

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Appeal No. 23-001761
Court of Appeals Opinion No. 6004
(Filed July 26, 2023; Rehearing Denied October 11, 2023)

Joseph Abruzzo, Petitioner,

v.

Bravo Media Productions LLC; Haymaker
Media, Inc.; NBCUniversal Media, LLC;
Comcast Corporation; Craig Conover; Chelsea
Meissner; and Madison LeCroy, Respondents.

**RESPONDENTS' RETURN IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI**

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Pursuant to Rule 242, SCACR, Respondents Bravo Media Productions LLC, Haymaker Media, Inc., NBCUniversal Media, LLC, Comcast Corporation, Craig Conover, Chelsea Meissner, and Madison LeCroy, Defendants below (jointly “Defendants” or “Respondents”), respond in opposition to Petitioner Joseph Abruzzo’s (“Petitioner” or “Abruzzo”), Petition for Writ of Certiorari seeking review of the Court of Appeals’ Opinion No. 6004, filed July 26, 2023 (Appx. 508-515), and the Order denying his Petition for Rehearing *En Banc*. (Appx. 522). Petitioner has not raised any novel question of law or constitutional issue. Contrary to Petitioner’s legally unsupportable allegations, the Court of Appeals’ unanimous Opinion is not in conflict with any prior decision of this Court. Petitioner’s Petition is little more than another chapter in his ongoing effort to harass Respondents and cause them to incur litigation costs in the hopes of extracting a multi-million dollar settlement from them in what is, at best, a frivolous lawsuit arising out of his regret of his decision to voluntarily and knowingly appear on a popular reality television show. The Court of Appeals correctly held that Petitioner failed to specifically challenge the Arbitration Agreement separate and apart from the larger Appearance Release, Voluntary Participation, and Arbitration Agreement.

QUESTION PRESENTED FOR REVIEW

- I. Did the Court of Appeals properly reverse the Circuit Court and remand for an order compelling arbitration?

PROCEDURAL BACKGROUND

Petitioner filed a Complaint and Summons on January 28, 2020 (“Complaint”) in the Charleston County Court of Common Pleas, alleging ten causes of action against Defendants arising out of his appearance on *Southern Charm* (“the Program” or “*Southern Charm*”). (R. 7-37). On May 12, 2020, Defendants filed a Motion to Dismiss Plaintiff’s Complaint and for Order Compelling Arbitration and Memorandum in Support. (R. 38-92).

In response, on June 19, 2020, Petitioner filed a 50-page Amended Complaint, which re-alleged his earlier causes of action and added seven additional, and often duplicative, purported causes of action entitled: Wrongful Appropriation of Personality/Infringement on the Right of Publicity; Wrongful Publicizing of Private Affairs; Public Nuisance; Private Nuisance; Fraudulent Inducement of Arbitration Agreement/Unconscionability of Arbitration Agreement; Fraudulent Inducement of Release/Unconscionability of Release; and, Rescission of “Appearance Release, Voluntary Participation, and Arbitration Agreement,” seeking damages in excess of \$10,000,000, treble damages and costs and fees. (R. 94-143). Petitioner also filed a one-paragraph response to Defendants’ Motion to Dismiss. (R. 93).

Defendants filed a Motion to Dismiss Plaintiff’s Amended Complaint and for Order Compelling Arbitration on June 22, 2020, (R. 144-162), and a corresponding Memorandum in Support on June 29, 2020 (“Memo in Support”). (R. 163-250). Petitioner filed a Memorandum in Opposition to Defendants’ Motion to Dismiss Amended Complaint on June 29, 2020. (R. 251-285). The parties were heard by the Honorable Bentley Price the following day, on June 30, 2020.

Judge Price issued a Form 4 Order on July 6, 2020, (R. 4-6), ruling Defendants’ “motion to Dismiss and Motion for order compelling arbitration are denied.” Defendants first requested that the Circuit Court issue a detailed written order setting forth the reasons for its denial, (R. 334), which Petitioner vociferously opposed. (R. 335-336). Defendants then timely moved for Reconsideration pursuant to Rule 59(e), SCRCP, (R. 286-311), which the Court denied, again issuing a Form 4 Order on July 22, 2020 that simply denied relief without a hearing. (R. 1-3).

Respondents timely appealed to the Court of Appeals. After extensive briefing and oral argument in which Respondents argued, among other things, that Petitioner failed to effectively challenge the enforceability of the Arbitration Agreement separate and apart from the larger

Agreement, (Appx. 376-377, 386, 396-398, 483, 487-488, 492-493), the Court of Appeals reversed the Circuit Court and remanded for an order compelling arbitration. The Court of Appeals found that Petitioner failed to challenge the Arbitration Agreement separate and apart from the larger Agreement, contrary to the rule set forth in *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395 (1967). (Appx. 508-515). Abruzzo's Petition for Rehearing, (Appx. 516-518), was denied on October 11, 2023. (Appx. 522).

