THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge

Circuit Court Case No. 2023-CP-40-04606
Appellate Case No. 2024-001435

LATONYA MARIE MILLER-HEMINGWAY,.....Respondent,

v.

U-HAUL CO. OF SOUTH CAROLINA, INC., d/b/a/ U-HAUL MOVING & STORAGE OF SPRING VALLEY,.....Appellant.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

This case arises from Respondent LaTonya Marie Miller-Hemingway's rental of a vehicle from Appellant U-Haul Co. of South Carolina, Inc. d/b/a U-Haul Moving & Storage of Spring Valley ("UHSC") on December 23, 2020. (R. __ (Compl. ¶ 5)). The rental agreement between these parties was memorialized in a written contract (the "Equipment Contract") signed by Respondent on December 23, 2020. (R. __ (Anderson Aff., Ex. A at p. 6)). Respondent alleges that while exiting the U-Haul rental truck, she slipped on the side step, fell to the pavement, and was injured as a result. (R. __ (Compl. ¶¶ 6, 9)).

The Equipment Contract that Respondent signed states that "I agree to submit all legal claims in accordance with the U-Haul Arbitration Agreement, incorporated by reference, and available at uhaul.com/arbitration or from my local U-Haul representative." (R. __ (Anderson Aff., Ex. A at p. 6)). Pursuant to the terms of the Arbitration Agreement that was specifically identified and incorporated by reference into the Equipment Contract, Respondent agreed to mandatory arbitration of "any dispute, complaint, controversy, or cause of action related to" her U-Haul truck rental, as follows:

U-HAUL ARBITRATION AGREEMENT ("AGREEMENT")

> **PLEASE READ CAREFULLY. THIS MANDATORY AGREEMENT AFFECTS YOUR RIGHTS.** By engaging in a "Transaction," "You" and "U-Haul" voluntarily and knowingly enter into this Agreement, which waives your right to sue and bring claims in court, other than as stated below, or have a jury resolve any dispute:
>
> **1.** Except as expressly provided in this Agreement, "Claims" shall not be pursued in court (except "Small Claims"), but shall be decided by binding arbitration administered by the American Arbitration Association in accordance with its AAA Consumer Arbitration Rules (https://www.adr.org/ consumer), and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.
>
> **2.** For purposes of this Agreement, the following definitions shall apply:

a. **"Claims"** is broadly interpreted to include any dispute, complaint, controversy, or cause of action related to your Transaction and to U-Haul. Claims, including assigned claims, brought under any legal theory, whether at law or in equity, are covered by this Agreement and shall include, but not be limited to, all statutory and tort claims, that may be asserted.

b. **"Equipment"** means any truck, vehicle, trailer, tow dolly, U-Box container, retail purchase, or physical item related to your Transaction.

c. **"Small Claims"** means a lawsuit filed in a local court that has jurisdiction to decide cases involving relatively small amounts of money damages.

d. **"Transaction"** means the commencement, completion, or fulfillment of: A) a request or reservation to rent, use or purchase Equipment or to receive services; and/or B) the use or review of the content of any U-Haul website.

e. **"U-Haul"** means all subsidiaries, related companies, insurers, parents, agents, affiliates, and/or independent dealers of U-Haul International, Inc., and each of their respective officers, directors, shareholders, managers, employees and other representatives who had anything to do with Your Transaction.

f. **"You"** means the person who engaged in a Transaction and (as applicable) Your respective subsidiaries, affiliates, agents, employees, persons related to You, and Your beneficiaries, estate, spouse, domestic partner, heirs, assigns and other successors-in-interest, as well as all authorized and unauthorized users of the Equipment. "Your" refers to "You."

3. U-Haul and You agree that a U-Haul Transaction affects interstate commerce and that this Agreement shall be governed by the Federal Arbitration Act, 9 U.S.C. ch. 1, et. seq.

4. You acknowledge and agree that You have voluntarily chosen to engage in a Transaction with U-Haul rather than a competitor who may offer comparable goods and services but may not require binding arbitration. Arbitration is less formal than court; uses a neutral arbitrator instead of a judge or jury; allows limited discovery; and is subject to limited judicial review. The decision of an arbitrator may be entered and enforced as a final judgment in a court of competent jurisdiction.

* * *

19. Arbitrator's Authority. The Arbitrator **shall:**

* * *

d. Resolve all disputes regarding the scope and enforceability of this Agreement, including the enforcement of the class action waiver;

(R. __ (Anderson Aff., Ex. B at pp. 8, 10)).

