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**May 24 2024**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

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

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

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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 RESPONDENT SONJA WILLIS

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### **Statement of Issues Presented**

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 Appeal stems from a personal injury lawsuit that the Petitioner, Sonja Willis, brought in Greenville County Common Pleas (2023-CP-23-04474) against Appellants Rent-A-Center East, Inc. (hereinafter “RAC”) as well as additional Defendants Rent-A-Center Franchising International, Inc., Garrett Anderson Road Center, LLC and Does 1 through 20. The lawsuit was based on physical injuries and property damage that she sustained after her husband, Thomas Willis, purchased furniture from a RAC store in Greenville, South Carolina.

As part of this purchase, Mr. Willis executed a “Consumer Rental-Purchase Agreement” (hereinafter “The Contract”). The Contract lists Mr. Willis as the “Consumer”, and he is the only signatory. The Contract does not contain arbitration language but references a separate arbitration agreement that must also be signed. Mr. Willis executed a “Rent-A-Center Acceptance/Get It Now/Home Choice Consumer Arbitration Agreement” (hereinafter “The Arbitration Agreement”). On the Arbitration Agreement, there are signature fields for Thomas Willis and for Sonja Willis, however, the only signature is that of Thomas Willis. It is undisputed that Respondent Sonja Willis never signed either The Contract or the Arbitration Agreement. To date there has never been any explanation of why RAC failed to obtain the signature of Ms. Willis and still proceeded with the transaction in its absence.

After the purchase of the furniture, it was discovered that the furniture was infested with bed bugs which caused personal injury and property damage to the Plaintiff.

After inception of the lawsuit, RAC filed a Motion to Dismiss, Or Stay, And to Compel Arbitration. A hearing was held in front of Judge G.D. Morgan, Jr. on this motion on February 5, 2024. On February 7, 2024, Judge Morgan denied this motion with the following order:

“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.”

Thereafter, RAC filed the subject appeal.

### **Standard of Review**

Whether an arbitration agreement may be enforced against a nonsignatory to the agreement is a matter subject to de novo review by an appellate court. *See Aiken v. World Fin. Corp. of S.C.*, 373 S.C. 144, 148, 644 S.E.2d 705, 707 (2007) (stating a determination of whether a claim is subject to arbitration is reviewed de novo); *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 286, 733 S.E.2d 597, 599 (Ct. App. 2012) (applying the de novo standard to a nonsignatory). Under de novo review, a circuit court's factual findings will not be reversed on appeal if any evidence reasonably supports those findings. *Aiken*, 373 S.C. at 148, 644 S.E.2d at 707; accord *Chassereau v. Global-Sun Pools, Inc.*, 373 S.C. 168, 644 S.E.2d 718 (2007); *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 813 S.E.2d 292 (Ct. App. 2018).

### **Summary of Argument**

There are a host of reasons why this Court should not force Plaintiff to arbitrate her personal injury claims against RAC. From the beginning, RAC has a steep uphill battle enforcing the Arbitration Agreement simply on a contractual basis. Plaintiff was not a party to the original contract for the furniture that Mr. Willis purchased from RAC. Plaintiff was also not a party to the Arbitration Agreement. Quite simply, she signed none of these documents. Thus, merely on a contractual review, there is no evidence of the formation of an enforceable contract between Plaintiff and RAC: no bargaining, no meeting of the minds, and no consideration.

RAC's arguments that the Plaintiff should still be forced to arbitrate her personal injury claims against RAC, also fail. While RAC relies on the *Pearson* case, more fully discussed herein, for support of their equitable estoppel arguments, it is clear that the courts have moved past the reasoning in the *Pearson* case. Namely, that the courts apply South Carolina principles of equitable estoppel and this Court has found that those narrower South Carolina principles do NOT support RAC's arguments.

Lastly, there are fundamental defects in the Arbitration Agreement that prevent enforceability against Plaintiff and support the Trial Courts decision.

