ___ DAY OF NOVEMBER 2021.

Clifton B. Newman

Circuit Court Judge



Aiken Common Pleas

Case Caption: Regions Bank An Alabama Banking Corporation VS Cdic
Development Company Llc, A South Carolina Limited Liab
Case Number: 2021CP0201306
Type: Order/Set Aside Judgment

So Ordered

s/ Clifton B. Newman, 2127

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STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
Case No. 2021-CP-02-01306

REGIONS BANK, an Alabama banking
corporation,

Claimant,

vs.

CDIC DEVELOPMENT COMPANY,
LLC, a South Carolina limited liability
company,

Respondent.

**ORDER DENYING RESPONDENT’S MOTION
TO DISMISS AND CONFIRMING
ARBITRATION AWARD AND FOR ENTRY
OF JUDGMENT**

This matter came before the Court on January 31, 2022, for oral argument on Respondent CDIC Development Company, LLC’s (“CDIC” or “Respondent”) Motion to Dismiss. Claimant Regions Bank (“Regions Bank” or “Claimant”) brought this petition pursuant to S.C. Code Ann. § 15-48-120 petitioning the Court for an Order to confirm and enroll, as the judgment of this Court, the arbitration award issued in favor of Regions Bank and against CDIC. On September 7, 2021, Respondent filed a Response to Regions Bank’s petition and Motion to Dismiss.

At the hearing, Regions Bank was represented by Jonathan D. Klett, Esquire, and CDIC was represented by Ian Ford, Esquire, and Ainsley Tillman, Esquire. After carefully considering the matters of record including the Response to Regions Bank’s petition and Motion to Dismiss, the memorandum supporting the Motion, the memorandum opposing the Motion and the parties’ arguments, the Court denies CDIC’s Motion to Dismiss, Confirms the Arbitration Award, and enters Judgment in favor of Regions Bank.

BACKGROUND

Regions Bank is a banking corporation that made a loan in the principal amount of \$250,000.00 to CDIC on or about January 10, 2008 (the “Note”). CDIC defaulted on the Note by failing to pay amounts due and owing under the Note. The Note expressly provides:

Collection Costs. Lender may hire or pay someone else to help collect this Agreement if Borrower does not pay. Borrower will pay Lender that amount. This includes Lender’s reasonable attorneys’ fees in an amount not less than fifteen percent (15%) of the amount owing on this Agreement and Lender’s legal expenses whether or not there is a lawsuit, including reasonable attorneys’ fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. If not prohibited by law, Borrower also will pay any court costs, in addition to all other sums provided by law.

The Note also contained a provision requiring that any dispute, claim, and controversy arising from the Note be submitted to binding arbitration. In accordance with the Note, the dispute between Regions Bank and CDIC was submitted to arbitration. Thereafter, on June 27, 2019, the arbitrator approved the parties’ Joint Stipulation and issued a written award, awarding Regions Bank \$220,309.81 as of June 21, 2019, and interest at the per diem default rate of interest of \$28.18 accruing thereafter (“Arbitration Award”). Regions Bank petitioned the Court to confirm and enroll, as the judgment of this Court, the Arbitration Award on June 22, 2021.

ANALYSIS

CDIC moved to dismiss Regions Bank’s petition for confirmation and enrollment of the Arbitration Award pursuant to 9 U.S.C. § 9 of the Federal Arbitration Act (“FAA”). CDIC argues that confirmation of the Arbitration Award is barred because Regions Bank failed to seek confirmation of the Arbitration Award within one year. Conversely, Regions Bank argued that the FAA does not apply to the procedural confirmation of an arbitration award in South Carolina State Court and, even if it was applicable, that the FAA’s confirmation language is permissive rather than mandatory. *Sverdrup Corp. v. WHC Constructors, Inc.*, 989 F.2d 148 (4th Cir. 1993).

Regions Bank petitions the Court to confirm and enroll, as the judgment of this Court, the Arbitration Award pursuant to S.C. Code Ann. § 15-48-120. That statute provides:

Upon application of a party, the court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in §§ 15-48-130 and 15-48-140.

Further, S.C. Code Ann. § 15-48-150, which also applies to this action, provides:

Upon the granting of an order confirming, modifying or correcting an award, judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent thereto, and disbursements may be awarded by the court.

The Federal Arbitration Act, at 9 U.S.C. § 9, provides:

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 (emphasis added).

Regardless of the applicable provision, Regions Bank prevails. “The general rule is that the FAA does not preempt state *procedural* law relating to arbitration.” *Henderson v. Summerville Ford-Mercury, Inc.*, 405 S.C. 440, 448, 748 S.E.2d 221, 225 (2013). “The FAA’s substantive provisions apply to arbitration in federal or state courts, but a state’s procedural rules apply in state court unless they conflict with or undermine the purpose of the FAA.” *Id.* at 450, 748 S.E.2d at 226-27.

If South Carolina procedural rules govern, then the controlling statute is S.C. Code Ann. § 15-48-120. This statute provides that a “court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in §§ 15-48-130 and 15-48-140.” S.C. Code Ann. 15-48-120. Respondent has not moved to vacate, modify or correct the Arbitration Award within the time limits of §§ 15-48-130 and 15-48-140.

Further, if the Federal Arbitration Act governs, the permissive language found in 9 U.S.C. § 9 does not require the confirmation of an arbitration award within one year. *See Sverdrup* at 156. Therefore, CDIC's argument fails under the FAA, as well.

Based on the foregoing, the Court denies Respondent's motion to dismiss and confirms the Arbitration Award. Under any applicable law, CDIC's motion to dismiss must be denied and the arbitration award must be confirmed.

CONCLUSION

Based on the foregoing findings and analysis, Respondent's Motion to Dismiss is denied. It is therefore,

ORDERED, ADJUDGED AND DECREED that Respondent CDIC Development Company, LLC's Motion to Dismiss is **DENIED**.

IT IS FURTHER ADJUDGED that the Arbitration Award is **CONFIRMED**.

IT IS FURTHER ADJUDGED that Claimant Regions Bank is entitled to judgment in the amount of: (i) \$220,309.81, plus (ii) interest at the per diem rate of interest of \$28.18 accruing from as of June 21, 2019 through the date of entry of the judgment.

IT IS FURTHER ADJUDGED that Claimant Regions Bank is entitled to the reasonable costs incurred of \$437.06 to confirm the award and enter judgment against Respondent CDIC Development Company, LLC, which costs shall be included in the judgment amount.

IT IS FURTHER ADJUDGED that Claimant Regions Bank is entitled to move for its reasonable attorneys' fees and costs associated pursuant to the terms of the Note against Respondent, including supplemental proceedings pursuant to *Raynor v. Byers*, 422 S.C. 128, 810 S.E.2d 430 (Ct. App. 2017).

IT IS SO ORDERED.

The Honorable Clyburn Pope, Presiding Judge
Second Judicial Circuit

_____, 2022
_____, South Carolina

[JUDGE'S ELECTRONIC SIGNATURE PAGE TO FOLLOW]

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO. 2021-CP-02-01306

REGIONS BANK, an Alabama banking
corporation,
PLAINTIFF(S)

CDIC DEVELOPMENT
COMPANY, LLC, a South Carolina
limited liability company,
DEFENDANT(S)

Submitted by: Jonathan D. Klett	Attorney for : <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
--	---

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow)
Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the

Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
REGIONS BANK, an Alabama banking corporation	CDIC DEVELOPMENT COMPANY, LLC, a South Carolina limited liability company	\$220,309.81 as of June 21, 2019, plus interest at the per diem default rate of interest of \$28.18 through the entry of judgment and at the judgment rate thereafter, plus costs of \$437.06
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

Judge Code

Date

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The “Information for the Judgment Index” section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the “Judgment in Favor of” column, enter the name of the party to whom the judgment is awarded. In the “Judgment Against” column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the “Judgment Amount” column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate “N/A” in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section “For the Clerk of Court Office Use Only” should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through “Circuit Court Judge” and indicate “Arbitrator” in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title “Circuit Court Judge” below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the “Judgment Amount To Be Enrolled” box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.



Aiken Common Pleas

Case Caption: Regions Bank An Alabama Banking Corporation VS Cdic
Development Company Llc, A South Carolina Limited Liab
Case Number: 2021CP0201306
Type: Order/Judgment and Form 4

So Ordered

The Honorable Courtney Clyburn Pope

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STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
Case No. 2021-CP-_____

REGIONS BANK, an Alabama banking
corporation,

Claimant,

vs.

CDIC DEVELOPMENT COMPANY,
LLC, a South Carolina limited liability
company,

Respondent.

**PETITION TO CONFIRM
ARBITRATION AWARD**

Pursuant to S.C. Code Ann. § 15-48-120, Claimant Regions Bank (“Regions Bank” or “Claimant”) petitions the Court for an Order to confirm and enroll, as the judgment of this Court, the arbitration award issued in favor of Regions Bank and against Respondent CDIC Development Company, LLC (“CDIC” or “Respondent”). This petition is based on the following:

1. Regions Bank is a banking corporation incorporated under the laws of Alabama, and it is registered to do business in South Carolina.
2. CDIC is a limited liability company organized under the laws of the State of South Carolina, with its principal place of business in Aiken County, South Carolina.
3. On or about January 10, 2008, CDIC executed and delivered to Regions Bank, a Regions Business Line in the principal amount of \$250,000.00 (the “Note”). A true and accurate copy of the Note is attached hereto as **Exhibit A** and incorporated herein by reference.

4. CDIC defaulted under the Note by failing to pay Regions Bank all sums due under the Note at the scheduled maturity date of January 10, 2018.

5. Despite demand for payment, CDIC failed to pay Regions Bank for amounts due and owing under the Note.

6. The Note contained a provision requiring that any dispute, claim, and controversy arising from the Note be submitted to binding arbitration and requiring that the arbitration be conducted in accordance with the rules of the American Arbitration Association.

7. The dispute was submitted to arbitration as required under the terms of the Note. Pursuant to the rules and guidelines established by the American Arbitration Association, Regions Bank and CDIC submitted a Joint Stipulation to the arbitrator.

8. On June 27, 2019, the arbitrator approved the Joint Stipulation and issued a written award, awarding Regions Bank \$220,309.81 as of June 21, 2019, and interest at the per diem default rate of interest of \$28.18 accruing thereafter. A copy of the award is attached as **Exhibit B**, and incorporated by reference. This award should be confirmed by this Court and judgment rendered accordingly.

9. The specific amounts now due Regions Bank are as follows: (1) \$220,309.81 pursuant to the underlying award, plus (2) interest of \$28.18 per diem accruing since June 21, 2019.

10. The Note provides: "Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction." See **Exhibit A**.

WHEREFORE, Claimant Regions Bank requests an order:

- A. Confirming the award made by the arbitrator on June 27, 2019 in the above titled proceedings pursuant to S.C. Code Ann. § 15-48-120;
- B. Directing the entry of judgment on the award in favor of Claimant Regions Bank and against Respondent CDIC for the sum of \$220,309.81, plus interest of \$28.18 per diem from June 21, 2019;
- C. Awarding Claimant Regions Bank the costs of this action; and
- D. Granting Claimant Regions Bank such other and further relief as the Court deems just and proper.

Respectfully submitted,

s/ Jonathan D. Klett
Jonathan D. Klett (SC Bar No. 103208)
HAYNSWORTH SINKLER BOYD, P.A.
ONE North Main Street, 2nd Floor (29601)
P. O. Box 2048
Greenville, SC 29602
Telephone: 864-240-3200
Facsimile: 864-240-3300
Email: jklett@hsblawfirm.com

Attorneys for Claimant Regions Bank

June 22, 2021
Greenville, South Carolina



CDIC DEVELOPMENT COMPANY

0006040000000007000047604SF1 SS



EXHIBIT A

RE



7923504



**REGIONS
REGIONS BUSINESS LINE**

Principal	Loan Date	Maturity	Bank/App	Loan No	Account	Officer
\$250,000.00	01-10-2008	01-10-2018	60400	00000007000047604		CGR2040

References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "*****" has been omitted due to text length limitations.