BACKGROUND FACTS

Abruzzo is a well-educated, sophisticated, widely known, and self-proclaimed successful Florida politician and consultant, who resides in Florida and, at all times relevant to this dispute, was a director for public relations for a major Florida law firm. (R. 96-100). The Amended Complaint details at length Petitioner's education, extensive background in public office in Florida and work in government relations, while employed at a major Florida law firm. (R 96-102).

Petitioner alleges that the long-running hit reality television show, *Southern Charm*, has aired nationally and internationally since 2014. (R. 102). According to Petitioner's Amended Complaint, *Southern Charm* features the professional and personal lives of its cast members "and reveals a world of exclusivity, money and scandal." (R. 102). In the fall of 2018, Abruzzo began pursuing a romantic relationship with Kathryn Dennis ("Dennis"), one of the main cast members on the *Southern Charm*, with full knowledge that Season Six of the Program was being filmed at the time, as "Dennis almost immediately began imploring [Petitioner] Abruzzo to be on the show." (R. 104). Abruzzo alleges, without foundation, that, prior to and following filming, certain verbal representations were made to him about how he would be portrayed on the Program. (R. 105-106).

Abruzzo has admitted that, prior to being filmed for the Program, he was given and signed a three-page Appearance Release, Voluntary Participation, and Arbitration Agreement. (R. 153-

156, 159). Although Abruzzo initially alleged that he was presented with a document for his signature, “turned to the third page,” (R. 21), after Defendants pointed out in their first Motion to Dismiss and Supporting Memorandum that the Arbitration Agreement was on the signature page, Abruzzo changed his story to allege that he was presented with a “partial piece of paper with only the signature portion of the page visible.” Abruzzo alleges he nonetheless signed the Appearance Release, Voluntary Participation, and Arbitration Agreement without reading it based on purported representations by the Corporate Defendants and/or their agents that the document “simply authorized filming of [Abruzzo and Dennis’s] dinner.” (R. 105-106). Abruzzo asserts that he felt pressure from both Dennis and the Corporate Defendants “to participate in the filming of the dinner” and “to begin filming” because “it would be a great thing for” his then girlfriend Dennis. (R. 104, 106). The Amended Complaint alleges that Defendants did not “state, suggest, or imply that he would be portrayed in a negative and/or false light.” (R. 105, 107-109).

Abruzzo alleges that the relationship between himself and Dennis ended in early 2019, and that the Corporate Defendants subsequently defamed him, through several statements by cast members of *Southern Charm* about his public reputation and public conduct, which were included in two episodes of *Southern Charm*. Abruzzo alleges that all of the purportedly false statements about him were made on *Southern Charm* either in order to further a storyline and “create dramatic material for consumption by the viewers of the ‘reality’ show Southern Charm in the United States and worldwide,” or “to defame, disparage, or otherwise harm the Plaintiff.” (R. 107-113). As a result of these statements and other actions alleged to have been taken by Defendants, Abruzzo filed his Amended Complaint in South Carolina state court.

A. The Appearance Release, Voluntary Participation, and Arbitration Agreement.

Petitioner concedes that, on October 30, 2018, prior to being filmed, he signed the Appearance Release, Voluntary Participation, and Arbitration Agreement. (R. 153-155). Pursuant to the Appearance Release, Voluntary Participation, and Arbitration Agreement, Abruzzo agreed to be a voluntary participant “[i]n exchange for the opportunity to be part of the program currently titled ‘Southern Charm’ (the ‘Program’).” (R. 153).

The Appearance Release, Voluntary Participation and Arbitration Agreement contained several notices, consents, and assumptions of the risk that are broken out in separately numbered paragraphs. For example, in Paragraph 6 of the Appearance Release, Voluntary Participation, and Arbitration Agreement, Abruzzo agreed that he would “not be paid for any and all of the rights listed in this Agreement and waive any right I may have to any compensation. I acknowledge and agree that a significant element of the consideration I am receiving under this Agreement is the opportunity for publicity that I will receive if Producer includes the Materials in the Program ...” (R. 204).

In Paragraph 8, Abruzzo agreed that he understood “that I or other parties may communicate private, factual, or fictional information about myself that I might find humiliating or embarrassing or that is defamatory, disparaging or unfavorable and that the depiction of such information may portray me in a false light. I consent to the inclusion of this information in the Program and the exploitation of the Materials even to the extent such inclusion might otherwise constitute an actionable tort.” In addition, in Paragraph 9, Petitioner acknowledged that, “[f]or dramatic or creative purposes, Producer and Network may make misrepresentations to me related to any and all topics, prior to and during the course of my participation. I consent to and assume

all risks of such acts and omissions regardless of whether they may infringe upon my rights or give rise to a claim.” (R. 204).

