

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP4008540

Matthew G Powell

Stewart Title Guaranty Group

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for :  Plaintiff  Defendant or  Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRCP;  Rule 41(a), SCRCP (Vol. Nonsuit);  Rule 43(k), SCRCP (Settled);  Other \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRCP;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  Affirmed;  Reversed;  Remanded;  Other \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

**INFORMATION FOR THE PUBLIC INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: \_\_\_\_\_

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge \_\_\_\_\_ Judge Code \_\_\_\_\_ Date \_\_\_\_\_

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this 19 August 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Arthur Kerr Aiken

Kathryn Thomas

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court

*Jeanette W. McBride*

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

Matthew G. Powell )

Plaintiff, )

v. )

Stewart Title Guaranty Company )

Defendant. )

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2012-CP-40-8549

**ORDER**

RICHLAND COUNTY  
FILED  
AUG 19 AM 11:31  
JEANETTE W. McBRIDE  
C.C.P. & G.S.

This matter came before the court on June 17, 2013 at a hearing on Defendant's Motion to Dismiss and to Compel Arbitration filed on March 28, 2013. Plaintiff was represented by Arthur Aiken, Esquire, and Defendant was represented by Kathryn Thomas, Esquire. After considering the law, the briefs filed by the parties, the arguments of counsel, and all matters submitted, Defendant's Motion to Dismiss and to Compel Arbitration is **DENIED**.

**FACTS**

On or about September 6, 2005, Plaintiff entered into an employment contract with Defendant, a corporation headquartered and incorporated in Texas with offices, corporate subsidiaries, and other affiliates located in forty-eight states and internationally, including South Carolina. During Plaintiff's time of employment, he used a credit card Defendant issued for business-related expenses; participated in training in Charlotte, North Carolina and Houston, Texas; and attended business meetings in Florida, North Carolina, and Texas. On April 1, 2009, Plaintiff executed a non-compete agreement entitled "Agreement" in conjunction with a correspondence explaining Plaintiff's salary and receipt of bonuses that specifically referenced the non-compete agreement. Agreement provided:

All disputes between "name" and Stewart shall be resolved by mandatory and binding arbitration administered by the American Arbitration Association (the "AAA") pursuant to the Federal Arbitration Act (Title 9 of the United States Code) in accordance with this Agreement and the Model Employment Arbitration Procedures of the AAA. Any arbitration proceeding under this Agreement shall be conducted in South Carolina.

On January 1, 2010, Plaintiff received a correspondence from Defendant describing a new incentive bonus program. On January 22, 2010, Plaintiff executed a document describing

his areas of responsibility and compensation, including salary and bonuses. Also on January 22, 2010, Plaintiff executed a second non-compete agreement entitled "Non-Solicitation Agreement." None of the documents executed at this time referenced another. The Non-Solicitation Agreement provided:

All disputes between Associate and Stewart shall be resolved by mandatory and binding arbitration administered by the American Arbitration Association (the "AAA") pursuant to the Federal Arbitration Act (Title 9 of the United States Code) in accordance with this Agreement and the Model Employment Arbitration Procedures of the AAA. Any arbitration proceeding under this Agreement shall be conducted in Texas.

Plaintiff resigned from his position effective on or about May 4, 2012. Plaintiff alleges Defendant breached its employment contract with Plaintiff by failing to pay Plaintiff his wages in the form of his salary and bonuses.

The issue raised in Defendant's motion is whether Plaintiff should be compelled to bring his claims against Defendant pursuant to the arbitration provisions in either the 2009 Agreement or the 2010 Non-Solicitation Agreement. Defendant also contends the arbitration provisions are subject to the Federal Arbitration Act ("FAA").

#### DISCUSSION

Arbitration is a matter of contract law and is only available when the parties involved contractually agreed to arbitrate. See *S.C. Pub. Serv. Auth. v. Great W. Coal, Inc.*, 312 S.C. 559, 437 S.E.2d 22 (1993); *Towles v. United Healthcare Corp.*, 338 S.C. 29, 524 S.E.2d 839 (Ct. App. 1999). "Determining whether a party agreed to arbitrate a particular dispute is an issue for judicial determination to be decided as a matter of contract. An arbitration clause is a contractual term, and general rules of contract interpretation must be applied to determine a clause's applicability to a particular dispute." *Towles*, 338 S.C. at 41, 524 S.E.2d at 846. Both federal and state policies favor the arbitration of disputes where the parties have agreed in advance to resolve their disputes by arbitration. *Grant v. Magnolia Manor-Greenwood, Inc.*, 383 S.C. 125, 678 S.E.2d 435 (2009). Because of this policy, "arbitration agreements are liberally construed in favor of arbitrability." *Landers v. Fed. Deposit Ins. Corp.*, 402 S.C. 100, 739 S.E.2d 209, 213 (2013). "[U]nless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute[,] arbitration must generally be ordered." *Id.* "A motion to compel arbitration made pursuant to an arbitration clause in a

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written contract should only be denied where the clause is not susceptible to any interpretation which would cover the asserted dispute.” *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 597, 553 S.E.2d 110, 118-19 (2001).

Plaintiff alleges in his Complaint that he was not paid wages in the form of a salary and bonuses. Defendant maintains that this allegation should be submitted to arbitration because the 2009 correspondence discussing salary and bonuses was executed in conjunction with and referenced Agreement that had an arbitration provision. However, in 2010, a subsequent document describing compensation and a subsequent non-solicitation agreement were executed, neither of which referenced the other. This Court finds that these later executed documents supersede the earlier executed documents.

The Non-Solicitation Agreement focuses exclusively on prohibiting Plaintiff from disclosing confidential information, soliciting clients, and soliciting employees. It does not reference salary and bonuses and, unlike the documents executed in 2009, no document discussing salary and bonuses references the Non-Solicitation Agreement. Therefore, under the terms of the Non-Solicitation Agreement, only disputes relating to a violation of the Non-Solicitation Agreement must be submitted to arbitration. Plaintiff’s pleadings and Defendant’s motion do not inform the Court that Plaintiff’s claims for wages are in any way related to a violation of the Non-Solicitation Agreement. Thus, the Court is obliged to conclude that they are not related. Therefore, the facts involved in this dispute are independent of the Non-Solicitation Agreement. Despite the policy of favoring arbitration, the Non-Solicitation Agreement does not provide any interpretation that could cover the asserted dispute and arbitration cannot be compelled.


Because this Court finds no reason to compel arbitration of the dispute, whether the arbitration provision is subject to the FAA is irrelevant.

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**ORDER**

Based upon the plain language of Non-Solicitation Agreement, Plaintiff's claim does not mandate arbitration. It is **ORDERED** that Defendant's Motion to Dismiss and to Compel Arbitration is **DENIED**.

**AND IT IS SO ORDERED.**

  
\_\_\_\_\_  
ALISON RENEE LEE  
Presiding Judge

August 15, 2013  
Columbia, South Carolina

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