

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

AUG 31 2023
SC Court of Appeals

Letitia H. Verdin, Circuit Court Judge

Case No. 2022-CP-23-01995
Appellate Case No. 2022-001389

Lois Seaborn, Personal Representative
of the Estate of Nathaniel J. Colbert,Appellant,

v.

CPM Federal Credit Union,Respondent.

RESPONDENT'S FINAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

- I. **Whether Seaborn's issues One, Two, and Four were preserved for review by the Court.**
- II. **Whether the circuit court erred in granting CPM's Motion to Compel Arbitration.**

STATEMENT OF THE CASE

This appeal arises from the circuit court's granting of CPM's Motion to Dismiss and Compel Arbitration based on direct benefits estoppel and Appellant's standing in the shoes of the signatory.

CPM is a federal credit union with operations in Greenville, South Carolina. Mr. Colbert, the decedent, was a customer of CPM. Nathaniel J. Colbert (Mr. Colbert), established an account with CPM, which required him to execute a Membership Agreement. After execution, Mr. Colbert was bound by the applicable Membership Account Agreement and Disclosures ("Membership Agreement"). The Membership Agreement established that "[the] agreement is binding upon the account owner . . . and any other person claiming any right or interest under or through said parties." (R. p. 29). The agreement also included a clear and unequivocal arbitration provision, which states that it applies to any dispute "relating to or arising out of [the] account..." (R. p. 31).

On April 21, 2021, Mr. Colbert died. On April 4, 2022, Mr. Colbert's mother, Appellant Lois Seaborn ("Seaborn" or Appellant") filed a Complaint with Greenville County Court of Common Pleas against CPM.¹ (R. p. 4). Seaborn alleged in her Complaint that CPM "unlawfully and unjustly" withheld a "sum of money." (R. p. 6). Seaborn also asserted various causes of action relating to Mr. Colbert's account with CPM. (R. pp. 6-13). On or about June 10, 2022, Respondent

¹ While Seaborn is representing herself, "[a] pro se litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law." *State v. Burton*, 356 S.C. 259, 265, 589 S.E.2d 6, 9 (2003). This includes preserving arguments for any appeal and following.

filed a Motion to Dismiss and Compel Arbitration based on the express provisions of the Membership Agreement. (R. 15-18). The circuit court held a hearing on September 19, 2022 and granted CPM's Motion on September 21, 2022, ordering Seaborn to have the merits of her claim determined in the proper forum – arbitration. (R. 1-3).

STANDARD OF REVIEW

An appellate court reviews a trial court's ruling on a motion to compel arbitration *de novo*. *Simmons v. Benson Hyundai, LLC*, 438 S.C. 1, 4, 881 S.E.2d 646, 647 (Ct. App. 2022), *reh'g denied* (Mar. 25, 2022), *cert. denied* (Mar. 30, 2023). The Appellate court will not reverse the factual findings of the trial court regarding a motion to compel arbitration unless it is reasonably supported by the record. *Partain v. Upstate Auto. Grp.*, 386 S.C. 488, 491, 689 S.E.2d 602, 603 (2010). “[T]he party resisting arbitration bears the burden of proving that the claims at issue are unsuitable for arbitration.” *Hall v. Green Tree Servicing, LLC*, 413 S.C. 267, 271, 776 S.E.2d 91, 94 (Ct. App. 2015) (alteration in original) (quoting *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 379, 759 S.E.2d 727, 731 (2014)).

ARGUMENT

This appeal concerns Seaborn's attempt to receive a direct benefit of a customer's account agreement with CPM Federal Credit Union yet avoid being bound by the arbitration clause of the same agreement. Courts in South Carolina have repeatedly held that, the doctrine of direct benefits estoppel prevents a non-signatory from asserting that they are not bound by the arbitration clause of a contract from which they have brought an action to receive a direct benefit. *See, e.g., Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 288, 733 S.E.2d 597, 600 (Ct. App. 2012). Seaborn urges this Court to depart from this well-established doctrine. Under the facts of this case, Seaborn's argument finds no support in South Carolina law. Seaborn is not being denied the opportunity to

have her claims heard, but rather, she must bring the claims, if at all, in the proper forum – arbitration.

The Circuit Court correctly granted CPM's Motion to Compel Arbitration. The issue before the Court is whether Seaborn is equitably estopped from avoiding to the application of the clear and unequivocal arbitration provision provided in the Membership Agreement. CPM was and still is entitled to the order compelling Seaborn to arbitrate her claims against CPM because Seaborn, whether or not she is a signatory to the Membership Agreement, seeks to obtain a direct benefit from the agreement.

Furthermore, Appellant's first, second, and fourth arguments are not preserved for appellate review because they were neither raised to, nor ruled upon by the Circuit Court. *See* (R. p. 4-13). Neither the transcript of the hearing nor Seaborn's Complaint include any mention of Seaborn's new claims for Negligent Infliction of Emotional Distress, Intentional Infliction of Emotional Stress, or a claim that CPM's Conduct constitutes Outrageous Acts. *See* (R. pp, 4-13; 51-53).

I. Seaborn's First, Second, and Fourth Designated Issues on Appeal were Not Preserved for appellate review.

It is well established that, like here, an issue is not preserved when the record does not show the issue was raised to and ruled upon by the circuit court. *Zaman v. S.C. Bd. of Med. Examrs.*, 305 S.C. 281, 285, 408 S.E.2d 213, 215 (1991). Seaborn never previously made any of these arguments and, therefore, her arguments are not preserved for appellate review. *See S. C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007) (“[I]t is a litigant's duty to bring to the court's attention any perceived error, and the failure to do so amounts to a waiver of the alleged error.”); *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (“It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.”);

State v. Freiburger, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005) (explaining that an issue is not preserved for appeal where one ground is raised below and another ground is raised on appeal); *see also* Jean Hoefler Toal *et al.*, *Appellate Practice in South Carolina* 57 (2d ed. 2002).

