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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Michael G. Nettles, Circuit Court Judge

Civil Case No. 2023-CP-07-00646
Appellate Case No: 2024-000869

Amber Leigh Lovelace, by and through her
Conservator Richard Cooler, ...Respondent,

v.

Steven Lovelace, Regions Bank,
Cetera Investment Services d/b/a Regions Investment
Services, and Christopher Lazurek, ...Defendants.

Of whom Regions Bank,
Cetera Investment Services d/b/a Regions Investment
Services, and Christopher Lazurek are, ...Appellants.

REPLY BRIEF OF APPELLANTS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

INTRODUCTION

Respondent's Initial Reply Brief spends several pages making factual assertions that, given the early posture of this case, have not been substantiated by any evidence. The parties have not engaged in any discovery as the threshold issue of arbitrability is still being decided. For example, Respondent baldly alleges that "Defendant Christopher Lazurek, a representative of Cetera who worked at the Beaufort office, signed the required Restricted Account Agreement for these accounts . . ." in referencing the restricted account agreement created by Defendant Steven Lovelace and signed by Cetera in 2016. (Resp't Br., at 2). This language suggests that the Regions account was covered by the Restricted Account Agreement in addition to the Cetera Account, but as Respondent later admits, no Restricted Account Agreement with Regions has ever been located or produced in these proceedings. Respondent incorrectly suggests that Mr. Lazurek had the authority to bind Regions, which he did not, and makes several additional factual allegations related to the substantive claims that will be at issue in these cases, but do not relate to the narrow question pending before this Court of whether the parties agreed to arbitrate their dispute.

Instead, the relevant record is limited to the documents signed by Mr. Cooler and those surrounding Mr. Cooler's agreement to arbitrate these claims after he was appointed as successor conservator for his granddaughter's estate, following Defendant Steven Lovelace's resignation. Relevant evidence demonstrates that Mr. Cooler signed Cetera's New Account Application and Regions' Fiduciary Account Maintenance and Signature Form. (R.p. __). Each of these documents informed Mr. Cooler that he was agreeing to arbitrate any claims he may have against Cetera and Regions, and certainly all claims related to the funds held in these accounts. With full knowledge that he had claims against both financial institutions, he assented to the Cetera Arbitration

Agreement (defined in Appellant's Initial Brief) and Regions Arbitration Agreement (defined in Appellant's Initial Brief) (collectively, "Arbitration Agreements").

Respondent does not contest that he signed the Arbitration Agreements. Respondent's Initial Reply Brief does not contest that the Federal Arbitration Act and its emphatic policy favoring arbitration applies. Instead, Respondent argues "the crux of this case" is whether the agreements are unconscionable. (Resp't. Br., at 15). There is no evidence of unconscionable practices or terms; what the record demonstrates is a typical interaction between a customer and financial institutions. Acting on behalf of his granddaughter, Mr. Cooler exercised his authority, bestowed upon him by the Beaufort County Probate Court, to enter into agreements that contained arbitration provisions. Respondent makes new arguments in a hollow attempt to find nonexistent substantive unconscionable terms. Instead, the Arbitration Agreements merely require all parties to arbitrate their claims. Contrary to Respondent's arguments, the presence of an arbitration agreement is not unconscionable, but instead, a common term ubiquitous in today's world.

ARGUMENT

I. Respondent Has Not Demonstrated These Agreements Were Unconscionable.

Respondent relies on *315 Corley CW LLC v. Palmetto Bluff Dev., LLC*, Op. No. 6074, 2024 WL 4763646 (Ct. App. filed July 24, 2024) and *Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 879 S.E.2d 746 (2022) to support his unavailing unconscionability arguments. Respondent failed to address the alleged substantive unconscionability of the Arbitration Agreements in any briefing to the lower court, but instead relied only on the perceived procedural unconscionability and Mr. Cooler's alleged lack of sophistication[1] in arguments to the circuit court. *See* Resp't. Br. Sec. 1(B).