Borrower: CDIC DEVELOPMENT COMPANY, LLC (TIN: [REDACTED] 9658)
100 ROGERS TERRACE
AIKEN, SC 29802

Lender: REGIONS BANK
PALMETTO MAIN
107 CHESTERFIELD
107 CHESTERFIELD STREET SOUTH
AIKEN, SC 29802

CREDIT LIMIT: \$250,000.00

DATE OF AGREEMENT: January 10, 2008

Introduction. This Regions Business Line ("Agreement") governs Borrower's line of credit (the "Credit Line" or the "Credit Line Account") issued through REGIONS BANK. Borrower agrees to the following terms and conditions:

Promise to Pay. Borrower promises to pay REGIONS BANK, or order, the total of all credit advances and **FINANCE CHARGES**, together with all costs and expenses for which Borrower is responsible under this Agreement. Borrower will pay Borrower's Credit Line according to the payment terms set forth below. **If there is more than one Borrower, each is jointly and severally liable on this Agreement. This means Lender can require any Borrower to pay all amounts due under this Agreement, including credit advances made to any Borrower. Each Borrower authorizes any other Borrower, on his or her signature alone, to cancel the Credit Line, to request and receive credit advances, and to do all other things necessary to carry out the terms of this Agreement. Lender can release any Borrower from responsibility under this Agreement, and the others will remain responsible.**

Term. The term of Borrower's Credit Line will begin as of the date of this Agreement ("Opening Date") and will continue until January 10, 2018 ("Maturity Date"). All indebtedness under this Agreement, if not already paid pursuant to the payment provisions below, will be due and payable upon maturity. The draw period of Borrower's Credit Line will begin on a date, after the Opening Date, when the Agreement is accepted by Lender and you have met all of Lender's conditions for the Credit Line and will continue as follows: The Draw period will continue until the Maturity Date. Borrower may obtain credit advances during this period ("Draw Period"). Borrower agrees that Lender may renew or extend the period during which Borrower may obtain credit advances or make payments. Borrower further agrees that Lender may renew or extend Borrower's Credit Line Account.

Minimum Payment. Borrower's "Regular Payment" will equal the amount of Borrower's accrued **FINANCE CHARGES**. Borrower will make 119 of these payments. Borrower will then be required to pay the entire balance owing in a single balloon payment. If Borrower makes only the minimum payments, Borrower may not repay any of the principal balance by the end of this payment stream. Borrower's payments will be due monthly. Borrower agrees to pay not less than the Minimum Payment on or before the due date indicated on Borrower's periodic billing statement.

Balloon Payment. Borrower's Credit Line Account is payable in full upon maturity in a single balloon payment. Borrower must pay the entire outstanding principal, interest and any other charges then due. **Unless otherwise required by applicable law, Lender is under no obligation to refinance the balloon payment at that time. Borrower may be required to make payments out of other assets Borrower owns or find a lender, which may be Lender, willing to lend Borrower the money. If Borrower refinances the balloon, Borrower may have to pay some or all of the closing costs normally associated with a new credit line account, even if Borrower obtains refinancing from Lender.**

How Borrower's Payments Are Applied. Unless otherwise agreed or required by applicable law, payments and other credits will be applied to amounts due under this loan in such order as Lender may determine in Lender's sole discretion. Lender reserves the right to apply payments to outstanding indebtedness and obligations in any order that Lender may determine in its sole discretion and Lender may change the methodology for the application of payments at any time without notice to Borrower.

Receipt of Payments. All payments must be made by a check, automatic account debit, electronic funds transfer, money order, or other instrument in U.S. dollars and must be received by Lender at the remittance address shown on Borrower's periodic billing statement. Payments received at that address prior to 11:00 AM Central Time on any business day will be credited to Borrower's Credit Line as of the date received. If Lender receives payments at other locations, such payments will be credited promptly to Borrower's Credit Line, but crediting may be delayed for up to five (5) days after receipt.

Credit Limit. This Agreement covers a revolving line of credit for the principal amount of Two Hundred Fifty Thousand & 00/100 Dollars (\$250,000.00), which will be Borrower's "Credit Limit" under this Agreement. Borrower may borrow against the Credit Line, repay any portion of the amount borrowed, and re-borrow up to the amount of the Credit Limit. Borrower's Credit Limit is the maximum amount Borrower may have outstanding at any one time. Borrower agrees not to attempt, request, or obtain a credit advance that will make Borrower's Credit Line Account balance exceed Borrower's Credit Limit. Borrower's Credit Limit will not be increased should Borrower overdraw Borrower's Credit Line Account. If Borrower exceeds Borrower's Credit Limit, Borrower agrees to repay immediately the amount by which Borrower's Credit Line Account exceeds Borrower's Credit Limit, even if Lender has not yet billed Borrower.

Charges to Borrower's Credit Line. Lender may charge Borrower's Credit Line to pay other fees and costs that Borrower is obligated to pay under this Agreement or any other document related to Borrower's Credit Line. Any amount so charged to Borrower's Credit Line will be a credit advance and will decrease the funds available, if any, under the Credit Line. However, Lender has no obligation to provide any of the credit advances referred to in this paragraph.

Effective Disbursement Date. The words "Effective Disbursement Date" as used in this Agreement mean a date, after the Opening Date, when the Agreement is accepted by Lender in the State of South Carolina and Borrower has met all of Lender's conditions for the Credit Line. Borrower agrees and understands that Borrower may not receive any credit advance under Borrower's Credit Line until after the Effective Disbursement Date of this Agreement.

Credit Advances. After the Effective Disbursement Date of this Agreement, Borrower may obtain credit advances under Borrower's Credit Line as follows:

Telephone Request. Requesting a credit advance from Borrower's Credit Line to be applied to Borrower's designated account by telephone. Except for transactions covered by the federal Electronic Fund Transfers Act and unless otherwise agreed in your deposit account agreement, **Borrower acknowledges and Borrower agrees that Lender does not accept responsibility for the authenticity of telephone instructions and that Lender will not be liable for any loss, expense, or cost arising out of any telephone request, including any fraudulent or unauthorized telephone request, when acting upon such instructions believed to be genuine.**

Requests in Person. Requesting a credit advance in person at any of Lender's authorized locations.

Other Methods. Electronic Banking Services includes without limitation, Internet Banking, PC Banking, Banking with Microsoft Money, Banking with Quicken, Banking with Quick Books, and Telephone Bill payment and Transfer Services.

If there is more than one person authorized to use this Credit Line Account, Borrower agrees not to give Lender conflicting instructions, such as one Borrower telling Lender not to give advances to the other.

Transaction Requirements. The following transaction limitations will apply to the use of Borrower's Credit Line:

Telephone Request and In Person Request Limitations. The following transaction limitations will apply to Borrower's Credit Line and requesting an advance by telephone and requesting an advance in person.

Other Transaction Requirements. You may request an Advance in person during normal business hours at any of our facilities which accept personal requests for Advances. We may require that the Advance be deposited into your deposit account. You may request an Advance by telephoning your loan officer. You must identify yourself to our satisfaction. The Advance may be deposited into your deposit account. You are responsible for knowing your loan officer.

Other Methods Limitations. There are no transaction limitations for accessing by other methods.

REGIONS BUSINESS LINE

Loan No: 00000007000047604

(Continued)

Page 2

Future Credit Line Services. Borrower's application for this Credit Line also serves as a request to receive any new services (such as access devices) which may be available at some future time as one of Lender's services in connection with this Credit Line. Borrower understands that this request is voluntary and that Borrower may refuse any of these new services at the time they are offered. Borrower further understands that the terms and conditions of this Agreement, together with any specific terms covering the new service, will govern any transactions made pursuant to any of these new services.

Right of Setoff. To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account), including without limitation, all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on this Agreement against any and all such accounts, and, at our option, to administratively freeze all such accounts to allow us to protect our charge and setoff rights provided in this paragraph.

Periodic Statements. If you have a balance owing on your Credit Line Account or have any account activity, we will send you a periodic statement. It will show, among other things, credit advances, **FINANCE CHARGES**, other charges, payments made, other credits, your "Previous Balance," and your "New Balance." Your statement also will identify the Minimum Payment you must make for that billing period and the date it is due.

When FINANCE CHARGES Begin to Accrue. Periodic **FINANCE CHARGES** for credit advances under Borrower's Credit Line will begin to accrue on the date credit advances are posted to Borrower's Credit Line. There is no "free ride period" which would allow Borrower to avoid a **FINANCE CHARGE** on Borrower's Credit Line credit advances.

Method Used to Determine the Balance on Which the FINANCE CHARGE Will Be Computed. A daily **FINANCE CHARGE** will be imposed on all credit advances made under Borrower's Credit Line imposed from the date of each credit advance based on the unpaid outstanding principal balance of the Credit Line on each day.

Method of Determining the Amount of FINANCE CHARGE. Any **FINANCE CHARGE** is determined by applying the "Periodic Rate" to the balance described herein. This is Borrower's **FINANCE CHARGE** calculated by applying a Periodic Rate.

Periodic Rate and Corresponding ANNUAL PERCENTAGE RATE. The Periodic Rate and the corresponding **ANNUAL PERCENTAGE RATE** on Borrower's Credit Line are based upon an **ANNUAL PERCENTAGE RATE** on ranges of balances as shown below. To determine the Periodic Rate that will apply to Borrower's account, Lender then divides the value of the interest rate by 360 days. To obtain the **ANNUAL PERCENTAGE RATE** Lender multiplies the Periodic Rate by 365 days. This result is the **ANNUAL PERCENTAGE RATE**.

Current Rates for the First Payment Stream			
Range of Balance or Conditions	Fixed Interest Rate	ANNUAL PERCENTAGE RATE	Daily Periodic Rate
All Balances	2.500%	2.535	0.00695%

Notwithstanding any other provision of this Agreement, Lender will not charge interest on any undisbursed loan proceeds.

Conditions Under Which Other Charges May Be Imposed. Borrower agrees to pay all the other fees and charges related to Borrower's Credit Line as set forth below:

Late Charge. In addition to Lender's rights upon default, Borrower's payment will be late if it is not received by Lender within **10 days after the "Payment Due Date" shown on Borrower's periodic statement.** If Borrower's payment is late Lender may charge Borrower 5.000% of the unpaid amount of the payment.

Right to Credit Advances. After the Effective Disbursement Date, Lender will honor Borrower's requests for credit advances up to Borrower's Credit Limit so long as: (A) Borrower is not in default under the terms of this Agreement; (B) this Agreement has not been terminated or suspended; and (C) Borrower's Credit Line has not been cancelled as provided above in the section of this Agreement titled "Term."

Default. Lender may declare Borrower to be in default if any one or more of the following events occur: (A) Borrower fails to pay a Minimum Payment when due; (B) Borrower dies; (C) Borrower makes any false or misleading statements on Borrower's Credit Line application; (D) Borrower violates any provision of this Agreement or any other agreement with Lender; (E) any garnishment, attachment, or execution is issued against any material asset owned by Borrower; (F) Borrower exceeds Borrower's Credit Limit; (G) Borrower files for bankruptcy or other insolvency relief, or an involuntary petition under the provisions of the Bankruptcy Code is filed against Borrower; (H) Lender in good faith believes itself insecure.

Lender's Rights. If Borrower is in default, Lender may terminate or suspend Borrower's Credit Line Account without prior notice. However, Lender will notify Borrower in writing of Lender's action as soon as practicable.

Suspension. If Lender suspends Borrower's Credit Line, Borrower will lose the right to obtain further credit advances. However, all other terms of this Agreement will remain in effect and be binding upon Borrower, including Borrower's liability for any further unauthorized use of any Credit Line access devices.

Termination. If Lender terminates Borrower's Credit Line, Borrower's Credit Line will be suspended and the entire unpaid balance of Borrower's Credit Line Account will be immediately due and payable, without prior notice except as may be required by law, and Borrower agrees to pay that amount plus all **FINANCE CHARGES** and other amounts due under this Agreement.

Collection Costs. Lender may hire or pay someone else to help collect this Agreement if Borrower does not pay. Borrower will pay Lender that amount. This includes Lender's reasonable attorneys' fees in an amount not less than fifteen percent (15%) of the amount owing on this Agreement and Lender's legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other sums provided by law.

Rate Increase. In addition to Lender's other rights on default, Lender may increase the interest rate under this Agreement to 2.000 percentage points over the then applicable **ANNUAL PERCENTAGE RATE**. The interest rate will not exceed the maximum rate permitted by applicable law. If Lender does not increase the interest rate on default, it will continue at the rate in effect as of the date Lender declares a default.

Delay in Enforcement. Lender may delay or waive the enforcement of any of Lender's rights under this Agreement without losing that right or any other right. If Lender delays or waives any of Lender's rights, Lender may enforce that right at any time in the future without advance notice. For example, not terminating Borrower's account for non-payment will not be a waiver of Lender's right to terminate Borrower's account in the future if Borrower has not paid.