In the case at bar, the complaint and arguments to the circuit court only address Seaborn's contention that as a nonsignatory to the Membership Agreement, she should not be bound by the Membership Agreement's arbitration provision. The record does not reflect that any of the various new arguments set forth in Seaborn's Brief, and this is the first time such arguments have been raised. As such, these arguments were not preserved and are not properly before this Court.

II. The Circuit Court Correctly Granted CPM's Motion Compel Arbitration Because Seaborn is Equitably Estopped From Avoiding the arbitration provision in the Membership Agreement.

The doctrine of equitable estoppel bars Seaborn from claiming she is not bound by the arbitration agreement. "[A] party can agree to submit to arbitration by means other than personally signing a contract containing an arbitration clause." *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 288, 733 S.E.2d 597, 600 (Ct. App. 2012) (quoting *Int'l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 416 (4th Cir. 2000)). Well-established common law principles establish that in certain circumstances a nonsignatory can "be bound by, an arbitration provision within a contract executed by other parties." *Id.* (quoting *Int'l Paper Co.*, 206 F.3d at 416-17). "A nonsignatory is estopped from refusing to comply with an arbitration clause 'when it receives a "direct benefit" from a contract containing an arbitration clause.'" *Pearson*, 400 S.C. at 290, 733 S.E.2d at 601 (quoting *Int'l Paper*, 206 F.3d at 418). "A benefit is direct if it flows directly from the agreement." *Wilson v. Willis*, 426 S.C. 326, 343, 827 S.E.2d 167, 176 (2019).

Direct benefits estoppel is a simple principle—a party may not sue to take benefits from a contract to which they are not a party and then argue that they may avoid the burdens of the contract because they are not a party. *Pearson*, 400 S.C. at 295, 733 S.E.2d at 604 ("[A] party may not rely

on the contract when it works to its advantage, and repudiate it when it works to its disadvantage.”). To allow otherwise would “both disregard equity and contravene the purposes underlying enactment of the [FAA].” *Id.* at 290, 733 S.E.2d at 601 (quoting *Int’l Paper Co.*, 206 F.3d 411 at 418).

A South Carolina court applied the direct benefits estoppel framework in *Pearson*, 400 S.C. at 295, 733 S.E.2d at 604. In *Pearson*, the Court found that a doctor was equitably estopped from asserting that, as a non-signatory, he was not bound by the arbitration provision in a contract between a hospital and a medical professional placement company. The court reasoned that even though the doctor was a non-signatory to the contract “he received a benefit due to the contract, in that he was able to work at the [h]ospital and receive payment for his work.” *Pearson*, 400 S.C. at 296, 733 S.E.2d at 605. The court held that since doctor's complaint showed that he was seeking a benefit from enforcing the hospital's contract while simultaneously attempting to avoid the arbitration provision, the doctor was barred by the application of equitable estoppel. *Id.*

Similarly, in *International Paper Co.*, International Paper purchased an industrial saw from Wood Systems. *Int’l Paper Co.*, 206 F.3d at 411, 414. The saw was manufactured pursuant to a contract between Wood Systems and Schwabedissen, which contained an arbitration clause. *Id.* International Paper, as a non-signatory to the contract, sued Schwabedissen over the saws defectiveness for breach of the terms of the warranties in the contract. *Id.* at 413-14. The Fourth Circuit found that International Paper was equitably estopped from avoiding being subject to the arbitration clause because International Paper could not both accept the contract benefits and reject the burden of the arbitration clause. *Id.* at 414, 416-19.

Here, looking at Seaborn as a nonsignatory in the Membership Agreement between Seaborn and CPM, Seaborn received a benefit due to the claims asserted in Seaborn’s Complaint. Seaborn has to rely on the Membership Agreement between Seaborn and CPM to have a breach

of contract and negligence claim against CPM. Similar to *Pearson*, because the Membership Agreement contains an arbitration provision, Seaborn should not be allowed to hold CPM to one part of the contract to allege claims arising out of alleged negligence and breach of contract, but avoid the application and enforcement of the Membership Agreement's arbitration provision.

The allegations of the Complaint Seaborn has brought all arise from the Membership Agreement which established the decedent's account and the funds contained in it originally, which Seaborn claims to be entitled to receive. When Seaborn attempts to enforce, and specifically assert a claim of breach of contract, she seeks to take direct benefit from the Membership Agreement. When Seaborn seeks to take said direct benefit of the Membership Agreement, and enforce the terms of the contract, she must be bound by all of the terms of the agreement including the arbitration provision, under South Carolina case law. The Membership Agreement clearly and unequivocally states that "[t]his agreement is binding upon the account owner and all parties hereto together with their heirs, successors, assigns, and any other person claiming any right to interest under or through said parties." (R. 29). "'To allow [a plaintiff] to claim the benefit of the contract and simultaneously avoid its burdens would both disregard equity and contravene the purposes underlying enactment of the Arbitration Act.'" *Pearson*, 400 S.C. at 290, 733 S.E.2d at 601 (quoting *Int'l Paper*, 206 F.3d at 418). Therefore, the circuit court properly compelled Seaborn to arbitrate her claims on the grounds that she was equitably estopped from avoiding the application and enforcement of the arbitration provision in the Membership Agreement.

CONCLUSION

Therefore, CPM respectfully requests this Court affirm the circuit court's order compelling Seaborn to arbitrate her claims against CPM.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned certifies that this brief complies with Rule 211(b), SCACR.

Respectfully submitted,

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