[1] Mr. Cooler was appointed conservator for his granddaughter's accounts in order to manage her financial relationship with Cetera and Regions. Under the doctrine of judicial estoppel, Respondent cannot now, after Mr. Cooler has been found competent to serve as conservator by the Beaufort

For the first time, Respondent attempts to create substantive grounds for unconscionability by complaining of provisions in the agreements, generally, instead of directing those arguments to specific provisions of the arbitration provisions. Though it is within this Court's discretion to determine whether it will entertain additional sustaining grounds, Respondent's new grounds are nevertheless unconvincing. *See I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 419-21, 456 S.E.2d 716, 723-24 (2000) (finding that even though an appellate court may choose to address additional sustaining grounds, "an appellate court is less likely to rely on such ground when the respondent has failed to present it to the lower court").

A. The Arbitration Agreements Are Not Procedurally Unconscionable.

Respondent premises his procedural unconscionability argument on the fact entering the Arbitration Agreements was a precursor to conducting business with Cetera and Regions. Respondent appears to argue the fact that the account agreements contain arbitration provisions is proof perfect of their unconscionability. What Respondent complains of, however, is ubiquitous

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County Probate Court, argue to the circuit court and this Court that Mr. Cooler is unequipped to understand run of the mill financial agreements.

Because judicial estoppel is an equitable consideration that serves the truth-seeking function of the court, courts may apply the doctrine at their discretion. See *Murray v. Est. of Murray*, 436 S.C. 99, 117, 871 S.E.2d 173, 183 (Ct. App. 2022) (quoting *Hawkins v. Bruno Yacht Sales, Inc.*, 342 S.C. 352, 368, 536 S.E.2d 698, 706 (Ct.App.2000) for the proposition that [J]udicial estoppel focuses on the relationship between the litigants and the judicial system. . .[b]ecause judicial estoppel is an equitable concept . . . application of the doctrine is discretionary")).

Application of judicial estoppel requires the five elements: (1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent" *Auto-Owners Ins. Co. v. Rhodes*, 405 S.C. 584, 597, 748 S.E.2d 781, 788 (2013). Mr. Cooler's position as conservator in this case satisfies all five elements and Appellants urge the Court to exercise its discretion to apply the doctrine.

of almost every interaction between an individual and almost any commercial entity—banking and investments institutions or otherwise.

Regions and Cetera plainly disclosed to Mr. Cooler that he was entering into arbitration agreements with the two institutions. As it relates to Cetera, the Cetera New Account Application is a nine-page document. (Aff. of Kenneth Cobb ¶ 5; R. p. ___). The sixth page of the Cetera New Account Application is the signature page. (*Id.*) With his signature, Mr. Cooler acknowledged and agreed that: (1) he "received, read, [understood], and agree[d] with all of the information contained within this document" and "that this agreement contains a predispute arbitration clause that is fully set forth in paragraph 20 on page 9 of this form." (Exhibit A to Appellants' Mem. in Supp. of Mot. to Compel Arb., at 6; R. p.___). Though Mr. Cooler denies receiving this page of the document, he does not deny signing it. (Aff. of Richard Cooler, ¶ 11-16; R. p. ___). Despite Respondent's claim there is no conflicting testimony, a Cetera representative swore that furnishing copies of the entire agreements is standard business practice, and there is no evidence to suggest Mr. Cooler did not receive all nine pages. (Aff. of Kenneth Cobb ¶6–8; R. p. __).

Similarly, Mr. Cooler also acknowledged receipt of the Regions Arbitration Agreement when he signed Regions' Fiduciary Account Maintenance and Signature Form, which provides in bolded font immediately next to the signature line:

> **By signing, I acknowledge receiving and agree to each and every term, condition, and provision of the Deposit Agreement (including without limitation, the ARBITRATION AND WAIVER OF JURY TRIAL provisions thereof and the provisions for changing the terms thereof) and related disclosures for this account.**

(Mot. to Compel. Ex. C; R. p. __). Again, Respondent claims that he did not receive the Regions Deposit Agreement that contains the arbitration agreement, however, there is evidence in the record that the Deposit Agreement is provided to all customers. (Aff. of Mark J. Weeks ¶ 5; R. p.

__). Respondent seemingly suggests that Regions and Cetera executed a sleight of hand to get Mr. Cooler to agree to arbitrate his claims, but what the record reveals is that Mr. Cooler was advised that he was entering into arbitration agreements, and under the law he is presumed to have read and understood the agreements he signed. *Burwell v. S.C. Nat. Bank*, 288 S.C. 34, 39, 340 S.E.2d 786, 789 (1986) ("[E]very 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."); *see also First Baptist Church of Timmonsville v. George A. Creed & Son, Inc.*, 276 S.C. 597, 599, 281 S.E.2d 121, 123 (1981) (concluding that "in the absence of showing of fraud, mistake, unfair dealing or the like, a party to a contract incorporating an arbitration provision cannot escape the obligation of such a provision by simply declaring: 'But I did not read the whole agreement'").

