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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

G.D. Morgan, Jr., Circuit Court Judge

Appellate Case No. 2024-000362

Case No. 2023-CP-23-04474

Sonja Willis,..... Respondent,

v.

Rent-A-Center East, Inc., Rent-A-Center Franchising International, Inc.,  
Garrett Anderson Road Center, LLC and Does 1 through 20, Inclusive,  
Defendants, of which Rent-A-Center East, Inc. is the Appellant .....Appellant.

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**INITIAL BRIEF OF APPELLANT RENT-A-CENTER EAST, INC.**

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## **STATEMENT OF THE ISSUE PRESENTED FOR REVIEW**

- I. Did the trial court err in denying RAC’s Motion to Compel Arbitration and Dismiss Plaintiff’s Claims on the basis that there is insufficient evidence the Plaintiff signed the agreement with the arbitration clause?

## **STATEMENT OF THE CASE**

This matter involves a dispute between Appellee Sonja Willis (“Willis” or “Appellee”) and Appellant Rent-A-Center East, Inc. (“Appellant” or “RAC”). Willis filed this lawsuit in the Court of Common Pleas for Greenville County, South Carolina, alleging injuries caused by furniture she acquired from RAC. (Compl.) Specifically, Willis alleges that she was bitten by bed bugs that were located on a couch and love seat Willis acquired from RAC in September of 2020. (Compl. ¶¶ 9-10.) Sonja Willis and her husband, Thomas Willis, opened an account with RAC on or about September 3, 2020 (the “2020 Account”). (2020 Rental-Purchase Agreement.) Willis opened the 2020 Account to obtain household furniture from RAC pursuant to the Rental-Purchase Agreement (the “2020 Rental-Purchase Agreement”) and accompanying Consumer Arbitration Agreement (the “2020 Arbitration Agreement”). (2020 Rental-Purchase Agreement; 2020 Arbitration Agreement.) Willis’ Complaint filed in the trial court expressly states that Willis entered into the 2020 Rental-Purchase Agreement. (Compl.¶ 8; *see also* Tr., pp. 9, 10.) The 2020 Arbitration Agreement is specifically incorporated into the 2020 Rental Purchase-Agreement. (2020 Rental-Purchase Agreement; 2020 Arbitration Agreement, p. 1 ¶ (A); Tr., pp. 4, 14.) The 2020 Arbitration Agreement requires both Willis and RAC to arbitrate any dispute or claim between them, including but not limited to those claims “arising under, arising out of, or relating in any way to any Consumer Contract entered between you and RAC at any time and/or any services rendered under or that relate to any such Consumer Contract.” (2020 Arbitration Agreement, p. 1 ¶ (B).) Because Willis has brought claims related to the furniture acquired through her 2020 Rental-Purchase

Agreement with RAC, they are subject to the 2020 Arbitration Agreement. Additionally, even if the Court were to determine that Willis did not properly sign the 2020 Arbitration Agreement with RAC, it is undisputed that she entered into the 2020 Rental-Purchase Agreement that explicitly incorporates the 2020 Arbitration Agreement. (Compl. ¶ 8; 2020 Rental-Purchase Agreement; 2020 Arbitration Agreement, p. 1 ¶ (A); Tr., p. 14.) Moreover, even if the Court were to determine that the 2020 Arbitration Agreement is not incorporated into the 2020 Rental-Purchase Agreement (it is), it is clear that Willis' husband, Thomas, signed both agreements. (2020 Rental-Purchase Agreement; 2020 Arbitration Agreement, p. 4; Tr., pp. 10-12, 16.) The 2020 Arbitration Agreement requires any beneficiaries of the 2020 Rental-Purchase Agreement, such as Willis, to arbitrate any dispute with RAC as well. (2020 Arbitration Agreement, p. 1.) Thus, however the Court interprets the evidence the result is the same, Willis is obligated to arbitrate her claims against RAC.

Initially, and dispositively, the 2020 Arbitration Agreement delegates the question of arbitrability to an arbitrator. (*See* 2020 Arbitration Agreement.) The U.S. Supreme Court has repeatedly enforced such delegation provisions and held that courts do not have discretion to ignore delegation provisions and decide the threshold issue of arbitrability. In light of the above facts, RAC moved the trial court to compel Willis' claims against RAC to arbitration on October 6, 2023. (RAC Motion to Dismiss, or Stay, and to Compel Arbitration.) Willis did not file a brief in opposition. The trial court heard RAC's motion on February 5, 2024. (Tr., p. 1.)

On February 8, 2024, the trial court entered an order denying RAC's motion stating that there was insufficient evidence that the arbitration agreement was signed. (Feb. 8 Order.) An image of the trial court's order is provided below:

This matter is before the Court on Defendant Rent-A-Center East Inc.'s Motion to Dismiss, or Stay and to Compel Arbitration. Based on a review of the file, submissions of the parties, and oral arguments, the Defendant's Motion is hereby denied on the grounds there is insufficient evidence the Plaintiff signed the agreement with the arbitration clause.

It is so ordered.

**ORDER INFORMATION**

This order  ends  does not end the case.

See Page 2 for additional information.

*(Id.)*

On March 5, 2024, RAC filed its Notice of Appeal with this Court seeking relief from the trial court's error in deciding RAC's motion. (RAC Notice of Appeal.) There are numerous salient reasons for this Court to overturn the trial court's decision. RAC, therefore, respectfully requests that this Court issue an order overturning the trial court's February 8th Order and directing Willis to arbitrate her claims against RAC and dismissing this action with prejudice.

