

State of South Carolina)	IN THE COURT OF COMMON PLEAS
)	
County of Anderson)	Case No.: 2022-CP-04-02159
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Skylar Blume, Virgil Dowis, Rhi Greer,)	
Jonathan Hudson, Natalie Mann, Mya)	
Ourada, Braden Terrill, & Aneil Tripathi,)	
)	
Plaintiffs,)	
)	
v.)	
)	
Starbucks Corporation & Melissa Morris,)	
)	
Defendants.)	
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ORDER

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Sep 22 2023

SC Court of Appeals

This case was brought by Plaintiffs, eight current or former employees of a Starbucks store in Anderson, South Carolina, asserting claims for defamation and abuse of process against Defendants Starbucks Corporation (“Starbucks”) and Melissa Morris (“Morris”) (Starbucks and Morris collectively the “Defendants”). On April 7, 2023, Starbucks filed a motion to dismiss or compel arbitration pursuant to an arbitration agreement between Plaintiffs and Starbucks. Morris joined in this Motion on June 2, 2023. The Court received memoranda in support of the motion from Starbucks Corporation and Morris, a memorandum in opposition from Plaintiffs, and a reply memorandum from Starbucks. The Court also heard oral arguments on June 14, 2023. Based on the parties’ submissions, arguments of counsel, and for the reasons set forth below, Defendants’ motions are **DENIED**.

Defendants have waived the right to compel arbitration. Defendants waited several months to seek to arbitrate Plaintiffs’ claims, and in the meantime have taken advantage of this Court’s processes by filing a motion to dismiss on another ground and a motion to transfer this case to the Business Court. Only after Defendants’ motion to transfer this case to the Business Court was denied did they file the present motion seeking arbitration. This conduct constitutes waiver because

it creates a “reasonable inference . . .that the [party] does not stand upon its right.” *Lawrimore*, 276 S.C. at 118, 276 S.E. 2d at 299 (S.C. 1981) (quoting *Williams v. Philadelphia Life Ins. Co.*, 112 S.C. 436, 447, 100 S.E. 157, 160 (S.C. 1919)). *See also Morgan v. Sundance, Inc.*, 142 S. Ct. 1708 (2022) (holding that courts must apply to arbitration agreements the same test that applies to waiver of other contractual rights or defenses).

Even if Defendants had not waived their right to compel arbitration, the Court would deny their motions because Plaintiffs’ claims are not arbitrable under the agreement. The agreement only covers claims “related” to “employment.” But here, Plaintiffs do not pursue an employment claim, nor do their claims turn on their employment status at Starbucks. As the South Carolina Court of Appeals has held, even the most broadly worded arbitration agreement between an employee and employer does not apply to claims that “do not truly relate to [the employee’s] employment.” *Davis v. ISCO Industries, Inc.*, 434 S.C. 488, 499, 864 S.E.2d 391, 397 (S.C. Ct. App. 2021). Similarly, the South Carolina Supreme Court has held that arbitration agreements do not apply to “wholly unexpected tortious conduct” that a party to the agreement “could not possibly have foreseen” in the course of “normal business dealings.” *Aiken v. World Finance Corp. of S.C.*, 373 S.C. 144, 151, 644 S.E.2d 705, 709 (S.C. 2007). I find that when Plaintiffs started working at Starbucks, they could not have anticipated that the claims asserted in this action would be subject to arbitration.

For the first time in reply, Starbucks claims that a delegation clause in the arbitration agreement requires the Court to allow an arbitrator to decide these issues. The Court disagrees. By raising this argument for the first time on reply, Starbucks waived this argument. *See Bochette v. Bochette*, 300 S.C. 109, 112, 386 S.E. 2d 475, 577 (S.C. Ct. App. 1989) (holding that a litigant “may not use either oral argument or the reply brief as a vehicle to argue issues not argued” in the

initial brief). Even if Starbucks had properly raised this argument, “the issue of waiver of arbitration through litigation is one for the court to decide rather than arbitrators.” *Samuel v. Schumacher Homes of S.C.*, Unpublished Opinion No. 2022-UP-148, 2022 BL99863 (S.C. Ct. App. Mar. 23, 2022).

Moreover, the agreement does not “clear[ly] and unmistakabl[y]” delegate questions of arbitrability to an arbitrator. *Doe v. TCSC, LLC*, 430 S.C. 602, 608, 846 S.E.2d 874, 877 (S.C. Ct. App. 2020). That is because “the arbitration agreement excludes ‘(c) actions to enforce this Agreement, compel arbitration, [or] compel arbitration.’” *Wilson v. Starbucks Corp.*, 385 F. Supp. 3d 557, 561 (E.D. Ky. 2019). As the adjudication of the present motion constitutes a “civil action to compel arbitration,” it is excluded from the arbitration agreement. *Id.* (quotation marks omitted). As such, this Court possesses the authority to determine whether the claims asserted in the Complaint are subject to and governed by the Arbitration Agreement.

Accordingly, Defendants’ motions to dismiss or compel arbitration are **DENIED**.

IT IS SO ORDERED.

R. Lawton McIntosh
Tenth Judicial Circuit

August _____, 2023

Anderson, South Carolina



Anderson Common Pleas

Case Caption: Skylar Blume , plaintiff, et al VS Melissa Morris , defendant, et al

Case Number: 2022CP0402159

Type: Order/Dismissal

S/R. LAWTON McINTOSH

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