B. The Arbitration Agreements Are Not Substantively Unconscionable.

"Under South Carolina law, substantive unconscionability exists where the arbitration contract has terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them." *Thomerson v. Covercraft Indus., LLC*, No. 2:23-CV-02225-DCN, 2024 WL 1251532, at *15 (D.S.C. Mar. 25, 2024) (quotation omitted). Mutuality is paramount when considering whether terms are substantively unconscionable. *Id.* (quoting *Finch v. Lowe's Home Ctrs., LLC*, 2021 WL 2982863, at *8 (D.S.C. July 15, 2021)).

For the first time, Respondent argues the Cetera Arbitration Agreement and Regions Arbitration Agreement are substantively unconscionable because both retained the exclusive right to amend the larger account agreement at any time.[2] (Resp't. Br., at 9–10). Respondent contends that *315 Corely* supports this position but *315 Corely* is distinguishable.

[2] Respondent references Paragraph 18 of the Cetera New Account Agreement and Paragraph 38 of the Regions Deposit Agreement. Importantly neither of these provisions are in the respective arbitration agreements of Regions and Cetera.

In *315 Corely*, this Court found that the combination of a unilateral amendment provision and a provision that deprived a home buyer of statutorily permissible damages rendered an arbitration agreement unconscionable under South Carolina law. *315 Corley*, 2024 WL 4763646, at *6. ("In light of this limitation on damages and the Defendants' unilateral ability to modify the arbitration agreement, no reasonable person would make the present terms in this arbitration agreement, nor would any reasonable person accept them. Consequently, we hold that the arbitration agreement in the [documents] is unconscionable."). Under the Court's reasoning, when one party to the agreement may unilaterally change the agreement without notice and when the arbitration clause acts to limit damages that are expressly provided for in South Carolina statute, thus depriving a consumer of their statutory rights to potential recovery, no reasonable person would agree to these provisions and so the agreement is unconscionable. However, the Arbitration Agreements at issue in this case are immediately distinguishable, and do not in any way limit Respondent's claims. These Arbitration agreements merely require Mr. Cooler to file his claims in a neutral, unbiased arbitral forum.

In addition to the contractual provisions outside the arbitration agreement referenced above, Respondent raises additional provisions from the Regions Deposit Agreement for the first time in an attempt to manufacture a substantively unconscionable term. (Resp't Br., at 10–11). Respondent's attempts to do this runs afoul of the separability principle established in *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395 (1967), in which the Supreme Court found that an arbitration clause's validity is distinct from the substantive validity of the contract as a whole. *See also New Hope Missionary Baptist Church v. Paragon Builders*, 379 S.C. 620, 630, 667 S.E.2d 1, 6 (Ct. App. 2008) (citing *The Hous. Auth. of City of Columbia v. Cornerstone Hous., LLC*, 356 S.C. 328, 338, 588 S.E.2d 617, 622 (Ct. App. 2003)); *Jackson Mills, Inc. v. BT Cap. Corp.*, 312

S.C. 400, 404, 440 S.E.2d 877, 879 (1994). Respondent cannot use other terms in the larger account agreements to invalidate an otherwise enforceable arbitration provision. *Smith v. D.R. Horton, Inc.*, 417 S.C. 42, 48, 790 S.E.2d 1, 4 (2016) ("[I]n conducting an unconscionability inquiry, courts may only consider the provisions of the arbitration agreement itself, and not those of the whole contract.").