**STATEMENT OF THE FACTS**

**Willis Opened an RAC Account in 2020.**

On or about September 3, 2020, Willis obtained furniture from RAC. (2020 Rental-Purchase Agreement.) To obtain the furniture, Willis entered into the 2020 Rental-Purchase Agreement with RAC. (Compl. ¶ 8; *see also* Tr., pp. 9, 10.) Willis' Complaint specifically states: "Plaintiff SONJA WILLIS entered in an agreement to acquire furniture from Defendant's Rent-A-Center Furniture Rental Store located at 2710 Anderson Road, Greenville, South Carolina 29611, United States, and Defendant delivered a couch and loveseat to Plaintiff." (*Id.*) The 2020 Arbitration Agreement is expressly incorporated into the 2020 Rental-Purchase Agreement entered into by Willis. (2020 Rental-Purchase Agreement; 2020 Arbitration Agreement, p. 1 ¶ (A); Tr., pp. 4, 14.)

## The 2020 Arbitration Agreement.

The 2020 Arbitration Agreement states, in relevant part, as follows:

**PLEASE READ THIS ARBITRATION AGREEMENT. IT IS BINDING AND ENFORCEABLE UNLESS YOU SEND IN A REJECTION NOTICE, AS SET OUT IN PARAGRAPH (A) BELOW.**

This Arbitration Agreement ("Agreement") is between RAC and the Consumer. As used in this Agreement, the terms "Consumer" and "Consumers" mean the customers who sign this Agreement. The term "Consumer Contract" means the consumer lease, rental-purchase agreement, or retail installment contract between the Consumers and RAC. The terms "you" and "your" mean the Consumer, customer, lessee, renter, user, buyer, and other third-party beneficiaries of the items or services RAC is providing, will provide, or has provided to you. And the term "RAC" means Rent-A-Center, its parents, subsidiaries, affiliate entities (including but not limited to RAC Acceptance, Acceptance Now, Get It Now, and Home Choice), predecessors, or successors in interest. The Federal Arbitration Act (9 U.S.C. §§ 1-16) ("FAA") governs this Agreement, which evidences a transaction involving interstate commerce.

Except as otherwise provided in this Agreement, you and RAC agree to resolve by individual, final, and binding arbitration any and all claims or controversies, past, present, or future, that RAC may have against you or that you may have against RAC and/or (i) its directors, members, managers, employees, or agents in their capacity as such or otherwise; (ii) its successors or assigns; and (iii) its clients and host stores, in accordance with the terms and procedures set forth in this Agreement. Each of the entities and/or individuals listed in this paragraph can enforce this Agreement.

**(A) Your Right to Reject:** If you want to reject this Agreement, you must send a written Rejection Notice, by certified mail, return receipt requested, to: Rent-A-Center Legal Department, 5501 Headquarters Drive, Plano, TX 75024-5837. The Rejection Notice must (i) state that you are rejecting this Agreement; (ii) provide your name, address, and phone number; and (iii) provide the agreement number from the Consumer Contract you entered into with RAC, which is incorporated into this Agreement as though fully set forth. A Rejection Notice is effective only if it is signed by all Consumers who signed the Consumer Contract with RAC and postmarked within fifteen (15) days after the date of those signatures. RAC will acknowledge your rejection in writing. You should retain the acknowledgement to establish rejection of this Agreement. If you do not receive the acknowledgement from RAC within fifteen (15) days from the date you sent the Rejection Notice to RAC, then you should contact the RAC Legal Department by mail or by email at [arbitration.reject@rentacenter.com](mailto:arbitration.reject@rentacenter.com). A Rejection Notice applies only to this Agreement and does not affect the validity or enforceability of any past or future Arbitration Agreements between you and RAC.

**(B) What Claims Are Covered:** You and RAC agree that, in the event of any covered dispute or claim between us, you and RAC agree to have that dispute or claim resolved by final and binding arbitration. This agreement to arbitrate is intended to be interpreted as broadly as the FAA allows. Claims and disputes subject to arbitration include but are not limited to:

- claims arising under, arising out of, or relating in any way to any Consumer Contract entered into between you and RAC at any time and/or any services rendered under or that relate to any such Consumer Contract;
- claims arising out of or relating in any way to your interactions with or any actions taken by RAC or any of its employees or agents, including but not limited to allegations that those employees or agents acted improperly in terminating your Consumer Contract, repossessing goods, or making complaints or reports about you to law enforcement, credit reporting bureaus, or any other third party;
- claims that arose before the execution of this Agreement or any current or prior Consumer Contract between you and RAC, such as claims related to advertising or disclosures;
- claims that arise after the termination of any Consumer Contract between you and RAC;
- claims that are based on any legal theory whatsoever, including negligence, breach of contract, tort, fraud, misrepresentation, trespass, the common law, or any statute, regulation, or ordinance; and
- except as specified in the Class Action Waiver below, any and all disputes relating to the interpretation, applicability, enforceability, scope, waiver, or formation of this Agreement, including but not limited to any contention that all or any part of this Agreement is void or voidable.

(2020 Arbitration Agreement, p. 1.)

The 2020 Arbitration Agreement details the types of claims subject to arbitration, stating that it requires arbitration of "claims that arise after the termination of any Consumer Contract between you and RAC" and includes "claims that are based on any legal theory whatsoever, including negligence, breach of contract, tort, fraud, misrepresentation, trespass, the common law, or any statute, regulation or ordinance." (*Id.*) The 2020 Arbitration Agreement also provides that it applies to "the Consumer, customer, lessee, renter, user, buyer, and other third-party

beneficiaries of the items or services RAC is providing, will provide, or has provided to you.” (*Id.*) The 2020 Arbitration Agreement further states that “[t]he Federal Arbitration Act (9 U.S.C. § 1-16) (“FAA”) governs this Agreement, which evidences a transaction involving interstate commerce.” (*Id.*)

### **STANDARD OF REVIEW**

South Carolina appellate courts review the appeal of a denial of a motion to compel arbitration *de novo* and will not reverse factual findings of the trial court that are reasonably supported by the record. *Gissel v. Hart*, 382 S.C. 235, 240, 676 S.E.2d 320, 323 (2009).