Respondent initiated this action on August 31, 2023 by filing a Summons and Complaint in the Court of Common Pleas that asserted a single cause of action for negligence against UHSC. (R. __ (Compl. ¶¶ 8 – 9)). On October 5, 2023, Appellant filed a Motion to Dismiss and Compel Arbitration. (R. __ (UHSC's Arbitration Motion)). On the same date, and in support of its motion to compel arbitration, Appellant filed an affidavit by its President, Mr. Kevin Anderson, which identified and attached the Equipment Contract and the Arbitration Agreement. (R. __ (Anderson Aff.)). Respondent filed no affidavits, and submitted no evidence, in opposition to UHSC's motion to compel.

The circuit court heard the pending motion to compel arbitration on June 12, 2024, and denied that motion on July 29, 2024. (R. __ (Order)). On the issue of arbitrability, the court stated that "[u]nder the FAA, the court, rather than the arbiter, is presumed to determine the gateway question of arbitrability unless the parties expressly provide otherwise." (*Id.* at p. 1). During the hearing, Appellant's counsel specifically raised the delegation of arbitrability to the arbitrator through Paragraph 19(d) of the Arbitration Agreement, (R. __ (Transcript at 6:12 – 6:15)), and that same Paragraph 19(d) was in evidence before the circuit court through the Affidavit of Kevin Anderson. (R. __ (Anderson Aff., Ex. B at ¶ 19(d), p. 10)). The court's written order found, however, that "[i]n this case, there is nothing in the arbitration clause of the Equipment Contract

or in the separate Arbitration Agreement that reserves the issue of arbitrability for the arbiter instead of the court." (R. __ (Order at pp. 1 – 2)).

Based on this finding, the circuit court held that "[i]n the absence of any provision that reserves these gateway issues for the arbiter, this is an issue of law for the court, applying South Carolina contract law." (*Id.* at p. 2). The court found that Respondent "signed the Equipment Contract but there is no evidence [Respondent] was provided with the separate Arbitration Agreement." (*Id.*). Respondent did not testify, either by affidavit or otherwise, and submitted no evidence regarding whether or not she requested, received, located, or reviewed the Arbitration Agreement. At hearing, Respondent's attorney did not argue that she never received or reviewed the Arbitration Agreement. (*See* R. __ (Transcript at pp. 4 – 15)). The court, however, found as fact that Respondent had <u>not</u> received the Arbitration Agreement, stating:

> It is hard to imagine how [Respondent] could have agreed to the terms set forth in the separate Arbitration Agreement when she was not provided with a copy of the document. [Respondent] would have had to go online when she was presented with the contract, presumably while standing at the counter at the U-haul office, in order to discern exactly what she was agreeing to.

(R. __ (Order at p. 2)). The circuit court denied Appellant's motion to compel arbitration, finding "there was no meeting of the minds to arbitrate the claims[.]" (*Id.* at p. 3). The court's order includes no analysis (or, indeed, any mention) of any challenge to the Arbitration Agreement on grounds of unconscionability. (*See id.* at pp. 1 – 3).

On August 28, 2024, Appellant timely filed and served a Notice of Appeal of the July 29, 2024 order denying its motion to compel arbitration.

STANDARD OF REVIEW

An appeal from the denial of a motion to compel arbitration is subject to de novo review. *Sanders v. Savannah Highway Auto. Co.*, 440 S.C. 377, 382, 892 S.E.2d 112, 114 (2023), *reh'g*

denied (Sept. 27, 2023) (citation omitted). "The question of the arbitrability of a claim is an issue for judicial determination, unless the parties provide otherwise." *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001) (citations omitted). That determination is also subject to de novo review. *Gissel v. Hart*, 382 S.C. 235, 240, 676 S.E.2d 320, 323 (2009).

ARGUMENT

In denying Appellant's motion to compel arbitration, the circuit court failed to give effect to the language of the delegation clause in the Arbitration Agreement that expressly reserves to the arbitrator alone the authority to "[r]esolve all disputes regarding the scope and enforceability of this Agreement[.]" (R. __ (Anderson Aff., Ex. B at ¶ 19(d), p. 10)). The circuit court erred in finding that the Arbitration Agreement did not "reserve[] the issue of arbitrability for the arbiter instead of the court," (R. __ (Order at p. 2)), thereby failing to apply controlling precedent from the United States Supreme Court and the Supreme Court of South Carolina recognizing and enforcing delegation clauses that reserve sole jurisdiction over threshold questions of arbitrability to the arbiter.