Respondent similarly relies on *Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 615, 879 S.E.2d 746, 757 (2022), *reh'g denied* (Nov. 17, 2022), *cert. denied*, 143 S. Ct. 2581 (2023), but that case is also distinguishable. In *Damico*, the South Carolina Supreme Court invalidated an arbitration provision that permitted a homebuilder defendant to select what parties the plaintiff could include in an arbitration. *Id.* There, parties excluded by the defendant homebuilder could be sued in state court. However, arbitration provision precluded the arbitration proceedings from having binding effect on future or parallel proceedings unless there was mutuality of parties, which the defendant homebuilder could ensure through its selection of who to include in the arbitration proceeding. The Court in *Damico* reasoned this risked duplicative and inconsistent judgments and factual findings because the defendant homebuilder could hand select certain defendants for arbitration and leave others to be sued in a separate forum. *Id.* at 616, 879 S.E.2d at 757. Read together, the Court found that these provisions made the arbitration agreement unconscionable. Neither Arbitration Agreement at issue here contains a framework that is in anyway similar to the provisions in *Damico,* and thus that case has no bearing on the provisions considered in the proceedings.

The Regions Agreement binds both Regions and Mr. Cooler to the arbitration provision stating, "you and we agree that *either party* may elect to resolve a claim by BINDING ARBITRATION any controversy, [or] claim . . . between you and us[;]" it provides for a fee

sharing relationship between the parties; permits the parties to agree to a forum other than arbitration; and even gives signors the option of filing certain claims in small claims court. (Def. Motn. To Compel Ex. D, at 8). These terms are not so tilted in Regions' favor that no reasonable person could ever agree to them. Instead, these terms apply equally to the signor and to Regions, and are distinguishable from the unilateral terms the Court evaluated in *315 Corley* and *Damico*.

The Cetera Agreement similarly applies the arbitration provision to both the signor and to Cetera. The Cetera Agreement does not elevate Cetera over Mr. Cooler, nor does it deprive Mr. Cooler of any potential damages. The Cetera Agreement applies equally to Cetera and Mr. Cooler, and even gives signatories actual notice of what they and Cetera are giving up when agreeing to the arbitration clause. (R. p. ___). Contrary to the contention of Respondents, the Cetera Agreement does not deprive the signor of any statutory or procedural rights; it does not limit discovery available to the parties; it does not impose limitations on claims; it does not impose any requirements on the composition of the arbitral panel; and does not require that decisions are void of reasoning or explanation. Instead, the Cetera Arbitration Agreement merely highlights general differences between arbitration and court proceedings exactly so signors will know what waiving their right to a jury trial could entail. Describing procedural differences between arbitration and traditional court proceedings is simply not the same as imposing terms that unduly favor one party over the other. *See Thomerson*, 2024 WL 1251532, at *16 (finding that the terms included in an arbitration agreement were equally fair and binding, even though the contract was one of adhesion, and therefore finding that the arbitration agreement was not unconscionable).

II. These Claims Are Covered by the Cetera and Regions Arbitration Agreements.

It is undisputed that Mr. Cooler signed the Cetera New Account Application and the Regions Fiduciary Account Maintenance and Signature Form on or around January 30, 2023.

These documents instructed Mr. Cooler that he was agreeing to arbitrate these claims. (Appellants' Mem. in Supp. of Mot. to Compel Arb. Exhibits A and C; R. p. __).

Because a party entering a contract owes the other party a duty to learn the contents of the contract, Mr. Cooler's signature acts as confirmation that he knew that the arbitration clauses existed and that he understood them. *Burwell v. S.C. Nat. Bank*, 288 S.C. 34, 39, 340 S.E.2d 786, 789 (1986) ("[E]very 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."); *see also First Baptist Church of Timmonsville v. George A. Creed & Son, Inc.*, 276 S.C. 597, 599, 281 S.E.2d 121, 123 (1981) (concluding that "in the absence of showing of fraud, mistake, unfair dealing or the like, a party to a contract incorporating an arbitration provision cannot escape the obligation of such a provision by simply declaring: 'But I did not read the whole agreement'").

In his brief, Respondent relies on semantics over substance, asserting that the use of "arising out of *this* agreement" in the Cetera Arbitration Agreeement acts to extrapolate Mr. Cooler's claims and place them outside of the agreement. (*See* Resp't Br., at 14; R.p.__); *then see Gardner v. Country Club, Inc.*, No. 4:13-CV-03399-BHH, 2015 WL 7783556, at *17 (D.S.C. Dec. 3, 2015) (finding that parsing semantics in job descriptions was insufficient to preclude exotic dancers as being characterized as employees of an adult entertainment club). "To determine whether an arbitration clause applies to a dispute, a court must determine whether the factual allegations underlying the claim are within the scope of the arbitration clause." *Parsons v. John Wieland Homes & Neighborhoods of the Carolinas, Inc.*, 418 S.C. 1, 6, 791 S.E.2d 128, 131 (2016) (citing *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 590, 553 S.E.2d 110, 115 (2001)).