### **SUMMARY OF THE ARGUMENT**

This appeal arises from Willis’ efforts to avoid arbitrating her claims against RAC by arguing that she did not sign the agreements with RAC and, therefore, cannot be enforced against her. The trial court erred in finding for Willis because the enforceability and validity of the agreements are for the arbitrator to determine, not the trial court, and even if such a determination fell within the ambit of the trial court, the agreements are enforceable against Willis and valid under federal and South Carolina law.

First, the 2020 Arbitration Agreement includes a specific delegation clause that provides that an arbitrator, not a court, must decide gateway issues, such as validity, formation, and arbitrability. Willis has never challenged the delegation clause. Thus, all issues related to the agreements and the arbitrability of the claim asserted against RAC are for an arbitrator to determine. This is true even if the court believes that the argument in favor of the applicability of the arbitration provision to the dispute at hand is “wholly groundless.” *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 65 (2019).

When it enacted the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.* (the “FAA”), Congress adopted a “liberal federal policy favoring arbitration agreements.” *Wiley v. Advance Am.*, No. 3:07-

3533-TLW-TER, 2008 WL 4179652, at \*9 (D.S.C. Sept. 5, 2008) (quoting *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 625 (1985)). In fulfilling this public policy, the United States Supreme Court has recognized the enforceability of delegation clauses in arbitration agreements. In the landmark decision of *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63 (2010), the United States Supreme Court explained that, even when an arbitration agreement is challenged under traditional contract principles, a court may not intervene unless there is a specific challenge to the validity of the delegation clause itself. This Supreme Court authority was adopted and implemented by the court in *Doe v. TCSC, LLC*, 430 S.C. 602, 609, 846 S.E.2d 874, 877 (Ct. App. 2020), when the court held that where a delegation clause reserves issues for the arbitrator, “the FAA requires us to honor that agreement and leave resolution of these discrete gateway issues to the arbitrator.” Where agreements contain delegation clauses, as the agreements do here, it is for the arbitrator, and not the court, to rule on the enforceability and validity as to the arbitration agreement as a whole.

Willis has failed to specifically allege or argue that the delegation clause in the 2020 Arbitration Agreement is unconscionable and unenforceable. Instead, Willis has only offered blanket arguments directed to the agreements as a whole. (*See Tr.*, pp. 8-10, 14-15.) Under Supreme Court precedent, a failure to challenge the specific delegation clause requires all issues related to the agreements be submitted to the arbitrator, as the trial court should have done in this case. *See Jackson*, 561 U.S. at 72-75; *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440 (2006); *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395 (1967); *see also Howard v. Rent-A-Center, Inc.*, No. 1:10-CV-103, 2010 WL 3009515, at \*4-6 (E.D. Tenn. July 28, 2010).

Moreover, even assuming, *arguendo*, that the trial court was the proper forum to determine the arbitrability of Willis’ claims, the 2020 Rental-Purchase Agreement, 2020 Arbitration

Agreement, and South Carolina law are clear – Willis must arbitrate her claims against RAC. It is indisputable that Willis opened an account to acquire furniture from RAC and “entered in an agreement” to acquire the furniture. (Compl. ¶ 8; *see also* Tr., pp. 9, 10.) It is also without dispute that this transaction was made pursuant to the 2020 Rental-Purchase Agreement and 2020 Arbitration Agreement. RAC delivered the furniture to Willis pursuant to these agreements, and the RAC furniture was undeniably accepted by Willis. In contrast to Willis’ contentions, she cannot admit to entering an agreement with RAC, have RAC deliver furniture to her, accept the furniture from RAC, and then turn around and claim that she is not subject to her agreements with RAC.

Willis has brought multiple claims against RAC based entirely on the furniture acquired subject to the agreements that Willis entered into with RAC. (*See* Compl.) As such, Willis cannot now assert that the 2020 Rental-Purchase Agreement and 2020 Arbitration Agreement (that is expressly incorporated into the 2020 Rental-Purchase Agreement) are unenforceable. Such an argument contravenes the most basic principles of contract law recognized by the state of South Carolina. This remains true even in light of the fact that the agreements appear not to be signed by Willis, as she has already admitted that she entered into the agreements with RAC and accepted the delivery of the furniture contemplated under the agreements. Moreover, South Carolina law does not require arbitration agreements to be signed in order to be enforceable.

Therefore, based on the plain language of the agreements, the allegations (or lack thereof) by Willis, Supreme Court precedent, and the laws and rules applicable to arbitration and delegation provisions, the trial court erred in denying RAC’s Motion to Compel Arbitration. Thus, RAC respectfully requests that this Court overturn the decision of the trial court and refer all questions regarding the 2020 Rental-Purchase Agreement and 2020 Arbitration Agreement to an arbitrator.

## ARGUMENT

### A. The Trial Court Erred in Evaluating the Enforceability and Validity of the Agreements.

The 2020 Arbitration Agreement specifically states that “any and all disputes relating to the interpretation, applicability, enforceability, scope, waiver, or formation of this Agreement” are arbitrable. (2020 Arbitration Agreement, p. 1; Tr. p. 7.) This delegation provision is controlling, especially in light of the fact that it has not been specifically challenged by Willis. Therefore, the trial court erred in making a determination related to the “interpretation, applicability, enforceability, scope, waiver, or formation” of the agreements. (2020 Arbitration Agreement, p. 1.)