## Argument

### 1. The Trial Court did not Err in Evaluating the Enforceability and Validity of the Contract or Arbitration Agreement

“When considered in the proper context, our statements that the law ‘favors’ arbitration mean simply that the courts must respect and enforce a contractual provision to arbitrate as it respects and enforces all contractual provisions.” *Palmetto Construction Group, LLC v. Restoration Specialists, LLC*, 432 S.C. 633, 639, 856 S.E.2d 150, 153 (2021). “There is, however, no public policy—federal or state— ‘favoring’ arbitration.” *Id.*

In *Doe v. TCSC, LLC*, 430 S.C. 602, 608, 846 S.E.2d 874, 877 (Ct. App. 2020), the Court of Appeals found that arbitration agreements which invoke the FAA allow “the Court, rather than the arbitrator, to decide ‘gateway’ issues related to arbitration, including whether the arbitration agreement is valid and enforceable.” This is the presumption unless there is “clear and unmistakable evidence” that the parties have chosen to “delegate these issues to the arbitrator.” *Id.* Once it is decided that the gateway issues of validity and enforceability have not been delegated away to the arbitrator, the court may invalidate an arbitration clause based on defenses applicable to contracts generally, including unconscionability. *TCSC*, 430 S.C. at 612, 846 S.E.2d at 879 citing *Kindred Nursing Cts. Ltd. P’ship v. Clark*, 137 S. Ct. 1421, 1426, 197 L.Ed.2d 806 (2017).

### 2. Respondent Is Not Required to Arbitrate Her Claims against RAC Under Equitable Estoppel

"Generally, arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which [it] has not agreed so to submit." *Int'l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 416 (4th Cir. 2000). Section 3 of the Federal Arbitration Act ("FAA") entitles litigants in federal court to a stay of any action that is "referable to

arbitration under an agreement in writing." 9 U.S.C. § 3. A litigant who is not a party to the relevant arbitration agreement may invoke Section 3 if the relevant state contract law allows it to enforce the agreement. *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 632, 129 S. Ct. 1896, 173 L. Ed. 2d 832 (2009). Here, Plaintiff is not a party to the relevant Contract for purchase of the furniture nor is she a party to the Arbitration Agreement both of which are only between RAC and Mr. Willis. Thus, RAC may only invoke Section 3 of the FAA if the relevant state law, here South Carolina law, allows it to enforce the agreement.

RAC argues that South Carolina adopted the doctrine of equitable estoppel under federal law and allows a nonsignatory to enforce an arbitration provision within a contract executed by other parties. RAC primarily relies upon *Pearson v. Hilton Head Hospital*, 400 S.C. 281, 733 S.E.2d 597 (S.C. Ct. App. 2012), in which the South Carolina Court of Appeals applied the FAA to resolve this issue.

However, *Pearson* ignored the United States Supreme Court's decision in *Arthur Andersen LLP v. Carlisle*, which specifically held that "[n]either [Sections 2 nor 3 of the FAA] purports to alter background principles of state contract law regarding the scope of agreements (including the question of who is bound by them). Indeed § 2 explicitly retains an external body of law governing revocation (such grounds 'as exist at law or in equity')." 556 U.S. 624, 630, 129 S. Ct. 1896, 173 L. Ed. 2d 832 (2009). The Seventh Circuit recently reiterated *Carlisle* and clarified that courts must apply traditional state estoppel principles to decide whether an arbitration agreement is enforceable by or against a non-party. *Warciaak v. Subway Rests., Inc.*, 880 F.3d 870, 872 (7th Cir. 2018). Indeed, in *Thompson v. Pruitt Corporation.*, the South Carolina Court of Appeals even acknowledged that *Pearson* contradicts the United States Supreme Court's decision in *Carlisle* concerning the application of state law in determining whether an arbitration agreement is

enforceable by or against a non-party. *Thompson v. Pruitt Corp.*, 416 S.C. 43, 784 S.E.2d 679, 687-88 (S.C. Ct. App. 2016). Accordingly, this Court should apply South Carolina's equitable estoppel law to determine whether RAC is entitled to compel Plaintiff, a non-signatory to the Contract or Arbitration Agreement, to arbitration.