Respondent cannot avoid arbitration by relying on the "arising out of *this* agreement" phrasing. "[W]here a broad arbitration clause is involved, a dispute must be referred to arbitration

as long as the underlying factual allegations simply touch matters covered by it." *Valspar Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA*, 104 F. Supp. 3d 977, 981 (D. Minn. 2015) (internal citations omitted); *see also Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 598, 553 S.E.2d 110, 119 (2001) ("A broadly-worded arbitration clause applies to disputes that do not arise under the governing contract when a 'significant relationship' exists between the asserted claims and the contract in which the arbitration clause is contained."). The funds at issue in this case are governed by the Cetera New Account Agreement signed by Mr. Cooler. The claims asserted in this case are related to Cetera's management of the conservatorship funds while in the accounts for which Mr. Cooler now seeks compensation. To accept Respondent's position would mean that the only claims that could be compelled to arbitration would be breach of contract claims, with the exclusion of any claims that could encompass the actions of anyone associated with the accounts; this is contrary to the broad language used to describe the types of actions the clauses are meant to cover.[3]

Respondent's "arising out of this agreement" argument is completely inapplicable to Regions. The Regions Arbitration Agreement broadly covers any dispute related "to any account, contract, loan, credit, transaction, business, contact, interaction or relationship you may have or have had with us from time to time." (Motn. To Compel Ex. D, at 1; R.p.___); *York v. Dodgeland of Columbia, Inc.*, 406 S.C. 67, 749 S.E.2d 139 (Ct. App. 2013) (finding that contractual language using "any and all disputes" "indicated the parties' unambiguous, mutual intent to arbitrate").

[3] For the avoidance of doubt, Respondent was informed that he was submitting disputes he had with Cetera to arbitration in in Paragraph 19 of the Cetera Agreement, which plainly states, "If any dispute arises between you and me, I agree that the matter will be resolved by arbitration as provided in the following paragraph, or if not available, by the courts of the State of Minnesota, County of Stearns." (Motn. To Compel Ex B, at 9; R.p.___).

III. There is Consideration to Support the Creation of the Arbitration Agreements.

Respondent does not address Appellants' arguments as to why the lower court erred in finding a lack of consideration. Instead, Respondent argues without any substantiation that Mr. Cooler's appointment as successor conservator somehow prevents him from assenting to the Arbitration Agreements. As explained above, Mr. Cooler signed both the Cetera New Account Application and the Regions Fiduciary Account Maintenance and Signature Form. A signature is more than enough to affirmatively assent to an agreement. As stated in Appellants' Initial Brief and above, bilateral, mutual promises are sufficient consideration.

IV. Existence of an Arbitration Agreement is Not Evaluated Under a Clear and Convincing Evidence Standard.

A clear and convincing standard is not required to prove the existence of an agreement to arbitrate in South Carolina. As described in Appellants' Initial Brief, the clear and convincing standard employed by the circuit court and argued by Respondent comes from a Fourth Circuit opinion that applied the clear and convincing standard to the motion for summary judgment because the court determined it must "view the evidence presented through the prism of the substantive evidentiary burden." *Hill v. Emp. Res. Grp., LLC* 816 F. App'x 804, 809 (4th Cir. 2020); (App. Br., at 28–29). Under the laws of Virginia, Kentucky, West Virginia, and Ohio, at issue in *Hill*, clear and convincing evidence is required to establish the existence of a missing or lost instrument through parole evidence. *Id.* No such evidentiary rule exists in South Carolina and the existence of the written instrument is not questioned here.

While courts have said that the burden of proof for a motion to compel arbitration is "akin to the burden of summary judgment," this is "because motions to compel arbitration often require courts to consider evidence outside of the pleadings." *Thomerson*, 2024 WL 1251532, at *4.

2024).[4] However, "[w]hether an arbitration agreement has been formed is an issue of state contract law." *Id.* (citing *Minnieland Priv. Day Sch., Inc. v. Applied Underwriters Captive Risk Assurance Co.*, 913 F.3d 409, 415 (4th Cir. 2019)). Appellants need only show that an agreement was made. *Id.* Admittedly, the law surrounding the burden of proof to compel arbitration is "less clear." *Id.* However, for Respondent's argument to withstand even the slightest of examinations, the burden of persuasion to prove the existence of a contract in South Carolina would have to be by clear and convincing evidence, which it is not.