1. **Because the agreements included a specific delegation clause and incorporated the AAA rules, South Carolina and applicable federal law require that the arbitrator, not the court, must resolve all questions of arbitrability.**

The FAA was enacted by Congress to “overcome judicial resistance to arbitration.” *Buckeye Check Cashing*, 546 U.S. at 443. “The FAA reflects the fundamental principle that arbitration is a matter of contract,” and it “places arbitration agreements on equal footing with other contracts.” *Jackson*, 561 U.S. at 67. The parties here agreed that all “claims that arise after the termination of any Consumer Contract between you and RAC” and including “claims that are based on any legal theory whatsoever, including negligence, breach of contract, tort, fraud, misrepresentation, trespass, the common law, or any statute, regulation or ordinance” would be subject to arbitration (2020 Arbitration Agreement, p. 1.) The 2020 Arbitration Agreement also provides that it applies to “the Consumer, customer, lessee, renter, user, buyer, and other third-party beneficiaries of the items or services RAC is providing, will provide, or has provided to you.” (*Id.*) The 2020 Arbitration Agreement further states that “[t]he Federal Arbitration Act (9 U.S.C. §§ 1-16) (“FAA”) governs this Agreement, which evidences a transaction involving

interstate commerce.” (*Id.*) Therefore, the FAA and federal law control the arbitration agreement at issue.

The United States Supreme Court has specifically recognized that delegation clauses in arbitration agreements are enforceable. *See Jackson*, 561 U.S. at 63. A “delegation provision is an agreement to arbitrate threshold issues concerning the arbitration agreement.” *Id.* at 68. The Supreme Court has further affirmed that “parties can agree to arbitrate ‘gateway’ questions of ‘arbitrability,’ such as whether the parties have agreed to arbitrate or whether their agreement covers a particular controversy.” *Id.* at 68-69. “Typically, whether the parties have an enforceable arbitration agreement covering their dispute is an issue the court must decide,” but “parties are free ... to delegate such gateway determinations to the arbitrator.” *Howard*, 2010 WL 3009515, at \*3. Further, where parties have delegated gateway issues of arbitrability in the agreement, “a court possesses no power to decide the arbitrability issue.” *Henry Schein*, 568 U.S. at 68. Reference to the rules of the AAA “constitutes clear and unmistakable evidence of the parties’ intent to delegate arbitrability.” *Howard*, 2010 WL 3009515, at \*4 (citing *Bishop v. Gosiger, Inc.*, 692 F. Supp. 2d 762, 769 (E.D. Mich. 2010); *T.Co Metals, LLC v. Dempsey Pipe & Supply, Inc.*, 592 F.3d 329, 344-45 (2d Cir. 2010); *Awuah v. Coverall N. Am., Inc.*, 554 F.3d 7, 10-12 (1st Cir. 2009); *Fallo v. High-Tech Inst.*, 559 F.3d 874, 877-78 (8th Cir. 2009); *Terminix Int’l Co. v. Palmer Ranch Ltd. P’ship*, 432 F.3d 1327 (11th Cir. 2005)).

For example, in *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 943 (1995), the Supreme Court explained that “[j]ust as the arbitrability of the merits of a dispute depends upon whether the parties agreed to arbitrate that dispute, *see, e.g., Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 57 (1995); *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 626 (1985), so the question ‘who has the primary power to decide arbitrability’ turns

upon what the parties agreed about *that* matter.” See also *Clayton v. Davidson Contractors, LLC*, No. E2013-02296-COA-R3-CV, 2015 WL 1880973, at \*4 (Tenn. Ct. App. Apr. 24, 2015) (“The FAA requires courts to enforce delegation provisions just as they are required to enforce arbitration agreements.” (citing *Jackson*, 561 U.S. at 70)). This principle flows inexorably “from the fact that arbitration is simply a matter of contract between the parties.” *First Options*, 514 U.S. at 943. Thus, the Court held that where an arbitration agreement includes a delegation clause that is not specifically challenged, arbitrability is always left to the arbitrator.

Following *First Options*, the U.S. Supreme Court has repeatedly and consistently upheld the enforceability of delegation provisions like those in the 2020 Arbitration Agreement. In the recent decision *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. at 65, the Court stated, unequivocally:

Under the Federal Arbitration Act, parties to a contract may agree that an arbitrator rather than a court will resolve disputes arising out of the contract. When a dispute arises, the parties sometimes may disagree not only about the merits of the dispute but also about the threshold arbitrability question—that is, whether their arbitration agreement applies to the particular dispute. Who decides that threshold arbitrability question? Under the Act and this Court’s cases, the question of who decides arbitrability is itself a question of contract. The Act allows parties to agree by contract that an arbitrator, rather than a court, will resolve threshold arbitrability questions as well as underlying merits disputes.

The Court then explained that district courts do not have the authority to ignore delegation provisions and decide the threshold issue of arbitrability, even if the argument that the arbitration provision applies to a particular dispute is “wholly groundless.” *Id.* at 65-67. This same reasoning applies to South Carolina’s state courts. See *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 590, 553 S.E.2d 110, 115 (2001) (“The federal policy favoring arbitration, as expressed in the FAA, is now binding even in state courts and supersedes inconsistent state law and statutes which invalidate arbitration agreements.”).

The U.S. Supreme Court’s *Henry Schein* decision favorably cited its prior holding in *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. at 70, where the Court stated that “[a]n agreement to arbitrate a gateway issue is simply an additional, antecedent agreement the party seeking arbitration asks the federal court to enforce, and the FAA operates on this additional arbitration agreement just as it does on any other.” *See Henry Schein*, 586 U.S. at 67-68. Indeed, in *Jackson*, the Supreme Court enforced a “delegation” clause in an RAC contract substantially similar to the clause present in the 2020 Arbitration Agreement. *See Jackson*, 561 U.S. at 72.