In Paragraph 12 of the Appearance Release, Voluntary Participation, and Arbitration Agreement, entitled “**CONFIDENTIALITY AND PUBLICITY**,” Abruzzo promised he would not disclose any information or materials about Producer, the Network this Agreement, the Program, its participants, location(s), events and outcomes, that I learn from my Program participation (collectively, the ‘Confidential Information’), unless such Confidential Information is specifically disclosed in the Program exhibition, if ever.” It also provides that “[a]ny breach by me of any of these confidentiality and publicity provisions would cause Producer and Network irreparable injury and damage that cannot be reasonably or adequately compensated by damages in an action at law. I agree that Producer and Network will be entitled to injunctive and other equitable relief (without posting bond) to prevent or cure any such breach or threatened breach.” Acknowledging the difficulty of proving damages for such a breach, Abruzzo agreed “to pay Producer and Network the sum of \$500,000 per breach plus disgorgement of any income that I may receive in connection with any such breach as liquidated damages.” (R. 205).

Paragraph 17 of the Appearance Release, Voluntary Participation, and Arbitration Agreement, entitled “**RELEASE, AGREEMENT NOT TO SUE AND INDEMNITY**,” provides, in pertinent part and as bolded in the original, as follows:

To the maximum extent permitted by law, I ... agree to release from liability, never sue, and bring no proceedings of any kind against Producer, Network, and/or any of their parents, subsidiaries, assignees, licensees, affiliates or anyone associated with the Program (the “Released Parties”) for any claims, actions, damages, losses, costs, expenses or causes of action whatsoever that in any way relate to this Agreement, my participation in the production of the Program, or the creation, use, or exhibition of the Materials, the Program or the Promotions, on any legal theory (including without limitation, failure to adequately compensate me, infliction of emotional distress, personal injury, rights of privacy and publicity, defamation, or false light), regardless of whether caused by the negligence or willful misconduct of the Released Parties

(collectively, the “Released Claims”). I will defend and indemnify the Released Parties from any Released Claims and any breach or alleged breach by me (including breaches by me of this paragraph 17) relating to this Agreement. I shall be liable for any attorney fees and costs incurred by the released Parties in connection with any claim or lawsuit I may bring in violation of this Agreement.” (R. 205).

Paragraph 19 of the Appearance Release, Voluntary Participation, and Arbitration Agreement contains the Arbitration Agreement, is entitled “**MEDIATION & ARBITRATION,**” and provides, in pertinent part, as bolded and capitalized in the original, as follows:

WHERE ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT ARISES, THE PARTIES AGREE TO FIRST TRY TO RESOLVE SUCH DISPUTE THROUGH CONFIDENTIAL MEDIATION. IF MEDIATION IS UNSUCCESSFUL, THEN ALL DISPUTES, INCLUDING THE SCOPE OR APPLICABILITY OF THIS AGREEMENT TO ARBITRATE, SHALL BE RESOLVED BY FINAL AND BINDING ARBITRATION ADMINISTERED BY JAMS OR ITS SUCCESSOR (“JAMS”) IN ACCORDANCE WITH ITS STREAMLINED ARBITRATION RULES AND PROCEDURES (COLLECTIVELY, “JAMS RULES,” HARD COPIES PROVIDED UPON REQUEST) ALL SUCH PROCEEDINGS WILL BE CONDUCTED IN THE CITY OF NEW YORK. MY AGREEMENT TO MEDIATE ANY AND ALL DISPUTES SHALL EXTEND TO THE RELEASED PARTIES. I AGREE THAT GIVEN THE UNIQUE NATURE OF THE ENTERTAINMENT INDUSTRY, AND THE IRREPARABLE DAMAGE TO PRODUCER, NETWORK AND THEIR LICENSEES THAT WOULD RESULT FROM DELAYING OR PREVENTING THE EXHIBITION OF ANY PROGRAM PRODUCED HEREUNDER, I MAY NOT SEEK OR OBTAIN INJUNCTIVE RELIEF IN CONNECTION WITH THIS AGREEMENT. (R. 206).

Paragraph 22 provides, in pertinent part, that:

This is the entire agreement between Producer and me, and it supersedes all prior oral or written communications. I am not relying on any promise or statement, express or implied, that is not contained in this Agreement. The illegality, invalidity or unenforceability of any specific provision shall in no way affect the remainder of this Agreement.” (R. 206).