The evidentiary standard to prove the existence of a contract is the preponderance of the evidence. For example, under South Carolina law, to prevail on a breach of contract claim, a plaintiff need only establish three elements, including a binding contract entered by the parties, "*by a preponderance of the evidence.*" *T-Zone Health Inc. v. SouthStar Cap. LLC*, No. 2:20-CV-02519-DCN, 2023 WL 5021952, at *3 (D.S.C. Aug. 7, 2023) (emphasis added). If a party need only prove the existence of a contract by the preponderance of the evidence to assert a breach of contract claim, then so too is the standard for a party to demonstrate the existence of an agreement to arbitrate. *See Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 539–540, 542 S.E.2d 360, 364 (2001) (citing *Allied–Bruce Terminix Companies, Inc. v. Dobson*, 513 U.S. 265, 281 (1995) and finding that when a state law places an arbitration clause on an unequal footing with other contracts, such a law is preempted by the FAA)*; see also Kindred Nursing Ctrs. Ltd. P'ship v. Clark*, 581 U.S. 246, 247 (2017) (finding that the Kentucky Supreme Court's finding that a power of attorney did not permit a legal representative to enter into an arbitration agreement for someone else singled out arbitration agreements and violated the FAA); *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011) (holding that a court may not invalidate an arbitration agreement based

[4] The more recently authored *Thomerson* opinion does not apply a clear and convincing standard.

on legal rules that "apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue"). The circuit court impermissibly elevated the arbitration provisions by requiring a heightened evidentiary standard and this Court should reverse and compel this case to arbitration when applying the proper standard.

V. The Federal Arbitration Act Does Preempt State Law that Singles Out Arbitration Agreements from Other Contracts and There Is No Waiver.

Appellants' Initial Brief addresses the arguments raised by Respondent in Sections IV and V of the Response Brief. In Section IV of his brief, Respondent argues the FAA does not preempt South Carolina law finding a contract unconscionable. This argument misses the mark. In Section I.ii. of Appellants' Initial Brief, it is noted that the circuit court's order served to invalidate the Cetera Arbitration Agreement based on the statutory language found in S.C. Code Ann. § 15-48-10. While the circuit court did not cite this statute directly, it effectively applied the requirements of this code section. The South Carolina Supreme Court has already determined that S.C. Code Ann. § 15-48-10 is preempted by the FAA. *Munoz*, 343 S.C. at 539, 542 S.E.2d at 364 (citing *Allied–Bruce Terminix Companies, Inc. v. Dobson*, 513 U.S. 265, 281 (1995)).

Section V of Respondent's brief continues to contort the 2016 Restricted Account Agreement and the 2023 Beaufort County Probate Court Order appointing Mr. Cooler as Successor Conservator by asserting that the court order somehow waives the arbitration provisions. This argument is simply not rooted in the reality of the statutory requirements imposed on conservatorships. For the reasons stated in Appellants' Initial Brief, there is waiver. Respondent has not raised any new arguments to support his contention that the 2023 Probate Court Order, to which no Appellant was a party, somehow demonstrates a waiver of Appellants' contractual rights to arbitration and cannot now act to bar this case from arbitration when these parties have duly contracted to arbitrate.

CONCLUSION

Pursuant to the foregoing analysis, and the analysis presented in Appellant's Initial Brief, Appellants ask the Court to reverse the circuit court and compel this case to arbitration.

Respectully submitted,

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December 2, 2024
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Of whom Regions Bank,
Cetera Investment Services d/b/a Regions Investment
Services, and Christopher Lazurek are, ...Appellants.

PROOF OF SERVICE

The undersigned certifies that a copy of the Reply Brief of Appellants has been served upon counsel for Respondent via electronic mail at the email addresses stated in the Attorney Information System as set forth below on December 2, 2024.

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December 2, 2024
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Attachments: 2024.12.02 Appellants' Reply Brief (Lovelace v Cetera).pdf

Dear Counsel,

Attached, and served upon you as Counsel for the Respondent, please find Appellants' Reply Brief in the above matter.

Thank you,
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