Further, when parties explicitly incorporate rules that empower an arbitrator to decide issues of arbitrability, such as the arbitral forum’s rules, the incorporation serves as clear and unmistakable evidence of the parties’ intent to delegate such issues to an arbitrator. Here, the 2020 Arbitration Agreement specifically adopts the rules of the American Arbitration Association (“AAA”). Specifically, the 2020 Arbitration Agreement states that any arbitration between the parties “shall proceed in accordance with the AAA’s Commercial Arbitration Rules.” (2020 Arbitration Agreement, p. 2 ¶ (G).) The applicable AAA rules for consumer disputes provide that “[t]he arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim or counterclaim.” *See AAA Consumer Arbitration Rules*, [www.adr.org](http://www.adr.org), Rule R-14.

By explicitly agreeing to conduct any arbitration in accordance with the rules of the AAA, and by expressly requiring that any questions regarding interpretation, applicability, enforceability or formation of the 2020 Arbitration Agreement be arbitrated, the agreement leaves no doubt whatsoever that the arbitrator alone should have the power to rule on the arbitrability of the claims in this case. (*See 2020 Arbitration Agreement*.) This is yet another reason that any questions

relating to the validity, enforceability, or applicability of the 2020 Arbitration Agreement to Willis' claims should be reserved for the arbitrator.

South Carolina courts follow the very approach set forth repeatedly by the U.S. Supreme Court and enforce delegation provisions. *Doe*, 430 S.C. at 609, 846 S.E.2d at 877 (finding that where a delegation clause delegates specific issues to the arbitrator, “the FAA requires [the court] to honor that agreement and leave resolution of these discrete gateway issues to the arbitrator”); *see also Gibbs v. Haynes Invs., LLC*, 967 F.3d 332, 337 (4th Cir. 2020) (“[W]hen an agreement ‘clearly and unmistakably’ delegates the threshold issue of arbitrability to the arbitrator, a court must enforce that delegation clause and send that question to arbitration.” (quoting *Jackson*, 561 U.S. at 67)).

The 2020 Arbitration Agreement at issue here also provides that “any and all disputes relating to the interpretation, applicability, enforceability, scope, waiver, or formation of this Agreement” are subject to arbitration. (2020 Arbitration Agreement, p. 1, ¶ (B); Tr. p. 7.) Accordingly, as South Carolina courts observe, there is no question here that Willis and RAC delegated the arbitrability question to an arbitrator in the 2020 Arbitration Agreement. In fact, they did so both expressly and by incorporating the rules of the AAA. Thus, an arbitrator must decide whether the 2020 Arbitration Agreement applies to all claims brought by Willis against RAC. Based on decades of U.S. Supreme Court precedent upholding the validity of delegation provisions, this fact ends any necessary analysis of this Court. As such, this Court should overturn the trial court and order Willis' claim against RAC to arbitration.

**2. Because Willis did not challenge the delegation provision specifically, the trial court erred in failing to refer all issues to an arbitrator.**

The United States Supreme Court has explicitly held that “unless [a party] challenge[s] the delegation provision specifically, we must treat it as valid under § 2 [of the FAA], and must enforce

it under §§ 3 and 4, leaving any challenge to the validity of the Agreement as a whole for the arbitrator.” *Jackson*, 561 U.S. at 72. Considering the law, the arbitration agreement, the delegation provision, and the challenge by the plaintiffs, the *Jackson* court held that the parties’ dispute must be compelled to arbitration, as the unconscionability of the arbitration agreement was for the arbitrator to decide because the plaintiffs failed to attack the delegation provision specifically. *Id.* at 72-73.

In *Jackson*, the plaintiff challenged the entire arbitration agreement by claiming that it “was drawn to provide Rent-A-Center with undue advantages” and arguing that “the *arbitration agreement as a whole* is substantively unconscionable.” *Id.* at 73. Based on these arguments, the court characterized the challenge as being “on the ground that the *entire arbitration agreement*, including the delegation clause, was unconscionable.” *Id.* The provision sought to be enforced in that case delegated to the arbitrator “exclusive authority to resolve any dispute relating to the ... enforceability ... of this Agreement.” *Id.* at 71 (citing RAC’s delegation provision). Notably, the Supreme Court stated that it made no difference that the underlying contract was an arbitration agreement. *Id.* at 72. “Application of the severability rule does not depend on the substance of the remainder of the contract” rather, “[s]ection 2 operates on the specific ‘written provision’ to ‘settle by arbitration a controversy’ that the party seeks to enforce.” *Id.* (quoting 9 U.S.C. § 2).

The issue presented to this Court is factually and substantially similar to those presented in *Jackson*. Like *Jackson*, Willis here has alleged and argued to the trial court that the arbitration agreement as a whole is unenforceable. *See Jackson*, 561 U.S. at 71-73. Also like *Jackson*, Willis has never specifically challenged the delegation provision. As such, this Court should make the same determination as the Court in *Jackson* and reserve all issues of arbitrability for an arbitrator.

Even if Willis had asserted a challenge to the delegation clause specifically, which she has not, the record demonstrates that all arbitrability issues must still be referred to arbitration. A party cannot sidestep a delegation clause by asserting a conclusory challenge. Instead, when parties include a delegation clause in their arbitration agreement, the party opposing arbitration must lodge a specific objection to the delegation clause, and its failure to do so requires the court to enforce the delegation provision as written. *Gibbs*, 967 F.3d at 337. Willis has come nowhere close to meeting this standard. (*See* Tr., pp. 8-10, 14-15.) Instead, Willis has only set forth generalized arguments regarding the enforceability of the arbitration agreement as a whole. Since the arbitration agreement clearly includes a delegation clause, and Willis has not specifically challenged this clause, Willis' arguments are improper and irrelevant. Thus, the trial court certainly erred in denying RAC's motion based on *any* argument presented by Willis.