Immediately above the signature line is the following, in which Abruzzo agreed, in print large enough to be read in the photograph of his signature and as capitalized, bolded and underlined in the original:

I HAVE HAD AMPLE OPPORTUNITY TO READ THIS ENTIRE AGREEMENT, HAD AN OPPORTUNITY TO REVIEW THIS AGREEMENT WITH AN

ATTORNEY OF MY CHOICE, AND HAVE IN FACT READ THIS AGREEMENT. I UNDERSTAND THAT I AM GIVING UP LEGAL RIGHTS IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, MY RIGHT TO FILE A LAWSUIT IN COURT OR TO BRING A CLAIM IN CONNECTION WITH THIS AGREEMENT. (R. 206, 195, 210).

B. Petitioner's Appearance on *Southern Charm*.

Abruzzo appeared briefly on an episode of Season Six of *Southern Charm* as a result of his pursuit of Dennis, an original cast member of the Program, during filming for that season. The Defendants were not involved with Dennis's decision to begin dating Abruzzo. Dennis was free to date whomever she chose, and Abruzzo could have pursued a romantic relationship with Dennis without appearing on *Southern Charm*. (R. 157). Abruzzo knew, prior to traveling to Charleston, South Carolina, that he was pursuing a relationship with a reality television cast member during active filming, (R. 104), and that his dinner date with Dennis would be filmed. Indeed, Petitioner alleges he had input, through Dennis, into the circumstances in which he was willing to be filmed and had declined to participate in two other possible filmed outings, one being a "guy's trip" and the other a dinner date with Dennis in a busy restaurant. (R. 104-105, 157).

Prior to filming, the Appearance Release, Voluntary Participation, and Arbitration Agreement was handed to Petitioner turned to the first page, and he took time to review each of the three pages of the Agreement. In fact, Morgan Miller, who served as the Executive Producer for Season Six of *Southern Charm*, attested that Petitioner asked a question about Paragraph 5 of the Appearance Release, Voluntary Participation, and Arbitration Agreement—concerning whether the voluntary participant is or will become a candidate for public office—which is located on the first page of Appearance Release, Voluntary Participation, and Arbitration Agreement. (R. 157-158). That question was answered to Petitioner's satisfaction. If Abruzzo had raised any other issues with the Appearance Release, Voluntary Participation, and Arbitration Agreement,

they would have been addressed prior to filming. If Abruzzo had declined to sign the Appearance Release, Voluntary Participation, and Arbitration Agreement, his dinner date with Dennis simply would not have been filmed. (R. 158). Abruzzo seemed eager to appear on *Southern Charm*, and freely chose to sign the Appearance Release, Voluntary Participation, and Arbitration Agreement, which was documented with a photograph. (R. 157-158, 159). It is evident from the photograph that Petitioner was aware that the document he was holding had more than one page and it is indisputable that he could see, at a minimum, all of the third page. The Arbitration Agreement is at the top of the third page. (R. 159, 206, 210).

ARGUMENT

Petitioner's main complaint appears to be that the Court of Appeals did not address each of his arguments specifically. However, an appellate court is not required to respond to every argument raised by a party when its ruling on an issue is dispositive of the appeal. *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999); Appx 515. This is particularly true of patently meritless arguments raised by Petitioner, including (but not limited to) that the entire three-page Appearance Release, Voluntary Participation, and Arbitration Agreement constitutes the Arbitration Agreement; that the Arbitration Agreement in Paragraph 19 is unconscionable; and that the Arbitration Agreement was procured through fraudulent means. The Court of Appeals correctly ruled that Petitioner failed to challenge the Arbitration Agreement separate from the Appearance Release, Voluntary Participation, and Arbitration Agreement. That issue is dispositive, and Petitioner has failed to raise any argument that warrants this Court's further review. His Petition should be denied.

I. Petitioner failed to challenge the Arbitration Agreement separate and apart from the larger Appearance Release, Voluntary Participation, and Arbitration Agreement.

The Court of Appeals correctly held that Petitioner did not challenge the Arbitration Agreement separate and apart from the larger Appearance Release, Voluntary Participation, and Arbitration Agreement. While Petitioner's Fifteenth Cause of Action is *titled* "Fraudulent Inducement of Arbitration Agreement/Unconscionability of Arbitration Agreement," (R. 129-133), his actual allegations are directed to the Appearance Release, Voluntary Participation, and Arbitration Agreement as a whole. In fact, a paragraph-by-paragraph comparison of that cause of action to his Sixteenth Cause of Action (challenging the Release) (R. 133-137), and his Seventeenth Cause of Action (seeking rescission of the entire Appearance Release, Voluntary Participation, and Arbitration Agreement) (R. 137-142), shows that they all are substantively identical. (R 134-135, 205). In other words, Petitioner's challenge to the Arbitration Agreement is the same as and dependent on his challenge of the separate Release provision and of the entire Appearance Release, Voluntary Participation, and Arbitration Agreement.