It is important to distinguish direct benefits from indirect benefits because when the benefits to a nonsignatory are merely indirect, arbitration cannot be compelled. *Wilson v. Willis*, 426 S.C. 326, 343-45, 827 S.E.2d 167, 176-77 (2019). A benefit is direct if it flows directly from the agreement. *Id.*; see also *MAG Portfolio Consult, GMBH v. Merlin Biomed Grp. LLC*, 268 F.3d 58, 61 (2d Cir. 2001) (stating direct benefits estoppel requires that a nonsignatory knowingly accept the benefits of an agreement with an arbitration clause in order to be bound by an arbitration clause).

Here, Plaintiff, as a non-signatory to the Contract or Arbitration Agreement, never received any direct benefit from the contract. The only direct beneficiary of the contract Mr. Willis signed was Mr. Willis. Any other person who used that furniture would therefore be an indirect beneficiary and not covered in the Federal rules above. Therefore, equitable estoppel under federal substantive law has no application to the present case.

Now we turn to South Carolina Law on equitable estoppel. Under South Carolina law, "equitable estoppel is a means of preventing a party from asserting a legal claim or defense that is contrary or inconsistent with his or her prior action or conduct." *Rodarte v. Univ. of S.C.*, 419 S.C. 592, 799 S.E.2d 912, 916 (S.C. 2017). "The essential elements of equitable estoppel are divided between the estopped party and the party claiming estoppel."<sup>3</sup> *Id.*

[T]he elements of equitable estoppel as to the party to be estopped are: (1) conduct which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intention, or at least expectation, that such conduct shall be acted upon by the other party; and (3) knowledge, actual or constructive, of the real facts. As related

to the party claiming the estoppel, they are: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; (2) reliance upon the conduct of the party estopped; and (3) action based thereon of such a character as to change his position prejudicially.

*Thompson*, 784 S.E.2d at 688-89 (emphasis in original) (quoting *Boyd v. Bellsouth Tel. Tel. Co.*, 369 S.C. 410, 633 S.E.2d 136, 142 (S.C. 2006)).

In *Thompson*, a decedent's estate brought a wrongful death and survival action against a nursing home facility, and the facility sought to compel the case to arbitration based on an arbitration provision in the decedent's intake paperwork that was signed by the decedent's son and was not legally executed by the decedent or her representative. *Id.* at 682. The South Carolina Court of Appeals rejected the facility's arguments that South Carolina contract law, including equitable estoppel, would bind the estate to arbitrate the dispute. *Id.* at 687-690. The court reasoned that, because the decedent had dementia at the time of her admission, she lacked the capacity to form an intent to mislead the facility into believing she assented to arbitration or that her children had the legal authority to agree to arbitration on her behalf. *Id.* at 689. The court further reasoned that the facility failed to show a detrimental reliance on the representation of the decedent's children that they had the authority to execute the arbitration agreement on behalf of the decedent. *Id.* The court noted that the facility even represented the arbitration agreement to be voluntary and revocable within thirty days of execution. *Id.* As a result, the court held that the facility could not rely on the doctrine of equitable estoppel to compel arbitration of the dispute. *Id.*

Here the elements of equitable estoppel are even less applicable in this case than they were in *Thompson*. Nothing indicates that Plaintiff made a false representation or intended to mislead RAC into believing that Plaintiff entered into an arbitration agreement with RAC. Instead, there is no evidence that Plaintiff had any communications with RAC at the time Mr. Willis signed the Arbitration Agreement. Similarly, nothing indicates that RAC relied on Plaintiff's representations

as set forth in the Agreement, if any, to its detriment. Accordingly, RAC cannot rely on the doctrine of equitable estoppel to compel arbitration of this case.