**B. Willis is Required to Arbitrate Her Claims Against RAC.**

Although it is abundantly clear that all issues of arbitrability are to be determined by an arbitrator, analysis of the agreements here further demonstrates the futility of Willis' arguments. The United States Supreme Court has unequivocally established that the substantive provisions of the FAA preempt state law and govern all written arbitration agreements in contracts connected to transactions involving interstate commerce. *Mastrobuono*, 514 U.S. at 56; *Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Junior Univ.*, 489 U.S. 468, 477-78 (1989). When considering a motion to compel arbitration under the FAA where a delegation clause is not at issue, a court is required to perform a two-part inquiry: (1) whether there is a valid arbitration agreement, and (2) whether the dispute in question falls within the scope of that agreement. *Weckesser v. Knight Enters. S.E., LLC*, 228 F. Supp. 3d 561, 564 (D.S.C. 2017), *aff'd*, 735 F. App'x 816 (4th Cir. 2018). Because the requirements for enforcing an arbitration agreement exist here, this Court should overturn the trial court's order and "rigorously enforce" the arbitration agreement, as the U.S.

Supreme Court requires, and compel Willis to arbitrate her claims against RAC. *Am. Express Co. v. Italian Colors Rest.*, 570 U.S. 228, 233-34 (2013).

**1. Willis' claims are governed by a valid, written agreement to arbitrate.**

Willis is subject to the provisions of the 2020 Rental-Purchase Agreement incorporating the 2020 Arbitration Agreement. As such, the trial court's decision was incorrect, and the claims brought against RAC by Willis are subject to the 2020 Arbitration Agreement's terms.

South Carolina state contract law controls the question of whether a valid agreement to arbitrate has been formed. *Berkeley Cnty. Sch. Dist. v. Hub Int'l Ltd.*, 944 F.3d 225, 236 (4th Cir. 2019) ("Because the issue of whether an arbitration agreement has been formed is an issue of contract law, we apply the 'ordinary state-law principles that govern the formation of contracts.'" (quoting *Minnieland Private Day Sch., Inc. v. Applied Underwriters Captive Risk Assurance Co.*, 913 F.3d 409, 415 (4th Cir. 2019))). In applying state law, however, "due regard must be given to the federal policy favoring arbitration, and ambiguities as to the scope of the arbitration clause itself must be resolved in favor of arbitration." *Stokes v. Metro. Life Ins. Co.*, 351 S.C. 606, 610, 571 S.E.2d 711, 714 (Ct. App. 2002) (quoting *Volt Info. Scis.*, 489 U.S. at 476). Under South Carolina law, a contract is formed between two parties when there is, inter alia, "a mutual manifestation of assent to [its] terms." See *Edens v. Laurel Hill, Inc.*, 271 S.C. 360, 364, 247 S.E.2d 434, 436 (1978); *Berkeley Cnty. Sch. Dist.*, 944 F.3d at 236.

Notably, and contrary to Willis' repeated assertions, South Carolina law does not require an arbitration agreement be signed in order to be enforceable. *Wilson v. Willis*, 426 S.C. 326, 338-40, 827 S.E.2d 167, 173-75 (2019). Indeed, the South Carolina Supreme Court has recognized several theories that could bind non-signatories to arbitration agreements under general principles of contract and agency law, including incorporation by reference and direct benefits estoppel. *Id.*; See *Malloy v. Thompson*, 409 S.C. 557, 561-62, 762 S.E.2d 690, 692 (2014) (recognizing that a

third-party beneficiary to an arbitration agreement may be compelled into arbitration as a non-signatory.) In the context of direct benefits estoppel, “[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 v. Hilton Head Hosp.*, 400 S.C. 281, 290, 733 S.E.2d 597, 601 (Ct. App. 2012) (quoting *Int’l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 416 (4th Cir. 2000)).

Willis admits in her Complaint that she entered into an agreement with RAC in order to acquire the furniture at issue in this matter. (Compl. ¶ 8.) Willis further admits that the furniture acquired pursuant to the 2020 Rental-Purchase Agreement was delivered to her. (*Id.*) The Willises further evidenced their mutual assent to the 2020 Rental-Purchase Agreement and the 2020 Arbitration Agreement by accepting RAC’s delivery of the furniture specifically contemplated under the agreements. Moreover, Willis states that she is the individual who called RAC on multiple occasions and eventually asked RAC to pick up the furniture from her house. (*Id.* at ¶¶ 9-10.) Willis fully assented to the 2020 Rental-Purchase Agreement and 2020 Arbitration Agreement and accepted the benefit of the goods contemplated by these agreements – her signature was not required. Additionally, the 2020 Arbitration Agreement contains bold, all-caps font stating: **“PLEASE READ THIS ARBITRATION AGREEMENT. IT IS BINDING AND ENFORCEABLE UNLESS YOU SEND IN A REJECTION NOTICE, AS SET OUT IN PARAGRAPH (A) BELOW.”** (2020 Arbitration Agreement, p. 1.) Willis never rejected the 2020 Arbitration Agreement by submitting a rejection notice pursuant to paragraph (A) of the 2020 Arbitration Agreement. Thus, the 2020 Arbitration Agreement was a valid and enforceable agreement between Willis and RAC, and all claims currently brought against RAC in this matter are subject to its terms.