Termination by Borrower. If Borrower terminates this Agreement, Borrower must notify Lender. Despite termination, Borrower's obligations under this Agreement will remain in full force and effect until Borrower has paid Lender all amounts due under this Agreement.

Prepayment. Borrower may prepay all or any amount owing under this Credit Line at any time without penalty, except Lender will be entitled to receive all accrued **FINANCE CHARGES**, and other charges, if any. Payments in excess of Borrower's Minimum Payment will not relieve Borrower of Borrower's obligation to continue to make Borrower's Minimum Payments. Instead, they will reduce the principal balance owed on the Credit Line. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Agreement, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: Regions Bank, P.O. Box 216 Birmingham, AL 35201.

Notices. All notices will be sent to Borrower's address as shown in Borrower's Credit Line application. Notices will be mailed to Borrower at a different address if Borrower gives Lender written notice of a different address. Borrower agrees to advise Lender promptly if Borrower changes Borrower's mailing address.

Annual Review. Borrower agrees that Borrower will provide Lender with a current financial statement, a new credit application, or both, annually, on forms provided by Lender. Based upon this information Lender will conduct an annual review of Borrower's Credit Line Account. Borrower also agrees Lender may obtain credit reports on Borrower at any time, at Lender's sole option and expense, for any reason, including but not limited to determining whether there has been an adverse change in Borrower's financial condition. Borrower authorizes Lender to release information about Borrower to third parties as described in Lender's privacy policy and Lender's Fair Credit Reporting Act notice, provided Borrower did not opt out of the applicable policy, or as permitted by law. Based upon a material adverse change in Borrower's financial condition (such as termination of employment or loss of income), Lender may suspend Borrower's Credit Line.

Transfer or Assignment. Without prior notice or approval from Borrower, Lender reserves the right to sell or transfer Borrower's Credit Line Account and Lender's rights and obligations under this Agreement to another lender, entity, or person. Borrower's rights under this Agreement

belong to Borrower only and may not be transferred or assigned. Borrower's obligations, however, are binding on Borrower's heirs and legal representatives. Upon any such sale or transfer, Lender will have no further obligation to provide Borrower with credit advances or to perform any other obligation under this Agreement.

Jury Waiver. Lender and Borrower hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by either Lender or Borrower against the other.

Suspicious Activity. You agree that you will not act in any manner that may cause us to reasonably believe that you have engaged in, or that you intend to engage in, any suspicious activity as described in or contemplated under the Bank Secrecy Act, the USA Patriot Act, or any other similar or related law, whether now or hereafter in effect, or under any regulation issued pursuant to any such law. Further, you agree that if your name (or a derivation thereof) appears on a list of suspects issued to financial institutions by the Office of Foreign Assets Control, the Financial Crimes Enforcement Network, the Federal Reserve Board, or any other governmental entity or agency, then you will be conclusively presumed to have acted in a manner that would cause us to reasonably believe that you have engaged in, or that you intend to engage in, such suspicious activity. You acknowledge and agree that your obligations under this paragraph constitute some of your "material obligations" of this Agreement.

Billing Statement Interest Rate. If the periodic FINANCE CHARGE on your Credit Line Account is computed with reference to an Index, your billing statement will reflect an interest rate equal to the Index plus any Margin. If the periodic FINANCE CHARGE on your Credit Line Account is not based on an Index, your billing statement will reflect an interest rate equal to the "Fixed Interest Rate" shown above. In either case, the ANNUAL PERCENTAGE RATE, as determined under the "Periodic Rate and Corresponding ANNUAL PERCENTAGE RATE" section above, will not be shown on your billing statement.

Governing Law. This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of South Carolina without regard to its conflicts of law provisions. This Agreement has been accepted by Lender in the State of South Carolina.

Caption Headings. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

Interpretation. Borrower agrees that this Agreement is the best evidence of Borrower's agreements with Lender. If a court finds that any provision of this Agreement is not valid or should not be enforced, that fact by itself will not mean that the rest of this Agreement will not be valid or enforced. Therefore, a court may enforce the rest of the provisions of this Agreement even if a provision of this Agreement may be found to be invalid or unenforceable. If Lender goes to court for any reason, Lender can use a copy, filmed or electronic, of any periodic statement, this Agreement, or any other document to prove what Borrower owes Lender or that a transaction has taken place. The copy, microfilm, microfiche, or optical image will have the same validity as the original. Borrower agrees that, except to the extent Borrower can show there is a billing error, Borrower's most current periodic statement is the best evidence of Borrower's obligation to pay.

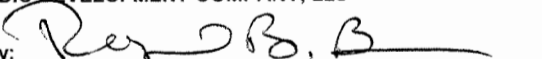
Severability. If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

Arbitration. Borrower and Lender agree that all disputes, claims and controversies between them whether individual, joint, or class in nature, arising from this Agreement or otherwise, including without limitation contract and tort disputes, shall be arbitrated pursuant to the Rules of the American Arbitration Association in effect at the time the claim is filed, upon request of either party. No act to take or dispose of any Collateral shall constitute a waiver of this arbitration agreement or be prohibited by this arbitration agreement. This includes, without limitation, obtaining injunctive relief or a temporary restraining order; invoking a power of sale under any deed of trust or mortgage; obtaining a writ of attachment or imposition of a receiver; or exercising any rights relating to personal property, including taking or disposing of such property with or without judicial process pursuant to Article 9 of the Uniform Commercial Code. Any disputes, claims, or controversies concerning the lawfulness or reasonableness of any act, or exercise of any right, concerning any Collateral, including any claim to rescind, reform, or otherwise modify any agreement relating to the Collateral, shall also be arbitrated, provided however that no arbitrator shall have the right or the power to enjoin or restrain any act of any party. Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction. Nothing in this Agreement shall preclude any party from seeking equitable relief from a court of competent jurisdiction. The statute of limitations, estoppel, waiver, laches, and similar doctrines which would otherwise be applicable in an action brought by a party shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of an action for these purposes. The Federal Arbitration Act shall apply to the construction, interpretation, and enforcement of this arbitration provision.

Acknowledgment and Amendments. Borrower understands and agrees to the terms and conditions in this Agreement. Borrower acknowledges that, subject to applicable laws, Lender has the right to change the terms and conditions of the Credit Line program. Lender will give Borrower written disclosure of the change. Borrower also understands and agrees that Borrower may be subject to other agreements with Lender regarding transfer instruments or access devices which may access Borrower's Credit Line. Any person signing below may request a modification to this Agreement, and, if granted, the modification will be binding upon all signers. By signing this Agreement, Borrower acknowledges that Borrower has read this Agreement. Borrower also acknowledges receipt of a completed copy of this Agreement.

BORROWER:

CDIC DEVELOPMENT COMPANY, LLC

By: 
REGINAL BARNER

Effective Disbursement Date: _____

EXHIBIT B

AMERICAN ARBITRATION ASSOCIATION

REGIONS BANK, an Alabama banking corporation,

CASE NO.: 01-18-0003-4435

Claimant,

v.

CDIC DEVELOPMENT COMPANY, LLC, a South Carolina limited liability company,

Respondent.

_____ /

STIPULATED FINAL ARBITRATION AWARD

THIS MATTER having come before the Arbitrator for consideration on the Joint Stipulation for Entry of Final Arbitration (the “Joint Stipulation”) between Claimant, Regions Bank (“Claimant”) and Respondent, CDIC Development Company, LLC, a South Carolina limited liability company (“Respondent”). The Arbitrator having reviewed the Joint Stipulation and the pleadings on file, and being otherwise fully advised of the premises, it is hereby


ORDERED AND AWARDED:

1. The Joint Stipulation is APPROVED.
2. An award is hereby entered in favor of Claimant, Regions Bank, and against Respondent, CDIC Development Company, LLC, a South Carolina limited liability company as to all of Claimant’s Claims.
3. Claimant, Regions Bank, is owed by Respondent, CDIC Development Company, LLC, a South Carolina limited liability company, the total amount of \$220,309.81² as of June 21,

² Based upon the following stipulated amounts: principal amount of \$225,427.12, plus attorneys’ fees and costs in the amount of \$22,567.00, and accrued but unpaid default interest in the amount of \$52,315.69 as of June 21, 2019, less the \$80,000.00 Initial Payment made pursuant to the terms and conditions of the parties’ written settlement agreement.

2019, which amount shall bear interest at the per diem default rate of interest of \$28.18 accruing thereafter.

DONE AND AWARDED this 27th day of June, 2019.



Evan Slavitt, Arbitrator

Copies furnished to:

Eric F. Werrenrath
Ian S. Ford

AFFIDAVIT OF SERVICE

ELECTRONICALLY FILED - 2021-Aug 25 9:08 PM - AIKEN - COMMON PLEAS - CASE#2021CP0201306

Case: 2021-CP-02-01306	Court: Common Pleas of Aiken County	County: Aiken	Job: 6044401
Plaintiff / Petitioner: Regions Bank, an Alabama Banking Corporation		Defendant / Respondent: CDIC Development Company, LLC.	
Received by: Anthony Proietta & Associates		For: Haynesworth Sinkler Boyd	
To be served upon: CDIC Development Company, LLC.			

I, Kanzora Robinson, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents and informed said person the contents herein

Recipient Name / Address: Chanosha Lawton, as Chief Executive Officer of CDIC Development Company, LLC. , 100 Rogers Terrace, Aiken, South Carolina 29801

Manner of Service: Substitute Service - Business, Aug 19, 2021, 4:48 pm EDT

Documents: Cover Letter, Petition to Confirm Arbitration Award, Exhibits A and B.

Additional Comments:

1) Successful Attempt: Aug 19, 2021, 4:48 pm EDT at 100 Rogers Terrace, Aiken, South Carolina 29801 received by Chanosha Lawton, as Chief Executive Officer of CDIC Development Company, LLC. .

Kanzora Robinson
Kanzora Robinson
Date 8/25/2021

Dwayne Perry
Subscribed and sworn to before me by the affiant who is personally known to me.

Dwayne Perry
Notary Public
Date 8/25/21 Commission Expires 10/17/2026

Anthony Proietta & Associates
1612 Marion Street Suite 218E
Columbia, SC 29201
803-795-7715



STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

Case No: 2021-CP-02-01306

REGIONS BANK, an Alabama banking
corporation,

Claimant,

v.

CDIC DEVELOPMENT COMPANY,
LLC, a South Carolina limited liability
company,

Respondent.

**RESPONDENT CDIC
DEVELOPMENT COMPANY, LLC'S
RESPONSE TO REGIONS BANK'S
PETITION TO CONFIRM
ARBITRATION AWARD AND
MOTION TO DISMISS**

Respondent CDIC Development Company, LLC ("CDIC") hereby responds to Claimant Regions Bank's Petition to Confirm Arbitration Award and moves to dismiss this action because the applicable statute of limitations has run.

RESPONSE AND FIRST DEFENSE

1. CDIC admits the allegations of Paragraph 1, on information and belief.
2. CDIC admits the allegations of Paragraph 2.
3. Answering the allegations of Paragraph 3, CDIC admits that Exhibit A appears to be an accurate copy of the Note, and CDIC craves reference to the Note for its force and effect. All allegations or inferences inconsistent with the express provisions of the Note are denied.

4. Answering the allegations of Paragraph 4, CDIC affirmatively alleges that the statute of limitations has run on its failure to pay sums due by the scheduled maturity date of January 10, 2018.
5. CDIC admits that the note has not been fully paid at this time.
6. Answering the allegations of Paragraph 6, CDIC craves reference to the Note; all allegations or inferences inconsistent with the express provisions of the Note are denied.
7. Answering the allegations of Paragraph 7, CDIC admits that the dispute was submitted to arbitration and that the parties submitted a Joint Stipulation to the arbitrator. Further answering the allegations of Paragraph 7, CDIC craves reference to the Note and the rules of the American Arbitration Association. All allegations or inferences inconsistent with the express provisions of the Note and the rules are denied.
8. Answering the allegations of Paragraph 8, CDIC admits that the arbitrator issued a written award on June 21, 2019; CDIC denies the remaining allegations of the paragraph, as characterized, it denies that the award attached as Exhibit B should be summarily confirmed by this Court, and it denies that any judgment should be rendered by this Court against CDIC.
9. CDIC denies the allegations of Paragraph 9.
10. Answering the allegations of Paragraph 10, CDIC craves reference to the Note. All allegations or inferences inconsistent with the express provisions of the Note are denied. Further answering the allegations of Paragraph 10, CDIC states that the

contractual language that Regions Bank quotes in the paragraph is permissive (“may”), and Regions Bank is not entitled to summary confirmation of the award. CDIC raises contractual defenses herein.