3. The Arbitration Provision Does Not Delegate Any Gateway Issues To The Arbitrator, And Therefore The Court Retains Jurisdiction To Decide Whether The Arbitration Provision Is Valid And Enforceable

The arbitration provision does not contain a clause to the effect that any of the so-called “gateway” or “threshold” issues are delegated to the arbitrator to decide. However, the arbitration provision explicitly states that the “Federal Arbitration Act will govern the interpretation, enforcement and all proceedings.” The FAA presumes parties intend that the court, rather than an arbitrator, decide “gateway” issues related to validity and enforceability. *TCSC*, 430 S.C. at 608, 846 S.E.2d at 877. “The FAA does not allow a court to make parties delegate issues they have not agreed to delegate.” *Id.*, 430 S.C. at 610, 846 S.E.2d at 878. This is consistent with the view of the Supreme Court of the United States that courts should assume that the parties intended the court to decide certain arbitration issues in the absence of “clear and unmistakable” evidence to the contrary. *See Green Tree Fin. Corp. v. Bazzle*, 539 U.S. 444, 452, 123 S. Ct. 2402, 156 L.Ed.2d 414 (2003).

“Without an express delegation of these issues<sup>1</sup> to the arbitrator, there is no delegation of them that 9 U.S.C. § 2 requires the court to carry out.” *TCSC*, 430 S.C. at 610, 846 S.E.2d at 877. Instead, it remains for the court to decide whether the arbitration agreement is valid and enforceable. *Id.* citing *Harry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524, 530, 202 L.Ed.2d 480 (2019).

There is no delegation clause in the arbitration provision. Accordingly, the Circuit Court was the proper authority to determine whether the arbitration provision is valid and enforceable.

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<sup>1</sup> E.g., Existence, applicability, interpretation and scope of the arbitration agreement, the arbitrability of the claim or dispute, and whether Agreement is valid and enforceable.

#### 4. The Arbitration Agreement Is Invalid Because It Is Unconscionable

“In deciding whether a valid, enforceable, and irrevocable arbitration agreement exists, we apply general principles of state contract law.” *TCSC*, 430 S.C. at 611, 846 S.E.2d at 878 citing *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944, 115 S. Ct. 1920, 131 L.Ed.2d 985 (1995). In South Carolina, “a valid and enforceable contract requires a meeting of the minds between the parties with regard to *all* essential and material terms of the agreement.” *Id.* Citing *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 578, 762 S.E.2d 696, 701 (2014). In the absence of the Plaintiff’s written signature, it is impossible to say that there was notice, much less a meeting of the minds as to any of the essential and material terms of the arbitration provision. The Arbitration Agreement does not indicate that the Plaintiff received any consideration for signing the Agreement.

Notwithstanding the foregoing, even if the Court finds that there was a meeting of the minds and that the Arbitration Agreement does not fail on basic contract principles, the Court may still find that the arbitration provision is invalid and unenforceable because it is unconscionable. *TCSC*, 430 S.C. at 612, 846 S.E.2d at 879. To prove that the arbitration provision is unconscionable, the Plaintiff must show: (1) there was a lack of meaningful choice as to whether to arbitrate because the terms were one-sided; and (2) the terms were so oppressive that no reasonable person would make them, and no fair and honest person would accept them.” *TCSC*, 430 S.C. at 612, 846 S.E.2d at 879 citing *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 24-25, 644 S.E.2d 663, 668 (2007).

##### a. Procedural Unconscionability: The Plaintiff lacked meaningful choice.

Determining whether the Plaintiff meaningfully chose to arbitrate involves sizing up the “fundamental fairness of the bargaining process.” *Smith v. D.R. Horton, Inc.*, 417 S.C. 42, 49, 790

S.E.2d 1, 4 (2016). As stated in *Simpson*:

“Courts should take into account the nature of the injuries suffered by the plaintiff; whether the plaintiff is a substantial business concern; the relative disparity in the parties’ bargaining power; the parties’ relative sophistication; whether there is an element of surprise in the inclusion of the challenged clause; and the conspicuousness of the clause.” 373 S.C. at 25, 644 S.E.2d at 669.

“We also consider whether the parties were represented by independent counsel.” *Smith*, 417 S.C. at 49, 790 S.E.2d at 4.

Even if this Court were to find that the Arbitration Agreement could be enforceable against Plaintiff, the disparity in bargaining power between the parties should give the court pause. To review this question, we must put aside the farcical nature analyzing the bargaining power between a multi-billion dollar corporation and an individual who, by all admissions and evidence, did NOT bargain with the corporation. There can be no inherent fairness in the bargaining of the terms of the Arbitration Agreement between RAC and Plaintiff given the vast disparity of the sophistication and size of the relative parties.