Specifically, Petitioner's allegations of fraudulent misrepresentations go to the larger Appearance Release, Voluntary Participation, and Arbitration Agreement, but not discretely or separately to the Arbitration Agreement. Paragraphs 170-173 repeat Petitioner's baseless and demonstrably false assertion that he was handed the entire Appearance Release, Voluntary Participation, and Arbitration Agreement with only the signature block showing, but does not separately address the Arbitration Agreement in any way, other than by substituting by rote the phrase "Arbitration Agreement" for the larger Appearance Release, Voluntary Participation, and Arbitration Agreement. The same is true of his allegations that the Arbitration Agreement was a contract of adhesion, and that it is procedurally and/or substantively unconscionable. Tellingly,

Paragraphs 178-181, 183, and part of 182 of the Amended Complaint recite provisions in the larger Appearance Release, Voluntary Participation, and Arbitration Agreement that do not appear anywhere in the Arbitration Agreement. Paragraphs 179 and 183 of the Amended Complaint argue that the Arbitration Agreement is not only intertwined with the Release but also with the “remainder of the document” such that they cannot be separated.¹

In short, Petitioner’s challenge to the Arbitration Agreement is entirely dependent on his argument that the entire Appearance Release, Voluntary Participation, and Arbitration Agreement constitutes the Arbitration Agreement, which is meritless for the reasons set forth in Section II below. The Court of Appeals correctly concluded that he has never challenged the validity of the Arbitration Agreement separate and apart from the larger Appearance Release, Voluntary Participation, and Arbitration Agreement, which is required under well-settled case law. *Prima Paint*, 388 U.S. at 403-404; *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 540, 542 S.E.2d 360, 364 (2001) (“Under the FAA, an arbitration clause is separable from the contract in which it is embedded and the issue of its validity is distinct from the substantive validity of the contract as a whole”).

In this respect, Petitioner completely misconstrues this Court’s decision in *Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 879 S.E.2d 746 (2022). There, this Court affirmed the Court of Appeals’ decision that “the circuit court’s analysis ran afoul of the *Prima Paint* doctrine as it relied on the oppressive nature of terms outside of the arbitration provisions,” 437 S.C. at 607-609, 879 S.E.2d at 753-754, the tactic repeatedly and erroneously employed by Petitioner in

¹ As is the case with his Amended Complaint, Abruzzo’s arguments in his Brief to the Court of Appeals on these issues were directed at the Appearance Release, Voluntary Participation, and Arbitration Agreement as a whole, and not specifically to the Arbitration Agreement separated out. (Appx. 436-462, 516-518).

this case. Here, as was the case in *Damico*, “there is a distinct section of the [larger agreement] that sets forth the entirety of the arbitration agreement,” making it a “standalone arbitration provision.” 437 S.C. at 610, 879 S.E.2d at 754. It was only after separating the arbitration agreement out from the larger agreement that this Court ruled that the arbitration agreement in *Damico*—which consisted of ten separately-numbered paragraphs—was substantively unconscionable. 437 S.C. at 615-617, 879 S.E.2d at 757. None of the elements that this Court found unconscionable in *Damico*, however, appear in the Arbitration Agreement under consideration here.

Petitioner’s reliance on *Sanders v. Savannah Highway Auto. Co.*, 2023 S.C. LEXIS 154, 892 S.E.2d 112 (2023), is also misplaced. There, the question was not whether an enforceable agreement to arbitrate was formed between plaintiff and the automobile dealership—it was—but rather, whether the dealership retained the right to demand arbitration after the retail installment sales contract, in which the arbitration agreement was contained, had been assigned to another commercial entity. The fact that the *Sanders* Court cited *Granite Rock Co. v. Int’l Bhd. of Teamsters*, 561 U.S. 287, 299-300 (2010), for the proposition that arbitration is a matter of consent is of no moment here. There is no serious dispute that Petitioner—a sophisticated, well-educated lobbyist at a prominent law firm—consented to the Arbitration Agreement. His argument that he signed a blank signature line relying on alleged representations and assurances, without taking time to read the document, is specious and belied by evidence adduced in this case. (R. 157-159). In addition, Petitioner’s fraudulent misrepresentation argument fails for the reasons set forth below in Section III.

Because the Court of Appeals correctly found, in accordance with this Court’s precedent, that Petitioner failed to challenge the Arbitration Agreement separate from the larger Appearance

Release, Voluntary Participation, and Arbitration Agreement, there is no need for further review and this Court should deny the Petition on this basis alone.