11. Answering the WHEREFORE paragraphs of Regions Bank’s petition, CDIC denies that Regions Bank is entitled to the relief requested, or to any relief whatsoever from CDIC.

**AS A SECOND DEFENSE
MOTION TO DISMISS
Rule 12(b)(6), SCRPC**

Regions Bank failed to seek confirmation of its award within one year, as required by the Federal Arbitration Act for parties seeking to avail themselves of the summary confirmation procedure permitted by the Act. This Court should therefore dismiss the Petition for failure to state facts sufficient to constitute a cause of action.

The agreement between the parties states that “[t]he Federal Arbitration Act shall apply to the construction, interpretation, and enforcement of this arbitration provision.” (See Ex. A to Regions Bank’s Petition to Confirm). The FAA provides that a party to an arbitration has one year within which to seek summary confirmation of an award:

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 (emphasis added).

Regions Bank's Petition states in Paragraph 8 that the award it seeks to have confirmed was issued on June 21, 2019. But **Regions Bank waited more than two years**, until June 22, 2021, to file its Petition to Confirm the award. It is therefore plainly outside of the time prescribed by the FAA for petitions to seek summary confirmation. This Court should dismiss based on pleadings insufficient to state a claim.

**AFFIRMATIVE DEFENSE III
(Waiver and Laches)**

Regions Bank's claims are barred or limited by the doctrines of waiver and laches.

**AFFIRMATIVE DEFENSE IV
(Estoppel)**

Regions Bank's claims are barred by the doctrine of estoppel.

**AFFIRMATIVE DEFENSE V
(Accord and Satisfaction)**

Regions Bank's claims are barred by the doctrines of accord and satisfaction.

**AFFIRMATIVE DEFENSE VI
(Statute of Limitations and Repose)**

Regions Bank's claims are barred by the applicable statute of limitations and statute of repose.

**AFFIRMATIVE DEFENSE VII
(Unclean Hands)**

Regions Bank's claims are barred or reduced by the doctrine of unclean hands.

**AFFIRMATIVE DEFENSE VIII
(Set-Off)**

CDIC is entitled to a set-off as to Regions Bank's damages, if any.

**AFFIRMATIVE DEFENSE IX
(Ongoing Investigation and Reservation of Rights)**

CDIC has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery regarding the circumstances of Regions Bank's allegations. CDIC intends to act as best CDIC can to inform CDIC of the pertinent facts and prevailing circumstances surrounding any purported injury or damage to Regions Bank as alleged in the Petition and gives notice of CDIC's intent to assert any further affirmative defenses that the information gathering process may indicate is supported by fact and/or law.

WHEREFORE, CDIC prays that Regions Bank's Petition be dismissed with prejudice, that costs and fees be awarded to CDIC, and for such other relief as the Court deems just and proper.

Respectfully submitted,

FORD WALLACE THOMSON LLC

By: s/ Ian Ford

Ian S. Ford

S.C. Bar No. 12463

Ian.Ford@FordWallace.com

Ainsley F. Tillman

S.C. Bar No. 70551

Ainsley.Tillman@FordWallace.com

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Attorneys for Respondent

CDIC Development Company, LLC

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

Case No: 2021-CP-02-01306

REGIONS BANK, an Alabama banking
corporation,

Claimant,

v.

CDIC DEVELOPMENT COMPANY,
LLC, a South Carolina limited liability
company,

Respondent.

**RESPONDENT CDIC
DEVELOPMENT COMPANY, LLC's
MOTION
PURSUANT TO
RULE 59, SCRPC**

On September 27, 2021, this Court filed its *Order Confirming Arbitration Award and for Entry of Judgment* (the "Order"). Pursuant to Rule 59 of the South Carolina Rules of Civil Procedure,¹ Respondent CDIC Development Company, LLC ("CDIC") hereby moves this Court to alter or amend its judgment, and CDIC specifically raises issues not ruled upon in the Order.

Claimant Regions Bank filed its Petition to Confirm Arbitration Award on June 22, 2021. It filed its affidavit of service on August 25, 2021 (for service effected on August 19, 2021). On August 27, 2021, Regions Bank filed a proposed order with the Court. On September 7, 2021, CDIC timely filed its *Response to Regions Bank's Petition to Confirm Arbitration Award and Motion to Dismiss* ("Motion to Dismiss"). CDIC's Motion to Dismiss

¹ To the extent there may have been a clerical error, inadvertent mistake, or similar grounds, CDIC bases this Motion on Rule 60, SCRPC.

is incorporated herein by reference as if set forth fully.² At this writing, CDIC's Motion to Dismiss has not been opposed by Regions Bank, nor has a hearing been held by the Court, nor has the Court issued an order on the Motion to Dismiss. Instead, the Court signed Regions Banks' original proposed order without hearing or ruling on CDIC's Motion to Dismiss.

In its Motion to Dismiss, CDIC asserts that the statute of limitations has expired under the applicable law – the Federal Arbitration Act, 9 U.S.C. § 9 (“FAA”) – which (i) is specifically invoked in the agreement between the parties, and (ii) states that a party has one year to apply to a court for confirmation of the arbitration award. (Mot. to Dismiss, pp. 3–4). Here, Regions Bank waited more than two years, and thereby is outside the time prescribed by the FAA.

In addition, in its Motion to Dismiss, CDIC asserts numerous affirmative defenses, including waiver and laches, estoppel, accord and satisfaction, unclean hands, and set-off. (Mot. to Dismiss, pp. 4–5). None of those defenses have been adjudicated.³ The purpose of this Motion is to request that the Court hear and rule upon the issues and affirmative defenses raised in CDIC's Motion to Dismiss.

CONCLUSION

Because none of the arguments and defenses in CDIC's Motion to Dismiss have been opposed or ruled upon, CDIC requests that the Court vacate its Order and schedule

² For the purposes of Rule 59 consideration and to the extent required for preservation of issues, this Motion incorporates CDIC's previous filings and evidence. *See Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772 (2004).

³ *Cf. Great Games v. SC Dept. of Revenue*, 339 S.C. 79, 529 S.E.2d 6 (2000) (noting that post-trial motions are necessary to preserve for appeal issues that the trial court does not rule upon).

a hearing on all the matters asserted in its Motion to Dismiss, in accordance with the South Carolina Rules of Civil Procedure and applicable law.

Respectfully submitted,

FORD WALLACE THOMSON LLC

s/ Ian S. Ford

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September 28, 2021
Charleston, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN

Case No. 2021-CP-02-01306

REGIONS BANK, an Alabama banking corporation,

Claimant,

vs.

CDIC DEVELOPMENT COMPANY, LLC, a South Carolina limited liability company,

Respondent.

**CLAIMANT REGIONS BANK'S
MEMORANDUM IN OPPOSITION TO
RESPONDENT CDIC DEVELOPMENT
COMPANY, LLC'S MOTION PURSUANT TO
RULE 59, SCRPC**

Claimant, REGIONS BANK, an Alabama banking corporation (“Regions”), by and through its undersigned counsel, submits this Memorandum in Opposition to Respondent, CDIC DEVELOPMENT COMPANY, LLC’S (“CDIC”) Motion Pursuant to Rule 59, SCRPC (the “Motion”), and respectfully requests the Court to deny CDIC’s Motion for the reasons set forth below.

RELEVANT BACKGROUND

Regions is a banking corporation that made a loan in the principal amount of \$250,000.00 to CDIC on or about January 10, 2008 (the “Note”). (Petition ¶3, Ex. A (Note)). CDIC defaulted on the Note by failing to pay amounts due and owing under the Note. *Id.* ¶¶4-5. The Note contained a provision requiring that any dispute, claim, and controversy arising from the Note be submitted to binding arbitration. *Id.* ¶6. In accordance with the Note, the dispute between Regions and CDIC was submitted to arbitration. *Id.* ¶7. Thereafter, on June 27, 2019, the arbitrator approved a Joint Stipulation and issued a written award, awarding Regions \$220,309.81 as of June 21, 2019, and interest at the per diem default rate of interest of \$28.18 accruing thereafter (“arbitration award”). (Petition Ex. B (Arbitration Award)). The Note expressly states:

“Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction.” (Petition Ex. A (Note at p. 3)).

PROCEDURAL HISTORY

Regions filed its petition to confirm the arbitration award on June 22, 2021. CDIC was served with the petition on August 19, 2021. CDIC filed a motion to dismiss on September 7, 2021, arguing the petition was time-barred pursuant to 9 U.S.C. § 9 of the Federal Arbitration Act (“FAA”). The Court entered an Order Confirming Arbitration Award and for Entry of Judgment (the “Order”) on September 27, 2021. CDIC filed the Motion to Reconsider on September 28, 2021. Specifically, CDIC moves the Court to reconsider the Order on the grounds that it believes (i) the FAA applies to confirmation of the arbitration award and (ii) the FAA has a one-year time bar for confirmation of arbitration awards. However, as detailed below, both of these arguments are erroneous.

ARGUMENT

I. The FAA does not apply to the procedural confirmation of an arbitration award in South Carolina state court.

First, the South Carolina Supreme Court has expressly held that state law applies when confirming an arbitration award. *Henderson v. Summerville Ford-Mercury, Inc.*, 405 S.C. 440, 448, 748 S.E.2d 221, 225 (2013). The Order confirming the arbitration award should not be reconsidered because this Court properly entered the Order in accordance with the express South Carolina statutory requirements that govern this action.

As specifically alleged in the Petition to Confirm Arbitration Award, this action is governed by S.C. Code Ann. § 15–48–120, which provides as follows:

Upon application of a party, **the court shall confirm an award**, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in §§ 15-48-130 and 15-48-140. [Emphasis added.]

Similarly, S.C. Code Ann. § 15–48–150, which also applies to this action, expressly requires the issuance of the judgment against CDIC:

Upon the granting of an order confirming, modifying or correcting an award, judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent thereto, and disbursements may be awarded by the court.

“The general rule is that the FAA does not preempt state *procedural* law relating to arbitration.”

Henderson v. Summerville Ford-Mercury, Inc., 405 S.C. 440, 448, 748 S.E.2d 221, 225 (2013).

“The FAA’s substantive provisions apply to arbitration in federal or state courts, but a state’s procedural rules apply in state court unless they conflict with or undermine the purpose of the FAA.” *Id.* at 450, 748 S.E.2d at 226-27. Confirmation of an arbitration award is procedural, not substantive. *Id.*

Notwithstanding CDIC’s meritless defenses and assertions to the contrary, this confirmation action is governed by S.C. Code Ann. § 15–48–120 and not the FAA. CDIC asserts in its Motion that the FAA is “specifically invoked in the agreement between the parties.” (Motion at p. 2). CDIC is simply wrong. The underlying Promissory Note attached to Regions’ Petition as Exhibit A states that the FAA only applies “to the construction, interpretation, and enforcement of this arbitration provision.” (Petition Ex. A (Note at p. 3)). It is beyond dispute that the instant action does not involve the construction, interpretation, and enforcement of any arbitration provision, so the FAA does not apply to this action seeking confirmation. CDIC also conveniently omits the relevant language in the Note that states “[j]udgment upon any award entered by any arbitrator may be entered in any court having jurisdiction.” (Petition Ex. A at p. 3). It is undisputed that this Court has jurisdiction. Accordingly, because the FAA does not apply to this action to confirm the arbitration award, CDIC’s Motion based solely upon the FAA is wholly without merit and there is no basis to reconsider the Order.

II. Even if the FAA applied, which it does not, the Fourth Circuit holds that 9 U.S.C. § 9 is permissive and not a time-bar for enrollment of arbitration awards.