## 2. Willis' claims falls within the scope of the arbitration provision.

The presumption of arbitrability, created by the mere existence of an arbitration clause, may be rebutted only if “it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. *Doubts should be resolved in favor of coverage.*” *AT&T Techs., Inc. v. Commc’ns Workers of Am.*, 475 U.S. 643, 650 (1986) (emphasis added) (quoting *United Steelworkers of Am. v. Warrior & Gulf Nav. Co.*, 363 U.S. 574, 582-83 (1960)). In construing arbitration clauses, courts have distinguished between “broad” clauses that purport to cover all disputes “arising out of” or “relating to” a contract, and “narrow” clauses that limit arbitration to specific types of disputes. *Am. Recovery Corp. v. Computerized Thermal Imaging, Inc.*, 96 F.3d 88, 93 (4th Cir. 1996) (holding that an arbitration clause that provided arbitration for any dispute that “ar[ose] out of or related to” the agreement was a broad clause, “capable of expansive reach”).

The arbitration provision here specifically states that it is to be “interpreted as broadly as the FAA allows” and that the term “claims” includes *both* “claims arising under, arising out of, or relating in any way to any Consumer Contract entered into between you and RAC at any time, and/or any services rendered under or that relate to any such Consumer Contract” *and* “claims that arise after the termination of any Consumer Contract between you and RAC.” (2020 Arbitration Agreement, pp. 1, 3.) The 2020 Arbitration Agreement further defines “claims” to mean those “based on any legal theory whatsoever, including negligence, breach of contract, tort, fraud, misrepresentation, trespass, the common law, or any statute, regulation or ordinance.” (*Id.* at p. 1.)

Willis' claims falls squarely within the scope of the arbitration clause. Willis has asserted five claims against RAC: (1) Negligence/Gross Negligence; (2) Intentional Infliction of Emotional Distress; (3) Strict Liability – Design Defect, Marketing Defect, Labelling Defect (failure to warn); (4) Breach of Warranty; and (5) Assault and Battery. (*See Compl.*, pp. 4-6.) Each of these claims

is based on the furniture acquired by Willis pursuant to the 2020 Rental-Purchase Agreement that Willis admits she entered. Thus, the core of Willis' dispute centers on whether RAC properly fulfilled its services and duties in providing the furniture contemplated under the 2020 Rental-Purchase Agreement. The broad language of the 2020 Arbitration Agreement and its express inclusion of claims, which "relate to" the 2020 Rental-Purchase Agreement, plainly extends to Willis' claims in this action. In short, the 2020 Arbitration Agreement's coverage of "any dispute or claim" relating to the 2020 Rental-Purchase Agreement certainly encompasses Willis' five claims against RAC. As such, Willis' claims must be submitted to arbitration.

**3. The 2020 Arbitration Agreement and 2020 Rental-Purchase Agreement are routinely enforced.**

Pursuant to the FAA, courts throughout the country, including the United States Supreme Court, routinely enforce arbitration agreements in consumer contracts like the agreements presented here. *See, e.g., CompuCredit Corp. v. Greenwood*, 565 U.S. 95 (2012) (credit card agreement); *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011) (cell phone services contract); *Buckeye Check Cashing*, 546 U.S. 440 (2006) (consumer loan agreement); *Green Tree Fin. Corp. v. Bazzle*, 539 U.S. 444 (2003) (home improvement loan); *Green Tree Fin. Corp.-Ala. v. Randolph*, 531 U.S. 79 (2000) (finance contract for purchase of mobile home); and *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265 (1995) (home termite prevention contract).

Indeed, courts have enforced identical and substantially similar arbitration agreements of RAC and affiliated entities. *See Howard*, 2010 WL 3009515; *Malik v. Equifax Info. Servs., LLC*, No. 16-CV-10477, 2016 WL 3900829, at \*5 (E.D. Mich. July 19, 2016) (granting RAC's motion to compel arbitration pursuant to the terms of a substantially similar arbitration agreement); *Carter v. Rent-A-Center, Inc.*, No. 2:15-cv-00178-GMN, 2015 WL 4773547, at \*3 (D. Nev. Aug. 13, 2015) (finding that Rent-A-Center's arbitration agreement is enforceable and compelling

arbitration), *aff'd*, 718 F. App'x 502 (9th Cir. 2017); *Dirse v. Rent-A-Center E., Inc.*, No. 16-23530, 2016 WL 6330432 (S.D. Fla. Oct. 27, 2016) (same); *Seney v. Rent-A-Center, Inc.*, 909 F. Supp. 2d 444, 450 (D. Md. 2012) (finding that Rent-A-Center's arbitration agreement covers claim), *aff'd*, 738 F.3d 631 (4th Cir. 2013). Therefore, as demonstrated by numerous courts throughout the country, the 2020 Arbitration Agreement and 2020 Rental-Purchase Agreement provide this Court a valid basis upon which to grant RAC's motion.

**C. Policy Considerations Weigh in Favor of Arbitration of Willis' Claims.**

Because all issues of validity, enforceability, and arbitrability are committed to an arbitrator, it was not appropriate for the trial court to rule on any challenges to the applicability, validity, or enforceability of the 2020 Rental-Purchase Agreement or 2020 Arbitration Agreement. As demonstrated above, however, applicable federal and South Carolina law demonstrates that even if the trial court were the proper forum to determine the arbitrability of Willis' claims, its determination was incorrect and should be overturned by this Court. The 2020 Rental-Purchase Agreement, 2020 Arbitration Agreement, and applicable law are clear – Willis must arbitrate her claims against RAC because she has admitted that she is subject to the terms of her agreements with RAC and she has accepted the benefits contemplated by the agreements. In addition to these facts, policy considerations further demonstrate that this Court should compel arbitration of Willis' claims. Therefore, in the instance that this Court finds the arguments of both sides persuasive, widely accepted policy considerations should shift the Court's decision in favor of RAC.