II. The Arbitration Agreement is not comprised of the entire Appearance Release, Voluntary Participation, and Arbitration Agreement.

As he did below, Petitioner continues to argue—incorrectly—that the entire Appearance Release, Voluntary Participation, and Arbitration Agreement constitutes the Arbitration Agreement. Petitioner’s continued reliance on *Smith v. D.R. Horton, Inc.*, 417 S.C. 42, 790 S.E.2d 1 (2016), misses the mark, as that case is readily and factually distinguishable. There, the arbitration agreement was embedded as a subparagraph in a comprehensive warranty paragraph that this Court construed as a single provision for several reasons, including that the text of the arbitration agreement was physically intertwined with the text of the larger warranty provision, all of those sections addressed the buyer’s remedies, and they contained “*numerous cross-references* to one another, intertwining the subparagraphs so as to constitute a single provision.” 417 S.C. at 48, 790 S.E.2d at 4 (emphasis added); *see also Smith v. D.R. Horton, Inc.*, 403 S.C. 10, 13-14, 742 S.E.2d 37, 39 (Ct. App. 2013) (describing in detail the various subparagraphs of the warranty paragraph). Here, in contrast, the various provisions Petitioner argues are “intertwined” with the Arbitration Agreement are set forth in separate paragraphs of the Appearance Release, Voluntary Participation, and Arbitration Agreement, and address entirely different and unrelated topics. The sole reference in the Arbitration Agreement to any other provision of the larger Agreement is a cross reference to the definition of the term “Released Parties.” The fact that the Arbitration Agreement employs the defined term “Released Parties”, first used and defined in the release provision, rather than relist those individuals and entities again in the Arbitration Agreement, does not render those provisions “intertwined” under South Carolina law. *See One Belle Hall Prop. Owners Ass’n v. Trammell Crow Residential Co.*, 418

S.C. 51, 64, 791 S.E.2d 286, 293 (Ct. App. 2016) (finding the lower court “erred in finding the arbitration agreement was not separable from other allegedly unconscionable provisions that precede the arbitration agreement” in longer warranty provision). Here, by its terms and operation, the Arbitration Agreement stands on its own and must be evaluated separate and apart from the rest of the Agreement. *See, e.g., Munoz*, 343 S.C. at 540, 542 S.E.2d at 364; *see also Prima Paint*, 388 U.S. at 403-404.

Furthermore, contrary to Petitioner’s assertion here, *Smith v. D.R. Horton* does not provide a uniform rule that a court must determine the scope of an arbitration agreement. Instead, under both South Carolina and federal law, the court decides the scope of the disputes that fall within an arbitration agreement *unless*, as is the case here, the parties have provided that the arbitrator decides whether the claims fall within the Arbitration Agreement. *See Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 597, 553 S.E.2d 110, 118 (2001) (“The question of the arbitrability of a claim is an issue for judicial determination, unless the parties provide otherwise”); *Contec Corp. v. Remote Solution Co.*, 398 F.3d 205, 208 n.1 (2d Cir. 2005) (the question of who determines arbitrability generally “is a question for the court unless there is ‘a “clear and unmistakable” agreement to arbitrate arbitrability’”). Here, the Arbitration Agreement clearly and unmistakably provides that “all disputes, *including the scope or applicability of this Agreement to Arbitrate*, shall be resolved by final and binding arbitration ...” (R. 155) (emphasis added).

Because Petitioner has not and cannot show that the Arbitration Agreement is comprised of the entire Appearance Release, Voluntary Participation, and Arbitration Agreement, there is no need for further appellate review and this Court should deny his Petition.

III. The Arbitration Agreement is neither procedurally nor substantively unconscionable.

Like below, Petitioner’s erroneous arguments as to unconscionability go to the entire