Second, assuming arguendo the FAA applied, 9 U.S.C. § 9 is permissive and does not act as a time-bar for confirmation of arbitration awards. The Fourth Circuit holds that the FAA does not require confirmation of an arbitration award within one year of the award. *See Sverdrup Corp. v. WHC Constructors Inc.*, 989 F.2d 148, 156 (4th Cir. 1993) (holding that 9 U.S.C. § 9 was permissive and did not bar confirmation of an arbitration award beyond the one-year period); *Apex Plumbing Supply, Inc. v. U.S. Supply Co., Inc.*, 142 F.3d 188, 192 (4th Cir. 1993); *Real Color Displays, Inc. v. Universal Applied Techs. Corp.*, 165 F.3d 19 (Table), 1998 WL 764711, at *3 (4th Cir. Oct. 30, 1998); *United Gov't Sec. Officers of Am. v. Special Operations Grp., Inc.*, 436 F.Supp.2d 790, 794 (E.D. Va. 2006); *Cyber Imaging Sys., Inc. v. Eyclation, Inc.*, No. 5:14-cv-901-BO, 2015 WL 2152872, at *2 (E.D. N.C. May 7, 2015). CDIC cannot cite one controlling case in South Carolina or from the Fourth Circuit holding 9 U.S.C. § 9 acts as a one-year time bar for the confirmation of arbitration awards. Therefore, CDIC's argument is meritless.

Furthermore, in the event CDIC attempts to argue that *Cortez Byrd Chips, Inc. v. Bill Harbert Constr. Co.*, 529 U.S. 193 (2000) conflicts with *Sverdrup Corp.*, 989 F.2d at 156, this argument is mistaken. A federal court in Virginia refuted this argument and set forth the following:

[Defendant], refusing to strike its colors, argues that *Sverdrup* is of limited precedential value in light of the Supreme Court's subsequent decision in *Cortez Byrd Chips, Inc. v. Bill Harbert Construction Co.*, 529 U.S. 193, 120 S.Ct. 1331, 146 L.Ed.2d 171 (2000). Yet this argument, too, is not persuasive, as the *Cortez* analysis focuses almost exclusively on the FAA's venue provisions and their legislative history, not on § 9's one-year time period. *Id.* at 199, 120 S.Ct. 1331. The Supreme Court in *Cortez* did not analyze any FAA provisions dealing with statutes of limitations. [Defendant] also cites *Photopaint Technologies, LLC v. Smartlens Corp.*, where the Second Circuit, contrary to *Sverdrup*, construed § 9 as establishing a one-year statute of limitations. Although the Second Circuit's reasoning in *Photopaint* is sound, indeed compelling, **Sverdrup remains controlling precedent in this circuit and district courts are not at liberty to reach a different result. In short, § 9's one-year period is not, in this circuit, a**

statute of limitations and hence § 9 cannot be used in preference to West Virginia law.

United Gov't Sec. Officers of Am. v. Special Operations Grp., Inc., 436 F. Supp. 2d 790, 794–95 (E.D. Va. 2006) (emphasis added). The *Cortez* decision did not analyze any FAA provisions dealing with statute of limitations. Accordingly, the controlling law is clear and the 9 U.S.C. § 9 one-year period is not a statute of limitations for confirmation of an arbitration award.

III. CDIC has not asserted any specific grounds for vacating or modifying the Stipulated Final Arbitration Award.

Lastly, none of CDIC's defenses or arguments in its Motion assert any specific grounds to vacate or modify the underlying arbitration award. Even if CDIC had sought to vacate or modify the arbitration award, such request would be completely meritless in light of the fact that CDIC knowingly and intentionally stipulated to the entry of the arbitration award against it. It simply defies logic that CDIC could seek to vacate, modify, or otherwise challenge the confirmation of an arbitration award that was expressly stipulated to by CDIC. As such, this Court's entry of the Order was proper based upon statutory language requiring that "the court shall confirm" the arbitration award. S.C. Code Ann. § 15–48–120. Accordingly, the Order should not be reconsidered.

CONCLUSION

Based on the foregoing, Regions Bank respectfully requests that this Court deny CDIC's Motion.

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Respectfully submitted,

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Attorneys for Claimant Regions Bank

November 1, 2021
Greenville, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

Case No: 2021-CP-02-01306

REGIONS BANK, an Alabama banking
corporation,

Claimant,

v.

CDIC DEVELOPMENT COMPANY,
LLC, a South Carolina limited liability
company,

Respondent.

**RESPONDENT CDIC
DEVELOPMENT COMPANY, LLC'S
REPLY TO CLAIMANT'S
MEMORANDUM IN OPPOSITION
TO RESPONDENT'S MOTION TO
RECONSIDER**

Claimant Regions Banks ("Regions") is wrong on several important points within its Memorandum in Opposition to Respondent CDIC Development Company, LLC ("CDIC")'s Motion Pursuant to Rule 59, SCRCF. This Court should alter its judgment to (1) deny Regions' petition to confirm arbitration, and (2) find that the FAA's one-year statute of limitations precludes Regions' application for summary confirmation of its arbitration award against CDIC.

I. The parties elected to be bound by the Federal Arbitration Act.

Ignoring the parties' contract, Regions wrongly argues that South Carolina statutory law trumps the FAA, as a "general rule." For this proposition, Regions cites the case of *Henderson v. Summerville Ford-Mercury, Inc.*, which held that as a "general rule . . . that the FAA does not preempt state procedural law relating to arbitration." 405 S.C. 440, 448, 748 S.E.2d 221 (2013). While this may indeed be the "general rule," it does not trump

the specific contract provisions, here, that formed a basis of the parties' bargain. Critically, the parties to this case deliberately identified the Federal Arbitration Act as governing the contract's arbitration clause. This was a choice-of-law provision in the parties' agreement, and Regions identifies no basis to set it aside.

Contracting parties are free to select the law by which they agree to be bound. Notably, CDIC is a South Carolina corporation and Regions Bank is a large, multi-state corporation, with its headquarters in Alabama. It makes sense that Regions and CDIC would contract to be bound by federal law, and they indeed agreed that the FAA should apply to the arbitration of any disputes.

Significantly, CDIC abided by this choice of law provision when it submitted to arbitration, in accordance with the FAA. Regions may not now pivot and argue that South Carolina arbitration law applies, just because it suits Regions better at the moment. Because the FAA was selected by the parties as governing their arbitration proceedings, this Court should look to the FAA's provisions in deciding whether to summarily confirm the arbitration award.

II. This Court is free to interpret the plain language of the FAA's statute of limitations.

Contrary to its contractual agreement with CDIC, Regions would suddenly like State law to apply for an obvious reason: Regions has radically missed the statute of limitations which applies under the FAA – by more than an entire year. The FAA's one-year statute of limitations is clear and unambiguous. The FAA very simply states that if the parties have agreed that a court may enter judgment on an arbitration award (as here), “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” 9 U.S.C. § 9 (emphasis added).

Regions attempts to deflect from this clear language by arguing that CDIC “cannot cite one controlling case from South Carolina or the Fourth Circuit holding 9 U.S.C § 9 acts as a time bar for the confirmation of arbitration awards. Therefore, CDIC’s argument is meritless.” (See Regions’ Memorandum in Opposition, p. 4). Respectfully, the reason for this lack of citation is simple, and it is not because CDIC’s position is meritless: first, CDIC cannot cite a South Carolina case, **because there are none**. South Carolina courts have not had the opportunity to address the FAA’s one-year statute of limitations. Second, CDIC cannot cite a Fourth Circuit case that is “controlling” for the simple reason that Fourth Circuit decisions (as well as the decisions of all inferior federal courts) are **not** “controlling” or binding on South Carolina state courts. See *Hall v. Pa. Bd. of Probation and Parole*, 851 A.2d 859, 578 Pa. 245 (Pa. 2004), for a thorough discussion of the decisions nationwide on the question of whether state courts are obligated to follow any federal precedent other than that of the United States Supreme Court.¹ Although South Carolina

¹ The Pennsylvania Court’s discussion of this issue is informative:

However, whether or not this Court has a responsibility to adhere to the pronouncements of inferior federal courts on matters of federal law, where the United States Supreme Court has not spoken, is less certain. There appear to be four schools of thought on this question: (1) a decision of an inferior federal court should be treated as persuasive, but not binding, authority; (2) a decision of an inferior federal court should be followed, if reasonably possible, to avoid a conflict between state and federal resolutions of the same question; (3) a decision of an inferior federal court binds the state court; and (4) if the decisions of the inferior federal courts are “numerous and consistent,” the state court must follow their dictates.

A vast majority of state supreme courts that have addressed this issue have adopted the first approach. See, e.g., *Totemoff v. State*, 905 P.2d 954 (Alaska 1995), cert. denied, 517 U.S. 1244, 116 S.Ct. 2499, 135 L.Ed.2d 190 (1996); *Custom Microsystems, Inc.*

has not explicitly ruled on this question, the vast majority of state courts do not find federal decisions to be binding. South Carolina has held that federal decisions are not binding in other contexts. See *Walden v. Harrelson Nissan, Inc.*, 399 S.C. 205, 731 S.E.2d 324 (Ct. App. 2012) (federal decisions interpreting state law are not binding precedent).

In short, while the Fourth Circuit indeed issued an opinion over 30 years ago on the purported discretionary nature of the FAA's express one-year statute of limitations, that decision has been heavily criticized for its failure to adhere to elementary linguistic and grammar rules, as well as rules of statutory interpretation. See *Sverdrup Corp. v. WHC Constructors Inc.*, 989 F.2d 148, 156 (4th Cir. 1993) (interpreting 9 U.S.C. § 9 to find it is permissive and does not always bar confirmation of an arbitration award beyond the one-year period); but see *Photopaint Technologies LLC v. Smartlens Corp.*, 335 F.3d 152 (2nd Cir. 2003) (holding that 9 U.S.C. § 9 contains a clear one-year limitation on the confirmation of arbitration awards, and finding the reasoning in *Sverdrup* have been subsequently contradicted by the Supreme Court); see also, *Md. Transit Admin. v. Nat'l R.R. Passenger Corp.*, 372 F. Supp. 2d 478, 483-84 (D. Md. 2005) ("The court adheres to its view that

v. Blake, 344 Ark. 536, 42 S.W.3d 453 (2001); *Hill v. Thomas*, 973 P.2d 1246 (Colo.1999), affirmed, 530 U.S. 703, 120 S.Ct. 2480, 147 L.Ed.2d 597 (2000); *Macon-Bibb County Hospital Authority v. National Treasury Employees Union*, 265 Ga. 557, 458 S.E.2d 95 (1995); *Indiana Department of Public Welfare v. Payne*, 622 N.E.2d 461 (Ind.1993); *Shell Oil Company v. Secretary, Revenue and Taxation*, 683 So.2d 1204 (La.1996); *ACE Property Casualty and Insurance Co. v. Commissioner of Revenue*, 437 Mass. 241, 770 N.E.2d 980 (2002); *In Re 3628 v. Street*, 262 Neb. 77, 628 N.W.2d 272 (2001); *Dewey v. R.J. Reynolds Tobacco Co.*, 121 N.J. 69, 577 A.2d 1239 (1990); *Custom Cabinet Factory of New York, Inc. v. Eighth Judicial District Court ex rel. County of Clark*, 119 Nev. 51, 62 P.3d 741 (2003); *Bogart v. CapRock Communications Corp.*, 69 P.3d 266 (Okla.2003); *State v. Austin*, 165 Vt. 389, 685 A.2d 1076 (1996); *Election Board of State of Wisconsin v. Wisconsin Manufacturers & Commerce*, 227 Wis.2d 650, 597 N.W.2d 721 (1999), cert. denied, 528 U.S. 969, 120 S.Ct. 408, 145 L.Ed.2d 318 (1999).

Hall, 851 A.2d at 863-864.

Sverdrup Corp. is a candidate for reconsideration by the Fourth Circuit and, accordingly, shall dismiss without prejudice as untimely MTA’s petition to enforce the first arbitration award.”); and see *Climbzone, LLC v. Washington* Case No.: GJH-18-2732, Opinion of February 10, 2020 (D. Md. 2020) (noting: “since [the *Sverdrup* opinion], however, at least one federal Court of Appeals has interpreted an intervening Supreme Court decision to have rendered that reading untenable. In addition, former Judge Davis of this Court declined to follow the Fourth Circuit’s decision in light of the conflict raised by the Second Circuit. This issue appears to remain unsettled.” (internal citations omitted); and see, *FIA Card Servs., N.A. v. Gachiengu*, 571 F. Supp. 2d 799, 803-05 (S.D. Tex. 2008) (collecting cases).