For the foregoing reasons, including the nature of the Plaintiff’s injuries, the Plaintiff’s lack of representation, the element of surprise and the lack of conspicuousness of the clause, as well as the disparity in bargaining power, this arbitration clause is procedurally unconscionable because the Plaintiff lacked any meaningful choice in choosing to arbitrate.

b. Substantive Unconscionability: The terms are unfair and oppressive.

“The FAA became law in 1925, passed primarily to safeguard the rights of merchants to use arbitration to resolve disputes arising over interstate commercial transactions by reversing the judicial hostility against arbitration.” *TCSC*, 430 S.C. at 616, 846 S.E.2d at 881 citing *Epic Sys. Corp. v. Lewis*, 584 U.S. --, 138 S. Ct. 1612, 1621, 200 L.Ed.2d 889 (2018).

The Court’s analysis is to look at the terms of the arbitration provision to see if they are “so

harsh and oppressive no reasonable person would offer or accept them.” *TCSC*, 430 S.C. at 614, 846 S.E.2d at 880. The arbitration provision provides that the:

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.

The Court in *TCSC* previously chastised similar language purporting to bind the parties to resolve all future disputes between them, regardless of the type of dispute precisely as the arbitration provision attempts to do here: through arbitration. *TCSC*, 430 S.C. at 614, 846 S.E.2d at 880.

#### 5. Policy Considerations Are Not In Favor of Enforcing Arbitration in This Case

Equitable estoppel is, ultimately, a theory designed to prevent injustice, and it should be used sparingly. See *Hirsch v. Amper Fin. Servs., LLC*, 215 N.J. 174, 71 A.3d 849, 852 (N.J. 2013) (observing equitable estoppel should be used sparingly to compel arbitration and noting it "is more properly viewed as a shield to prevent injustice rather than a sword to compel arbitration"); 28 Am. Jur. 2d Estoppel and Waiver § 29 (2011) (stating equitable estoppel should be used with restraint and only in exceptional circumstances). This Court should decline to impose it on Plaintiff because considerations of equity do not warrant estopping such an attenuated nonsignatory individual from asserting their claims outside of arbitration. To do otherwise would allow any conceivable victim of RAC's negligence to be forced to arbitrate under an agreement that they were not a party to and did not consent to.

### **Conclusion**

RAC should not be allowed to compel arbitration of Plaintiff's personal injury claims and the Trial Court's decision that there was no evidence that Plaintiff entered into an Arbitration Agreement with RAC should stand. There still is no evidence that Plaintiff entered any enforceable contract with RAC, whether the purchase agreement or the Arbitration Agreement. Both of these contracts were negotiated by and signed by RAC and Mr. Willis. If RAC wished for the purchase agreement and the Arbitration Agreement to be enforceable against Plaintiff, they should have insisted on signatures on the documents by Plaintiff. Their failure to request those signatures was a willful waiving of any right to enforce those contracts against Plaintiff.

While RAC's efforts to compel arbitration fail on a contractual basis, they also fail under RAC's arguments of equity. It is clear that Equitable Estoppel provides RAC no relief whatsoever in their effort to force a nonsignatory to arbitration. As discussed above, Equitable Estoppel in South Carolina is essentially the elements of fraud. There must be some form of misrepresentation or concealment on the part of the nonsignatory. The nonsignatory must intend or expect that the misrepresentation would be relied upon by RAC. The nonsignatory must know the actual truth obstructed by the misrepresentation. Lastly RAC would have to rely on the Plaintiff's misrepresentation by changing their position and that reliance harmed RAC materially. In short, there is simply no evidence that any of those elements are satisfied in this case whatsoever.

Respectfully submitted, this 24<sup>th</sup> day of May 2024.

Signature on following page

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PROOF OF SERVICE

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I certify that I have served the Initial Brief of Sonja Willis on Rent-A-Center Inc. by electronic means a copy sent by email on May 24, 2024, to attorney of record, Benjamin R. Jenkins, [bjenkins@burr.com](mailto:bjenkins@burr.com).

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