Appearance Release, Voluntary Participation, and Arbitration Agreement and not separately to the Arbitration Agreement and should be rejected on that basis alone. *Munoz*, 343 S.C. at 540, 542 S.E.2d at 364; *see also Prima Paint*, 388 U.S. at 403-404. In any event, his procedural and substantive unconscionability arguments are fundamentally flawed. One of Petitioner’s central objections to arbitration continues to be his internally inconsistent, facially unbelievable and legally deficient argument that he—a well-educated, successful politician, then employed at a prominent Florida law firm—was presented only with the signature block of the Appearance Release, Voluntary Participation, and Arbitration Agreement, which he signed, blindly relying on alleged assurances of the producers and/or film crew of *Southern Charm*, whom he had only just met and with whom he had no other relationship. Moreover, Petitioner claims (wrongly) that he was justified in such reliance. (*See* R. 262-263, 291, 322-323). As Respondents demonstrated below, any asserted reliance on the representations alleged to have been made here is legally inadequate to prove fraudulent inducement and/or negligent misrepresentation. (Appx. 377-388, 485-490). “As early as 1924, this Court recognized that every contracting party owes a duty to the other party to the contract and to the public to learn the contents of a document before he signs it. One cannot complain of fraud and misrepresentation in the contents of a document if the truth could have been ascertained by reading it.” *Burwell v. South Carolina Nat’l Bank*, 288 S.C. 34, 39-40, 340 S.E.2d 786, 789-790 (1986) (internal citations omitted); *see also Tetrev v. Pride Int’l, Inc.*, 444 F. Supp. 2d 524, 530 (D. S.C. 2006) (even assuming the drafting party “made false representations” regarding a contract, the other party has “no right to rely on them when the truth of these representations [would] have been evident by an inspection of the contract”).

And, while the rule set forth in *Burwell* “is subject to the exception that if the party is ignorant and unwary, his failure to read the document may be excused,” that exception is, “very

strictly interpreted by our Court. In determining whether a party can be classified as ignorant and unwary, an individual's education, business experience and intelligence are all considered." 288 S.C. at 40, 340 S.E.2d at 790. Given the five and a half pages of Petitioner's Amended Complaint setting out his extensive education, numerous professional accomplishments and accolades—including as an arbiter of cases involving unfair and deceptive business practices by individuals and businesses in Palm Beach County—and his position at the time as "a director of government relations for a major law firm in Florida," (R. 96-102), he cannot credibly claim that he is uneducated, ignorant or unwary. Even if, solely for the sake of argument, Petitioner's allegations concerning purported representations or concerning his complete ignorance as to the nature of the reality television genre were true, the consequences of any failure on his part to read the Arbitration Agreement or indeed the larger Appearance Release, Voluntary Participation, and Arbitration Agreement—a duty he owed Defendants and the public—fall on him.

There simply "is no right to rely, which is required to establish fraud, where there is no confidential or fiduciary relationship and there is an arm's length transaction between mature, educated people. This is especially true in circumstances where one should have utilized precaution and protection to safeguard his interests." *Regions Bank v. Schmauch*, 354 S.C. 648, 672, 582 S.E.2d 432, 444 (Ct. App. 2003), citing *Florentine Corp. v. Peda I, Inc.*, 287 S.C. 382, 386, 339 S.E.2d 112, 114 (1985); see also *Schmauch*, 354 S.C. at 673, 582 S.E.2 at 445 ("It is largely because the law of fraud requires [a claimant] to prove his ignorance of the falsity of the representation and his right to rely on the falsity that the courts long ago established the rule that ordinarily one cannot complain of fraud in the misrepresentation of the contents of a written instrument signed by him when the truth could have been ascertained by reading the instrument,

and that one entering into a written contract must read it and avail himself of every reasonable opportunity to understand its content and meaning”).

For the first time, Petitioner argues to this Court that the JAMS Rules, specified by the Arbitration Agreement, are unconscionable. As Petitioner has never raised this argument before, it is unpreserved for appellate review and should be disregarded. *Schofield*, 316 S.C. at 82, 447 S.E.2d at 191. Even if considered by this Court, his argument lacks any merit. The JAMS provisions highlighted by Petitioner apply equally to all parties. Moreover, JAMS Rule 26 provides that JAMS fees and expenses are paid by each party on a pro rata basis “unless the parties agree on a different allocation of fees and expenses.” (Appx. 247). While both discovery and the proceeding are streamlined under the JAMS Rules, as is the case with most well-recognized arbitration rules, these rules apply evenly to all parties. Petitioner blatantly misconstrues Rule 1, Scope of Rules, to suggest (incorrectly) that “damages are limited to \$250,000 in the absence of an agreement to arbitrate or use those rules.” What Rule 1 actually provides is that the JAMS Rules “govern binding Arbitrations of disputes or claims that are administered by JAMS and in which the Parties agree to use these Rules or, in the absence of such agreement, no disputed claim or counterclaim exceed \$250,000, not including interest or attorneys’ fees, unless other Rules are prescribed.” (R. 230). The Awards provision of the JAMS Rules, Rule 19, contains no limitation on damages. (R. 243-245). Petitioner’s unpreserved argument is, at best, incorrect and demonstrates his continued attempts to misconstrue both the facts and the law.