Given the application of the FAA, RAC's appeal of the trial court's denial of its Motion to Compel Arbitration "must be undertaken against the background of a 'liberal federal policy favoring arbitration agreements.'" *Kakawi Yachting, Inc. v. Marlow Marine Sales, Inc.*, No. 8:13-cv-1408-T-TBM, 2014 WL 12650701, at \*3 (M.D. Fla. Oct. 3, 2014) (citation omitted); *see also Marmet Health Care Ctr., Inc. v. Brown*, 565 U.S. 530, 533 (2012) (FAA "reflects an emphatic

federal policy in favor of arbitral dispute resolution.”) (citation omitted); *Bridas S.A.P.I.C. v. Gov’t of Turkmenistan*, 345 F.3d 347, 355 (5th Cir. 2003) (“federal courts have held that so long as there is *some* written agreement to arbitrate, a third party may be bound to submit to arbitration”) “[C]onsistent with th[e] text [of the FAA], courts must ‘*rigorously enforce*’ arbitration agreements according to their terms . . . .” *Italian Colors Rest.*, 570 U.S. at 233 (emphasis added) (quoting *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213, 221 (1985)).

Given the strong federal policy favoring arbitration, “the party resisting arbitration bears the burden of proving that the claims at issue are unsuitable for arbitration.” *Randolph*, 531 U.S. at 91; *see also Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 26 (1991) (finding that “the burden is on [the party opposing arbitration] to show that Congress intended to preclude a waiver of a judicial forum”). The party opposing arbitration cannot meet its burden by making “generalized attacks on arbitration that rest on ‘suspicion of arbitration.’” *Randolph*, 531 U.S. at 89-90 (citation omitted); *see also Mitsubishi Motors Corp.*, 473 U.S. at 626-27 (stating that “we are well past the time when judicial suspicion of the desirability of arbitration and of the competence of arbitral tribunals inhibited the development of arbitration as an alternative means of dispute resolution”).

It is abundantly clear that Willis has not met her burden. Instead, Willis has presented cursory arguments finding little support in South Carolina law. Notably, Willis has wholly failed to mention the 2020 Arbitration Agreement’s delegation clause a single time. This fact alone renders any challenge that Willis may present regarding the arbitrability of the agreements utterly futile.

In contrast, RAC has presented numerous widely accepted and supported reasons that all issues of arbitrability be submitted to an arbitrator here. Additionally, each of the reasons for arbitration that RAC has set forth herein “must be addressed with a healthy regard for the federal policy favoring arbitration.” *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1,

24 (1983). Therefore, it is evident that even if this Court finds some merit in Willis' position, this Court should still find with the overwhelming number of courts favoring arbitration and overturn the trial court's order and enforce the agreements.

**D. The Action Should Be Dismissed.**

While Section 3 of the FAA speaks in terms of a stay, the Fourth Circuit has held that Section 3 permits a district court to dismiss an action where all of the claims asserted are referred to arbitration. Where a litigant establishes the existence of a valid agreement to arbitrate the dispute at issue, the court must grant the litigant's motion to compel arbitration and stay or dismiss proceedings until the completion of arbitration. *See Rock v. Solar Rating & Certification Corp.*, No. 8:17-cv-3401-DCC-JDA, 2018 WL 3750617, at \*3 (D.S.C. July 23, 2018), *R. & R. adopted*, 2018 WL 3745057 (D.S.C. Aug. 7, 2018); *See also Weckesser*, 228 F. Supp. 3d at 564. Therefore, because Willis' claims against RAC must be referred to arbitration, the Court should order the trial court to dismiss this action and refer all questions regarding the arbitrability of Willis' claims against RAC to an arbitrator.

**CONCLUSION**

The arbitration agreement unmistakably delegates to the arbitrator the exclusive authority to decide issues related to the formation, validity, and enforceability of the 2020 Arbitration Agreement. Thus, the underlying dispute *and* Willis' challenges to the enforceability of the 2020 Arbitration Agreement are to be decided by the arbitrator. Even if this Court analyzes the validity of the 2020 Arbitration Agreement, however, Willis' challenges ultimately fail. Willis' actions and admissions have bound her to the terms of both the 2020 Rental-Purchase Agreement and 2020 Arbitration Agreement. Therefore, this Court should uphold widely adopted precedent and order the trial court to enforce the 2020 Arbitration Agreement by its terms.

WHEREFORE Appellant Rent-A-Center East, Inc. respectfully requests that this Court overturn the trial court's February 8th order and order that Willis' claims against RAC be submitted to arbitration and that the current action, as to RAC, be dismissed.

Respectfully submitted, this the 25th day of April 2024.

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**RECEIVED**

**Apr 25 2024**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

G.D. Morgan, Jr., Circuit Court Judge

Appellate Case No. 2024-000362  
Case No. 2023-CP-23-04474

Sonja Willis,..... Respondent,

v.

Rent-A-Center East, Inc., Rent-A-Center Franchising International, Inc.,  
Garrett Anderson Road Center, LLC and Does 1 through 20, Inclusive,  
Defendants, of which Rent-A-Center East, Inc. is the Appellant .....Appellant.

**PROOF OF SERVICE**

I certify that I have served the Initial Brief of Appellant Rent-A-Center East, Inc. on Sonja Willis by depositing a copy of it in the United States Mail, postage prepaid, on April 25, 2024, addressed to her attorney of record, Trevor P. Eddy, Esq., The Eddy Law Firm, LLC, 1516 Richland Street, Suite B, Columbia, SC 29201.

April 25, 2024

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