In sum, the consensus, even among district courts within the Fourth Circuit, seems to be that the *Sverdrup* decision is wrong and has been overshadowed by the Supreme Court’s decision in *Cortez Byrd Chips, Inc. v. Bill Harbert Construction Co.* 529 U.S. 193 (2000).² See *General Elec. Co. v. Anson Stamping Co. Inc.*, 426 F.Supp.2d 579 (W.D. Ky. 2006)

² The Second Circuit found that *Cortez Byrd* rendered the Fourth Circuit’s reasoning incorrect:

Cortez Byrd considered whether the word “may” is used permissively in the context of the FAA’s venue provisions, under which (whenever the parties do not specify otherwise) proceedings “may” be conducted in the district where the award was made. Although the Court held that the venue provisions are permissive, it expressly declined to rely on the permissiveness of “may” as a matter of plain meaning. Instead, *Cortez Byrd* relied on considerations particular to venue: the overall structure of the FAA (a narrow reading of the venue provisions would have created “needless tension” with other parts of the FAA, and the statutory history of the general federal venue provision, 28 U.S.C. § 112(a) (which was considerably more restrictive when the FAA was enacted, suggesting that Congress used “may” in § 9 to broaden venue under the FAA). And the Court rejected the idea that use of “may” in some provisions of the FAA (including § 9) – and not in others – carries definitive significance . . .

Photopaint Technologies LLC v. Smartlens Corp., 335 F.3d 152 (2nd Cir. 2003).

(discussing at length—and agreeing with—the rationale behind the Second Circuit’s conclusion that the plain language of the FAA imposes a one-year statute of limitations, and observing that “this extended discussion of *Photopaint* is offered, in part, because *Photopaint* is slowly being adopted by the lower federal courts.”)

Mercifully, this Court does not need to agonize over federal decisions, nor spend its time trying to reconcile the split among the federal courts on the question . . . because these federal decisions are not precedent that binds this state court at this moment. Rather, this Court can come to its own conclusion as to what the FAA’s plain language means, when it requires a party to apply for confirmation of any arbitration award “**at any time within one year after the award is made.**” 9 U.S.C. § 9.

CDIC urges this Court to read and interpret the FAA as it is plainly written, to impose a one-year statute of limitations on parties who wish to apply for summary confirmation of an arbitration award. Pursuant to this clear construction, Regions’ application—filed two years after the award at issue was made—was clearly untimely. This Court should amend its order to so find.

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Respectfully submitted,

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CDIC Development Company, LLC

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

REGIONS BANK, an Alabama banking corporation,

Claimant,

v.

CDIC DEVELOPMENT COMPANY, LLC, a South Carolina limited liability company,

Respondent.

IN THE COURT OF COMMON PLEAS

Case No: 2021-CP-02-01306

**CLAIMANT REGIONS BANK'S
MEMORANDUM IN OPPOSITION TO
RESPONDENT CDIC DEVELOPMENT
COMPANY, LLC'S MOTION TO
DISMISS PURSUANT TO RULE 12(B)(6),
SCRPC**

Claimant, REGIONS BANK, an Alabama banking corporation (“Regions”), by and through its undersigned counsel, submits this Memorandum in Opposition to Respondent, CDIC DEVELOPMENT COMPANY, LLC’s (“CDIC”) Motion to Dismiss pursuant to Rule 12(b)(6), SCRPC (the “Motion”), and respectfully requests the Court to deny CDIC’s Motion for the reasons set forth below.

RELEVANT BACKGROUND

Regions is a banking corporation that made a loan in the principal amount of \$250,000.00 to CDIC on or about January 10, 2008 (the “Note”). (Petition ¶3, Ex. A (Note)). CDIC defaulted on the Note by failing to pay amounts due and owing under the Note. *Id.* ¶¶4-5. The Note contained a provision requiring that any dispute, claim, and controversy arising from the Note be submitted to binding arbitration. *Id.* ¶6. In accordance with the Note, the dispute between Regions and CDIC was submitted to arbitration. *Id.* ¶7. Thereafter, on June 27, 2019, the arbitrator approved the parties’ Joint Stipulation and issued a written award, awarding Regions \$220,309.81

as of June 21, 2019, and interest at the per diem default rate of interest of \$28.18 accruing thereafter (“arbitration award”). (Petition Ex. B (Arbitration Award)).

PROCEDURAL HISTORY

Regions filed its petition to confirm the arbitration award on June 22, 2021. CDIC was served with the petition on August 19, 2021. CDIC filed a response on September 7, 2021, which included a motion to dismiss asserting the petition was time-barred pursuant to the Federal Arbitration Act, 9 U.S.C. § 9 (“FAA”). The Court entered an Order Confirming Arbitration Award and for Entry of Judgment (the “Confirming Order”) on September 27, 2021. CDIC filed a Motion to Reconsider on September 28, 2021, which was granted on November 11, 2021 and this case was returned to its prior posture before the Confirming Order was entered.

ARGUMENT

The underlying Note provides that the FAA only applies “to the construction, interpretation, and enforcement **of this arbitration provision.**” (Petition Ex. A (Note at p. 3)) (emphasis added). The Note also expressly states: “Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction.” (Petition Ex. A (Note at p. 3)). Notwithstanding this unequivocal language, CDIC moves to dismiss Regions’ petition for confirmation on the grounds that it believes (i) the FAA applies to confirmation of arbitration awards and (ii) the FAA has a one-year time bar for confirmation of arbitration awards. As detailed below, both of these arguments are wrong.

I. The FAA does not apply to the procedural confirmation of an arbitration award in South Carolina state court.

First, the South Carolina Supreme Court has expressly held that state law, not the FAA, applies when confirming an arbitration award. *Henderson v. Summerville Ford-Mercury, Inc.*, 405 S.C. 440, 448, 748 S.E.2d 221, 225 (2013) (“The general rule is that the FAA does not preempt

state *procedural* law relating to arbitration.”). “The FAA’s substantive provisions apply to arbitration in federal or state courts, but a state’s procedural rules apply in state court unless they conflict with or undermine the purpose of the FAA.” *Id.* at 450, 748 S.E.2d at 226-27. Confirmation of an arbitration award is procedural, not substantive. *Id.* Thus, the Motion should be denied, and the arbitration award should be confirmed, in accordance with the procedural requirements set forth in the state statutes that govern this action.

As specifically alleged in the Petition to Confirm Arbitration Award, this action is governed by S.C. Code Ann. § 15–48–120, which provides as follows:

Upon application of a party, **the court shall confirm an award**, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in §§ 15-48-130 and 15-48-140. [Emphasis added.]

Similarly, S.C. Code Ann. § 15–48–150, which also applies to this action, expressly requires the issuance of the judgment against CDIC upon confirmation of the award:

Upon the granting of an order confirming, modifying or correcting an award, judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent thereto, and disbursements may be awarded by the court.

Notwithstanding CDIC’s meritless defenses and assertions to the contrary, this confirmation action is governed by S.C. Code Ann. § 15–48–120 and not the FAA. *See Henderson*, 405 S.C. 440, 450, 748 S.E.2d 221, 226 (“[W]e hold section 9 of the FAA applies only in federal court and that the circuit court did not err in applying the UAA's confirmation provision in the matter before this Court because the confirmation statute is procedural, not substantive.”).

Any assertion or implication by CDIC that the FAA is specifically invoked in the agreement between the parties is simply wrong. The Note states that the FAA applies only “to the construction, interpretation, and enforcement of this arbitration provision.” (Petition Ex. A (Note at p. 3)). It is beyond dispute that the instant action does not involve the construction,

interpretation, and enforcement of any arbitration provision, so the FAA does not apply to this action seeking confirmation. CDIC also conveniently omits the relevant language in the Note that states “[j]udgment upon any award entered by any arbitrator may be entered in any court having jurisdiction.” (Petition Ex. A at p. 3). It is undisputed that this Court has jurisdiction. Accordingly, because the FAA does not apply to this action to confirm the arbitration award, CDIC’s Motion based solely upon the FAA is wholly without merit and must be denied.

II. Even if the FAA applied, which it does not, Fourth Circuit holds that 9 U.S.C. § 9 is permissive and not a time-bar for enrollment of arbitration awards.

Second, assuming *arguendo* that the FAA applied to this petition, 9 U.S.C. § 9 is permissive and does not act as a time-bar for confirmation of arbitration awards. The Fourth Circuit holds that the FAA does not require confirmation of an arbitration award within one year of the award. *See Sverdrup Corp. v. WHC Constructors Inc.*, 989 F.2d 148, 156 (4th Cir. 1993) (holding that 9 U.S.C. § 9 was permissive and did not bar confirmation of an arbitration award beyond the one-year period); *Apex Plumbing Supply, Inc. v. U.S. Supply Co., Inc.*, 142 F.3d 188, 192 (4th Cir. 1993); *Real Color Displays, Inc. v. Universal Applied Techs. Corp.*, 165 F.3d 19 (Table), 1998 WL 764711, at *3 (4th Cir. Oct. 30, 1998); *United Gov’t Sec. Officers of Am. v. Special Operations Grp., Inc.*, 436 F.Supp.2d 790, 794 (E.D. Va. 2006); *Cyber Imaging Sys., Inc. v. Eyclation, Inc.*, No. 5:14-cv-901-BO, 2015 WL 2152872, at *2 (E.D. N.C. May 7, 2015). CDIC cannot cite one controlling case in South Carolina or from the Fourth Circuit holding 9 U.S.C. § 9 acts as a one-year time bar for the confirmation of arbitration awards. Therefore, CDIC’s argument is meritless and the Motion must be denied.

Furthermore, to the extent CDIC attempts to argue that *Cortez Byrd Chips, Inc. v. Bill Harbert Constr. Co.*, 529 U.S. 193 (2000) conflicts with *Sverdrup Corp.*, 989 F.2d at 156, a federal court in Virginia summarily refuted such conflict argument and set forth the following:

[Defendant], refusing to strike its colors, argues that *Sverdrup* is of limited precedential value in light of the Supreme Court's subsequent decision in *Cortez Byrd Chips, Inc. v. Bill Harbert Construction Co.*, 529 U.S. 193, 120 S.Ct. 1331, 146 L.Ed.2d 171 (2000). Yet this argument, too, is not persuasive, as the *Cortez* analysis focuses almost exclusively on the FAA's venue provisions and their legislative history, not on § 9's one-year time period. *Id.* at 199, 120 S.Ct. 1331. The Supreme Court in *Cortez* did not analyze any FAA provisions dealing with statutes of limitations. [Defendant] also cites *Photopaint Technologies, LLC v. Smartlens Corp.*, where the Second Circuit, contrary to *Sverdrup*, construed § 9 as establishing a one-year statute of limitations. Although the Second Circuit's reasoning in *Photopaint* is sound, indeed compelling, **Sverdrup remains controlling precedent in this circuit and district courts are not at liberty to reach a different result. In short, § 9's one-year period is not, in this circuit, a statute of limitations and hence § 9 cannot be used in preference to West Virginia law.**

United Gov't Sec. Officers of Am. v. Special Operations Grp., Inc., 436 F. Supp. 2d 790, 794–95 (E.D. Va. 2006) (emphasis added). The *Cortez* decision is clearly distinguishable because it did not analyze any FAA provisions dealing with statute of limitations. Accordingly, the Motion must be denied because the controlling law is clear and the language in 9 U.S.C. § 9 is not a statute of limitations for confirmation of an arbitration award.

CONCLUSION

Ultimately, the Motion is nothing more than a frivolous attempt by CDIC to avoid the enforcement of its obligations that it knowingly and intentionally stipulated to perform. Not only is the Motion wholly unsupported by any facts or law, but CDIC's main argument that the FAA applies to this confirmation petition was expressly rejected by the South Carolina Supreme Court in *Henderson v. Summerville Ford-Mercury Inc.*, 405 S.C. 440, 450, 748 S.E.2d 221, 226 (2013). CDIC simply cannot avoid the applicable statutory language in S.C. Code Ann. § 15–48–120 and § 15–48–150 expressly mandating that “the court shall confirm” the arbitration award and a “judgment or decree shall be entered in conformity therewith.” Based upon these statutory requirements, the Motion must be denied, the arbitration award must be confirmed, and judgment entered against CDIC and in favor of Regions.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.

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Attorneys for Claimant Regions Bank

January 27, 2022
Greenville, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

Case No: 2021-CP-02-01306

REGIONS BANK, an Alabama banking
corporation,

Claimant,

v.

CDIC DEVELOPMENT COMPANY,
LLC, a South Carolina limited liability
company,

Respondent.