Petitioner pays only passing lip-service to the two arguments he made below concerning alleged substantive unconscionability of the Arbitration Agreement itself—regarding the choice of New York as the location for arbitration, and injunctive relief provided to the Corporate Defendants—and both are easily dispatched. The fact that the Arbitration Agreement requires that

arbitration take place in New York, (R. 155), does not make it unconscionable. As was detailed below, the continued viability of S.C. Code § 15-7-120(B) is highly questionable given the United States Supreme Court rulings in *The Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1 (1972), *Carnival Cruise Lines v. Shute*, 499 U.S. 585 (1991), and their progeny. Moreover, Rule 5 of the JAMS Rules provides that, where there is any conflict between those rules and state law, state law “will govern over the Rule in conflict.” (Appx. 231).

In any event, because this case indisputably involves interstate commerce, Section 15-7-120 is preempted by federal arbitration law. In *Tritech Elec., Inc. v. Frank M. Hall & Co.*, this Court held that the trial court erred in “applying § 15-7-120 to the arbitration clauses *sub judice* because state law is preempted by the Federal Arbitration Act (FAA) under [similar] circumstances presented by this action. Where a contract evidencing interstate commerce contains an arbitration clause, the FAA preempts conflicting state arbitration law.” 343 S.C. 396, 400, 540 S.E.2d 864, 866 (Ct. App. 2000); *see also Kiawah Island Util., Inc. v. Westport Ins. Corp.*, No. 2:19-cv-1359-DCN, 2019 U.S. Dist. LEXIS 182220 *17-18; 2019 WL 5394200 (D.S.C. Oct. 22, 2019) (same and, in addition, rejecting the argument that the forum selection clause was unenforceable because the chosen forum was a proper venue). To the extent that Section 15-7-120 remains viable in South Carolina, it conflicts with and is preempted by the FAA, which governs this appeal and strongly favors enforcing arbitration agreements, as agreed to by the parties, including any applicable forum selection provisions.

Even if the venue selection provision in the Arbitration Agreement was found to be unenforceable, Petitioner misconstrues *Grant v. Magnolia Manor-Greenwood, Inc.*, 383 S.C. 125, 678 S.E.2d 435 (2009), asserting (incorrectly) that the agreement to arbitrate is unenforceable because the venue is “an integral part of the Arbitration Agreement.” *Grant* uses the term “forum”

to describe the chosen arbitral body, in that case, the American Health Lawyers Association, and not the geographical location where the arbitration is to take place. Thus, *Grant* is inapposite and does nothing to advance Petitioner's argument.

Petitioner also points to what he claims is a "one-sided injunctive relief provision," without any substantive argument. This argument is unpreserved for appellate review. *E.g.*, *State v. Crocker*, 366 S.C. 394, 399 n.1, 621 S.E.2d 890, 893 n.1 (Ct. App. 2005) ("conclusory statements unaccompanied by argument and citation to authority are insufficient to preserve an issue for appellate review"). In any event, South Carolina courts routinely hold that "lack of mutuality of remedy in an arbitration agreement, on its own, does not make the arbitration agreement unconscionable." *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 31, 644 S.E.2d 663, 672 (2007); *Munoz*, 343 S.C. at 542, 542 S.E.2d at 365 (same).

In addition, where, as is the case here, there is a legitimate need for a one-sided injunctive relief provision in an arbitration agreement, courts have upheld the agreement. *See, e.g.*, *Kaufman v. Sony Pictures TV, Inc.*, Civ. No. 16-12027-LTS, 2017 U.S. Dist. LEXIS 112938, at *19 (D. Mass. July 20, 2017) (enforcing, in the reality television context, arbitration clause with a one-sided injunctive relief provision because it "spell[ed] out the 'legitimate commercial need' for the lopsided provision"); *Higgins v. Superior Court*, 140 Cal. App.4th 1238, 1254 n.12, 45 Cal. Rptr.3d 293, 305 n.12 (Cal. Ct. App. 2006), (holding that "the fact that the injunction provision is one-sided does not necessarily mean that the clause is substantively unconscionable," but instructing that any "'business realities' creating the special need, must be explained in the terms of the contract or factually established"). Here, the Arbitration Agreement provides the Corporate Defendants' legitimate business need for injunctive relief, "I agree that given the *unique nature of the entertainment industry, and the irreparable damage to Producer, Network and their*

licensees that would result from delaying or preventing the exhibition of any program produced hereunder, I may not seek or obtain injunctive relief in connection with this Agreement.” (R. 155) (emphasis added).

Because Petitioner has not and cannot raise any legitimate argument that the Arbitration Agreement to which he agreed is either procedurally or substantive unconscionable, there is no need for further appellate review and this Court should deny his Petition.

CONCLUSION

For the reasons set forth above, Respondents respectfully request that this Court deny Petitioner’s Petition for Writ of Certiorari.

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