**RESPONDENT CDIC
DEVELOPMENT COMPANY, LLC'S
MEMORANDUM IN SUPPORT OF
ITS MOTION TO DISMISS**

Respondent CDIC Development Company, LLC ("CDIC") has moved to dismiss this action because the applicable statute of limitations has run, and the pleadings—even if they are taken as true—fundamentally fail to state a claim against CDIC.

This is an action by Regions Bank for confirmation of an arbitration award, which award was more than two years old at the time Regions Bank filed its Petition to Confirm Arbitration Award with this Court. The agreement between the parties contains a choice-of-law provision naming the Federal Arbitration Act ("FAA") as governing arbitration proceedings between them. The FAA contains a one-year limitations period in which a party may seek summary confirmation of an award. Regions Bank went outside the one-year period, and this Court should therefore dismiss the Petition for failure to state facts sufficient to constitute a cause of action.

The agreement between the parties contains a clause entitled, “Arbitration.” (Ex. A to Regions Bank’s Petition to Confirm, at p. 3). The clause, as one might expect, governs the resolution of disputes between the parties by arbitration. Here, CDIC and Regions Bank participated in arbitration, and an award was issued in favor of Regions Bank. The agreement states: “Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction.” *Id.* At the end of the clause, the agreement identifies the controlling law: “The Federal Arbitration Act shall apply to the construction, interpretation, and enforcement of this arbitration provision.” *Id.*

The FAA plainly provides that a party to an arbitration has one year within which to seek the sort of summary confirmation of an award discussed in the agreement’s “Arbitration” clause:

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 (emphasis added).

Regions Bank’s Petition states in Paragraph 8 that the award it seeks to have confirmed was issued on June 21, 2019. But **Regions Bank waited more than two years**, until June 22, 2021, to file its Petition to Confirm the award. It is therefore plainly outside of the time prescribed by the FAA for petitions to seek summary confirmation.

Because Regions Bank’s pleadings are insufficient to state a viable claim against CDIC, this Court should dismiss.

IN OPPOSITION

In response to the arguments in Regions Bank's recently-filed legal memorandum, CDIC responds below.

I. The parties elected to be bound by the Federal Arbitration Act.

Ignoring the parties' contract, Regions Bank wrongly argues that South Carolina statutory law trumps the FAA, as a "general rule." For this proposition, Regions cites the case of *Henderson v. Summerville Ford-Mercury, Inc.*, which held that as a "general rule . . . that the FAA does not preempt state procedural law relating to arbitration." 405 S.C. 440, 448, 748 S.E.2d 221 (2013). While this may indeed be the "general rule," it does not trump the **specific contract provisions here**, that formed a basis of the parties' bargain. Critically, the parties to this case deliberately identified the Federal Arbitration Act as governing the contract's arbitration clause. This was a choice-of-law provision in the parties' agreement, and Regions identifies no basis to set it aside.

Contracting parties are free to select the law by which they agree to be bound. Notably, CDIC is a South Carolina corporation and Regions Bank is a large, multi-state corporation, with its headquarters in Alabama. It makes sense that Regions and CDIC would contract to be bound by federal law, and they indeed agreed that the FAA should apply to the arbitration of any disputes.

Significantly, CDIC abided by this choice of law provision when it submitted to arbitration, in accordance with the FAA. Regions Bank may not now pivot and argue that South Carolina arbitration law applies, just because it suits Regions Bank better at the moment. Because the FAA was selected by the parties as governing their arbitration

proceedings, this Court should look to the FAA's provisions in deciding whether to summarily confirm the arbitration award.

II. This Court is free to interpret the plain language of the FAA's statute of limitations.

Contrary to its contractual agreement with CDIC, Regions Bank would suddenly like State law to apply for an obvious reason: Regions Bank has radically missed the statute of limitations which applies under the FAA—by more than an entire year. The FAA's one-year statute of limitations is clear and unambiguous. The FAA very simply states that if the parties have agreed that a court may enter judgment on an arbitration award (as here), "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" 9 U.S.C. § 9 (emphasis added).

Regions Bank attempts to deflect from this clear language by arguing that CDIC "cannot cite one controlling case in South Carolina or from the Fourth Circuit holding 9 U.S.C. § 9 acts as a one-year time bar for the confirmation of arbitration awards. Therefore, CDIC's argument is meritless" (See Regions' Memorandum, p. 4). Respectfully, the reason for this lack of citation is simple, and it is not because CDIC's position is meritless—first, CDIC cannot cite a South Carolina case, **because there are none**. South Carolina courts have not had the opportunity to address the FAA's one-year statute of limitations. Second, CDIC cannot cite a Fourth Circuit case that is "controlling" for the simple reason that Fourth Circuit decisions (as well as the decisions of all inferior federal courts) are **not** "controlling" or binding on South Carolina state courts. See *Hall v. Pa. Bd. of Probation and Parole*, 851 A.2d 859, 578 Pa. 245 (Pa. 2004), for a thorough

discussion of the decisions nationwide on the question of whether state courts are obligated to follow any federal precedent other than that of the United States Supreme Court.¹ Although South Carolina has not explicitly ruled on this question, the vast majority of state courts do not find federal decisions to be binding. South Carolina has held that federal decisions are not binding in other contexts. *See Walden v. Harrelson Nissan, Inc.*, 399 S.C. 205, 731 S.E.2d 324 (Ct. App. 2012) (federal decisions interpreting state law are not binding precedent).

¹ The Pennsylvania Court's discussion of this issue is informative:

However, whether or not this Court has a responsibility to adhere to the pronouncements of inferior federal courts on matters of federal law, where the United States Supreme Court has not spoken, is less certain. There appear to be four schools of thought on this question: (1) a decision of an inferior federal court should be treated as persuasive, but not binding, authority; (2) a decision of an inferior federal court should be followed, if reasonably possible, to avoid a conflict between state and federal resolutions of the same question; (3) a decision of an inferior federal court binds the state court; and (4) if the decisions of the inferior federal courts are "numerous and consistent," the state court must follow their dictates.

A vast majority of state supreme courts that have addressed this issue have adopted the first approach. *See, e.g., Totemoff v. State*, 905 P.2d 954 (Alaska 1995), *cert. denied*, 517 U.S. 1244, 116 S.Ct. 2499, 135 L.Ed.2d 190 (1996); *Custom Microsystems, Inc. v. Blake*, 344 Ark. 536, 42 S.W.3d 453 (2001); *Hill v. Thomas*, 973 P.2d 1246 (Colo.1999), *affirmed*, 530 U.S. 703, 120 S.Ct. 2480, 147 L.Ed.2d 597 (2000); *Macon-Bibb County Hospital Authority v. National Treasury Employees Union*, 265 Ga. 557, 458 S.E.2d 95 (1995); *Indiana Department of Public Welfare v. Payne*, 622 N.E.2d 461 (Ind.1993); *Shell Oil Company v. Secretary, Revenue and Taxation*, 683 So.2d 1204 (La.1996); *ACE Property Casualty and Insurance Co. v. Commissioner of Revenue*, 437 Mass. 241, 770 N.E.2d 980 (2002); *In Re 3628 v. Street*, 262 Neb. 77, 628 N.W.2d 272 (2001); *Dewey v. R.J. Reynolds Tobacco Co.*, 121 N.J. 69, 577 A.2d 1239 (1990); *Custom Cabinet Factory of New York, Inc. v. Eighth Judicial District Court ex rel. County of Clark*, 119 Nev. 51, 62 P.3d 741 (2003); *Bogart v. CapRock Communications Corp.*, 69 P.3d 266 (Okla.2003); *State v. Austin*, 165 Vt. 389, 685 A.2d 1076 (1996); *Election Board of State of Wisconsin v. Wisconsin Manufacturers & Commerce*, 227 Wis.2d 650, 597 N.W.2d 721 (1999), *cert. denied*, 528 U.S. 969, 120 S.Ct. 408, 145 L.Ed.2d 318 (1999).

Hall, 851 A.2d at 863-864.

In short, while the Fourth Circuit indeed issued an opinion over 30 years ago on the purported discretionary nature of the FAA's express one-year statute of limitations, that decision has been heavily criticized for its failure to adhere to elementary linguistic and grammar rules, as well as rules of statutory interpretation. *See Sverdrup Corp. v. WHC Constructors Inc.*, 989 F.2d 148, 156 (4th Cir. 1993) (interpreting 9 U.S.C. § 9 to find it is permissive and does not always bar confirmation of an arbitration award beyond the one-year period); *but see Photopaint Technologies LLC v. Smartlens Corp.*, 335 F.3d 152 (2nd Cir. 2003) (holding that 9 U.S.C. § 9 contains a clear one-year limitation on the confirmation of arbitration awards, and finding the reasoning in *Sverdrup* have been subsequently contradicted by the Supreme Court); *see also Md. Transit Admin. v. Nat'l R.R. Passenger Corp.*, 372 F. Supp. 2d 478, 483-84 (D. Md. 2005) ("The court adheres to its view that *Sverdrup Corp.* is a candidate for reconsideration by the Fourth Circuit and, accordingly, shall dismiss without prejudice as untimely MTA's petition to enforce the first arbitration award."); *and see Climbzone, LLC v. Washington* Case No.: GJH-18-2732, Opinion of February 10, 2020 (D. Md. 2020) (noting: "since [the *Sverdrup* opinion], however, at least one federal Court of Appeals has interpreted an intervening Supreme Court decision to have rendered that reading untenable. In addition, former Judge Davis of this Court declined to follow the Fourth Circuit's decision in light of the conflict raised by the Second Circuit. This issue appears to remain unsettled.") (internal citations omitted); *and see FIA Card Servs., N.A. v. Gachiengu*, 571 F. Supp. 2d 799, 803-05 (S.D. Tex. 2008) (collecting cases).

In sum, the consensus, even among district courts within the Fourth Circuit, seems to be that the *Sverdrup* decision is wrong and has been overshadowed by the Supreme Court's decision in *Cortez Byrd Chips, Inc. v. Bill Harbert Construction Co.* 529 U.S. 193 (2000).² See *General Elec. Co. v. Anson Stamping Co. Inc.*, 426 F.Supp.2d 579 (W.D. Ky. 2006) (discussing at length—and agreeing with—the rationale behind the Second Circuit's conclusion that the plain language of the FAA imposes a one-year statute of limitations, and observing that “this extended discussion of *Photopaint* is offered, in part, because *Photopaint* is slowly being adopted by the lower federal courts.”).

Mercifully, this Court does not need to agonize over federal decisions, nor spend its time trying to reconcile the split among the federal courts on the question . . . because these federal decisions are not precedent that binds this state court at this moment. Rather, this Court can come to its own conclusion as to what the FAA's plain language

² The Second Circuit found that *Cortez Byrd* rendered the Fourth Circuit's reasoning incorrect:

Cortez Byrd considered whether the word “may” is used permissively in the context of the FAA's venue provisions, under which (whenever the parties do not specify otherwise) proceedings “may” be conducted in the district where the award was made. Although the Court held that the venue provisions are permissive, it expressly declined to rely on the permissiveness of “may” as a matter of plain meaning. Instead, *Cortez Byrd* relied on considerations particular to venue: the overall structure of the FAA (a narrow reading of the venue provisions would have created “needless tension” with other parts of the FAA, and the statutory history of the general federal venue provision, 28 U.S.C. § 112(a) (which was considerably more restrictive when the FAA was enacted, suggesting that Congress used “may” in § 9 to broaden venue under the FAA). And the Court rejected the idea that use of “may” in some provisions of the FAA (including § 9) — and not in others — carries definitive significance . . .

Photopaint Technologies LLC v. Smartlens Corp., 335 F.3d 152 (2nd Cir. 2003).

means, when it requires a party to apply for confirmation of any arbitration award “**at any time within one year after the award is made.**” 9 U.S.C. § 9 (emphasis added).

CDIC urges this Court to read and interpret the FAA as it is plainly written, to impose a one-year statute of limitations on parties who wish to apply for summary confirmation of an arbitration award. Pursuant to this clear construction, Regions Bank’s application—filed two years after the award at issue was made—was clearly untimely. This Court should dismiss Regions Bank’s petition.

CONCLUSION

For these reasons, the Court should grant CDIC’s motion to dismiss and dismiss Regions Bank’s Petition to Confirm Arbitration Award.

Respectfully submitted,

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Attorneys for Respondent

CDIC Development Company, LLC

STATE OF SOUTH CAROLINA) In Court of Common Pleas
) Second Judicial Circuit
COUNTY OF AIKEN) 2021-CP-02-01306

REGIONS BANK, An Alabama)
banking corporation,)
)
Plaintiff,)

vs.)

CDIC DEVELOPMENT COMPANY,)
LLC, a South Carolina limited)
liability company.)

Defendant.)

TRANSCRIPT OF RECORD

Aiken, South Carolina
January 31, 2022

B E F O R E:

The Honorable Courtney Clyburn Pope

A P P E A R A N C E S:

Mr. Johnathan Klett, Esquire
Attorney for Plaintiff

Mr. Ian Ford, Esquire
Ms. Ainsley Tillman, Esquire
Attorneys for Defendant

Recorded by: Court Monitor/ DCRP

Transcribed by: Lisa Carter, Court Reporter

I N D E X

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WITNESSES

PAGE

(NO WITNESSES INTRODUCED DURING HEARING)

(NO EXHIBITS INTRODUCED DURING HEARING)

1 THE CLERK: So the next will be 2021-CP-02-01306,
2 Regions Bank and Alabama Banking Corporation versus CDIC
3 Development Company. It's defendants motion to dismiss.

4 THE COURT: All right.

5 MR. FORD: Good morning, Your Honor.

6 THE COURT: Good morning, Mr. Ford. How are you?

7 MR. FORD: I'm well. I hope you're doing well in
8 Anderson. We're doing well in Charleston.

9 THE COURT: I'm in Aiken.

10 MR. FORD: Aiken, I'm sorry, the Upstate is all
11 the same to me, judge.

12 THE COURT: That's okay. All right. And Mr. Klett,
13 good morning to you, sir.

14 MR. KLETT: Good morning, Your Honor.

15 THE COURT: All right, Mr. Ford, your motion, sir.

16 MR. FORD: Thank you, Your Honor. And my colleague
17 Ainsley Tillman is here. She's gonna do the reply if we
18 have to delve into the case law, but I'm gonna, I'm gonna
19 muddle through the opening as best I can.

20 THE COURT: All right. Very good morning, Ms.
21 Tillman.

22 All right. Mr. Ford?

23 MR. FORD: May it please, the Court? I represent
24 CDIC and the Regions Bank has filed a petition with this
25 court to confirm an arbitration agreement, I'm sorry, an

1 arbitration award and we have filed a motion to dismiss
2 that and that's the motion and - my motion. And the basic
3 argument is that Regions Bank petition is barred by the one
4 year statute of limitation that applies here, so that's the
5 argument and they missed is our arguments.

6 Regions Bank, I don't think, denied they took longer
7 than a year. Their arguments said is that it's different,
8 different statute of limitations applies and that that
9 subsumes the agreement of the parties. So it's a, it's a
10 legal argument for Your Honor's decision which statute
11 limitations apply, but I don't believe they're disputes on
12 the dates and so on.

13 So the timeline, judge, is in June of 2019, the
14 arbitration award was entered. And that arbitration
15 agreement that the arbitration was under, incorporate the
16 Federal Arbitration Act. That's -- the cite is 9 U.S.C. §
17 9. So the Federal Arbitration Act was agreed to by the
18 parties in the contract. The Federal Arbitration Act says
19 that you have one year to confirm an arbitration. That's
20 what statute says. And that makes sense that they use
21 federal law, Your Honor. Regions Bank is an Alabama
22 Company. CDIC is a South Carolina Company, it makes sense
23 that it was incorporated federal law and Regions wrote that
24 contract. So it construed against them to the
25 accept (inaudible). Okay. So that was back in June of 2019 -

1 June of 2021 so almost two years later. Regions Bank filed
2 with this court to confirm the arbitration award. So that's
3 more than a year under the one year statute of limitations,
4 they missed that deadline. And it's as simple as that.
5 That's our motion to dismiss. My friend, Mr. Klett is going
6 to respond and he'll do so eloquently, but the gist of his
7 response as I understand it is that Regions Bank now wants
8 South Carolina, (inaudible) apply just to that. Just to
9 that statute of limitations. And that the through
10 Arbitration Act and all these things we've been laboring
11 under all this time don't apply to this one point. And
12 they'll make their argument, it's a complicated arguments,
13 and, and so on. But it's complicated because he's trying to
14 avoid a simple truth. And that simple truth is the Federal
15 Arbitration Act was specify by the party, everyone agreed
16 to it, everyone is functioning under it, and I don't mean
17 if unkindly, but they missed that one year deadline. So
18 that's our argument, Your Honor, and I'll stand down and
19 let Mr. Klett make his response and Ms. Tillman will
20 address the case law to the extent that Your Honor wants to
21 get into that.

22 Thank you.

23 THE COURT: Very good. Mr. Klett?

24 MR. KLETT: Yes, thank you, Your Honor. Jonathan
25 Klett for Regions Bank. I wouldn't say we're trying to

1 apply different statute of limitations. I would say there is
2 no statute of limitations confirmation of arbitration award
3 in South Carolina State Court. We brought this petition
4 pursuant to S.C. Code Ann. § 15-48-120, not the FAA. The
5 statute states "the court shall confirm an arbitration
6 award unless the party moves to vacate, correct or modify
7 the award." The defendant has not done that here. There's
8 no statute of limitations under this section and simply the
9 FAA does not apply for procedural confirmation of
10 arbitration award in South Carolina State Court. And as
11 recently as 2013 the South Carolina Supreme Court in
12 Henderson v. Summerville Ford-Mercury, held that when
13 there's a conflict between this statute, the state statute
14 and the FAA, the state statute applies for confirmation of
15 an arbitration award and even in that case, the agreement
16 was governed by the FAA. It stated that in the agreement.
17 And so I'd say there is no statute of limitations here.

18 And second, even if the FAA applied which it does not,
19 the Fourth Circuit has held that the statute that CDIC
20 tries to rely on is not a statute of limitations. It's
21 actually a permissive statute. And that was expressly held
22 in Sverdrup v. WHC Constructors Incspiritual and I cited a
23 litany of cases in brief holding the same. The defendant is
24 asking you to ignore South Carolina law, ignore Fourth
25 Circuit law and interpret a statute to their own benefit.

1 And I'd say based on the statutory requirements, we
2 respectfully request the motion should be denied, the
3 arbitration award confirmed, and judgment entered against
4 CDIC in favor of Regions.

5 Thank you, Your Honor.

6 THE COURT: Thank you, Mr. Klett. All right. Ms.
7 Tillman?

8 MS. TILLMAN: Yes, Your Honor, I'm Ainsley Tillman.
9 And we're not asking Your Honor to ignore South Carolina
10 laws. What we're asking Your Honor to do is to give effect
11 to the contractual rights and expectations of the parties.
12 The distinction between this case before this court and
13 that Henderson case that Regions Bank relies on is the
14 language of the contract. The Henderson v. Summerville
15 Ford-Mercury case had a contract at issue that was very
16 vague about what, what exactly the FAA would apply to
17 within the contract. And the court looked at that agreement
18 between those parties and found that, um, that the FAA
19 would only apply to the arbitration proceedings themselves.
20 That was what the parties in that case had agreed to. And
21 in this case, the contract between the party says that the
22 "FAA will apply to the enforcement and interpretation of
23 the arbitration clause within the contract itself." And the
24 arbitration clause which is -- I don't -- may I have
25 permission to share my screen? The language of the contract

1 is particularly important here.

2 (Whereupon, the court is trying to get the screen shared)

3 THE COURT: All right. There we go.

4 MS. TILLMAN: All right. You can see I've got, this
5 is the Exhibits to Regions Banks motions confirm the
6 arbitration award here. And this is I think it's Page 3 of
7 Exhibit 1, and it is the arbitration clause. And this is a
8 contract that was drafted by Regions Bank. And the clause
9 has arbitration and then it has a lot of words that
10 essentially means that the parties will agree to submit
11 disputes to arbitration, to binding arbitration. And then
12 this next section that I've highlighted here says, "the
13 judgment upon any award rendered by any arbitrator may be
14 entered in any court having jurisdiction" and that's what
15 Regions Bank has sought to do here. However, the final, the
16 final provision within the parties arbitration clause is
17 that Federal Arbitration Act vilified to construction
18 interpretation enforcement of this arbitration provision.
19 And so what that means, just based on the plain language of
20 this contract here is that the parties have selected the
21 Federal Arbitration Act as, as binding, and it includes
22 binding the confirmation of arbitration awards. And so --
23 so the Federal Arbitration Act - and that's different from
24 the Henderson case. The Henderson case that Regions Bank
25 cites had a different contract with much more fuzzy

1 provisions and it was being sought to be enforced by the
2 dealer in that case. And what we know is that arbitration
3 is a matter of consent and not coercion. And the
4 contractual rights and expectations of the parties should
5 trump this general rule. The general rule that Henderson
6 case talked about it whether state or federal law applies
7 to procedural versus substantive proceedings under an
8 arbitration proceedings. And our argument is, Your Honor,
9 that in instance as here where the parties have selected
10 the Federal Arbitration Act as binding, well, it does. And
11 I'll stop sharing my screen now. And the Federal
12 Arbitration Act has a very clear one year statute of
13 limitations. And we've cited that in our brief. It says,
14 "that where the parties have elected to have a court
15 enforce or confirm an arbitration award which we don't
16 dispute that the parties here did do. Then the prevailing
17 party in arbitration has one year after the award is made
18 to implied that the court or summary confirmation of that
19 award. And there is no dispute here that, ah, that Regions
20 Bank did not apply within one year. What Regions Bank wants
21 to argue is that the Fourth Circuit, which is severe
22 (inaudible) or something like that. It is a foreign
23 sounding name that I cannot undertake to pronounce here,
24 but it's cited in our brief. That, that decision which was
25 over 30 years ago, is binding on this court and that

1 decision is not binding on this court. And, in fact, the
2 steady majority of federal courts have decided that the
3 Sverdrup decision is outdated and it's wrong. Even federal
4 courts, district courts within the Fourth Circuit have -
5 and cited all of these cases within our brief - but Forth
6 Circuit District Courts have said that, the analysis
7 employed by the Sverdrup court doesn't make sense from a
8 grammatical standpoint and also under subsequent decisions
9 by the Supreme Court. And we've, we've cited all of these
10 cases. It's pretty complex, but the bottom line is that the
11 majority of federal courts have said that, hey, the plain
12 language of the Federal Arbitration Act says there's a one
13 year statute of limitations. And those words about one year
14 would be superfluous and wouldn't be given any of effect if
15 we followed the Fourth Circuit reasoning in that Sverdrup
16 opinion. And so we're not going to say the majority of
17 federal district courts, including in the Fourth Circuit.

18 And so because -- and we've all cited federal
19 decisions, the lower federal courts are not binding on this
20 court. Ultimately, the Supreme Court would weigh in here
21 which people seem to think that eventually the Supreme
22 Court will make a decision on what (inaudible) look into
23 what FAA means, then that would be binding on this court.
24 But lower Federal District Courts aren't opinions are not
25 binding. And so we are asking this court to leave the plain

1 language of the FAA, which we've cited in our memo which
2 clearly and unambiguously states that there is a one year
3 statute of limitations. We're asking Your Honor to apply
4 that and to dismiss Regions Bank motion for summary
5 confirmation of arbitration awards.

6 And thanks very much.

7 THE COURT: Thank you, Ms. Tillman. Mr. Klett, do
8 you have any response that you would like to offer?

9 MR. KLETT: Yeah. I would just like to reiterate
10 that this is a stipulated arbitration award between the
11 parties, so both parties came to an agreement as stipulated
12 to. We're not trying to pull a fast one here and this
13 enrolled with the court. Also, I think CDIC's counsel
14 did a good job of explaining that, but they're essentially
15 asking the court to make a decision against state court law
16 and against Fourth Circuit law, which I think would be
17 fully improper here. And that's all I have to say.

18 Thank you, Your Honor.

19 THE COURT: All right. Thank you, Mr. Klett. Ms.
20 Tillman and Mr. Ford, thank you both for your arguments. I
21 will get you all a decision before the end of the week.

22 MR. FORD: Thank you, Your Honor.

23 (Whereupon, Mr. Ford and the court had a conversation not
24 for the record)

25 MR. FORD: May we be excuse, judge?

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THE COURT: Have a good rest of the day.

MR. KLETT: Thank you, Your Honor.

MR. FORD: Thank you. You too.

(CONCLUSION OF HEARING HELD ON JANUARY 31, 2022)