Even if the parties had not delegated disputes concerning enforceability of the Arbitration Agreement to an arbitrator, however, the Circuit Court further erred in finding that no valid and enforceable agreement to arbitrate Respondent's claims against UHSC existed. It is undisputed that Respondent signed the Equipment Contract, and the Supreme Court of South Carolina has recognized that the mandatory arbitration of disputes arising under a contract may be effected by reference to documents outside of that contract. Respondent submitted no evidence in opposition to UHSC's motion to compel arbitration, and there is no evidence that Respondent did not in fact receive or review the Arbitration Agreement. But whether or not Respondent received or reviewed the Arbitration Agreement is immaterial. The parties do not dispute that Respondent signed the

Equipment Contract. Because she did so voluntarily, she is charged with knowledge of the terms of the Arbitration Agreement incorporated by reference into that contract, as a matter of law. This Court should reverse the circuit court's order, and remand this case for entry of an order compelling arbitration.

I. The Authority to Rule on the Threshold Issue of the Enforceability of the Arbitration Agreement was Expressly Reserved to the Arbitrator Alone.

Section 2 of the Federal Arbitration Act (the "FAA") provides that a "written provision in any… contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction … shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2 (2022). Here, because the Arbitration Agreement specifies that it "shall be governed by the Federal Arbitration Act," (R. __ (Anderson Aff., Ex. B at ¶ 3, p. 8)), the FAA applies. *See Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 539, 542 S.E.2d 360, 363–64 (2001) (applying the FAA where "the arbitration agreement, which applies to 'this contract and the relationships which result from this contract,' provides it shall be governed by the FAA" because "[a]rbitration agreements, like other contracts, are enforceable in accordance with their terms").

As the Supreme Court of South Carolina has recognized, "[t]he basic purpose of the FAA is to overcome state courts' refusal to enforce arbitration agreements." *Zabinski*, 346 S.C. at 590–91, 553 S.E.2d at 115 (citation omitted). Under the FAA, courts must stay "any suit or proceeding" pending arbitration of "any issue referable to arbitration under an agreement in writing for such arbitration." 9 U.S.C. § 3 (2022).

There is no dispute that Respondent's negligence claim against UHSC is related to her U-Haul truck rental, and thus within the scope of claims subject to mandatory arbitration under the Arbitration Agreement. (R. __ (Anderson Aff., Ex. B at ¶¶ 1 – 2, p. 8)). Before the circuit court,

Respondent did not assert that her claim against UHSC falls outside of the Arbitration Agreement. Instead, Respondent argued only that the Arbitration Agreement is unenforceable. (R. __ (Transcript at 9:20 – 9:24 and 13:23 – 14:6)).

Paragraph 19 of the Arbitration Agreement, however, reserves to the arbitrator alone the authority to "[r]esolve all disputes regarding the scope and enforceability of this Agreement[.]" (R. __ (Anderson Aff., Ex. B at ¶ 19(d), p. 10)). Respondent's challenge to the enforceability of the Arbitration Agreement is thus an "issue referable to arbitration under an agreement in writing for such arbitration" under the FAA, the circuit court erred by denying Appellant's motion to compel arbitration. *See* 9 U.S.C. § 3.

Under South Carolina law, "parties can delegate questions of arbitrability—such as the question of whether an arbitration agreement is valid—to an arbitrator." *315 Corley CW LLC v. Palmetto Bluff Dev., LLC*, Op. No. 6074 (S.C. Ct. App. filed July 24, 2024; withdrawn, substituted, and refiled November 13, 2024) (Davis Adv. Sh. No. 44 at 17) (citing *Aiken v. World Fin. Corp. of South Carolina*, 367 S.C. 176, 179, 623 S.E.2d 873, 874 (Ct. App. 2005) ("The question whether a claim is subject to arbitration is a matter [for] judicial determination, unless the parties have provided otherwise.")); *Masters v. KOL, Inc.*, 431 S.C. 28, 39, 846 S.E.2d 893, 899 (Ct. App. 2020) (finding that because the arbitration agreements at issue "express the parties' intent that even the enforceability of these arbitration agreements must be determined by an arbitrator," the issue of whether the agreement to arbitrate was rendered "'moot and unenforceable' was a question for an arbitrator to resolve"); *see also, e.g.*, *Landers v. Fed. Deposit Ins. Corp.*, 402 S.C. 100, 107–08, 739 S.E.2d 209, 213 (2013) ("The question of arbitrability of a claim is an issue for judicial determination **unless the parties provide otherwise**." (emphasis added) (quoting *Partain v. Upstate Auto. Grp.*, 386 S.C. 488, 491, 689 S.E.2d 602, 603 (2010))); *New Prime Inc. v. Oliveira*,

586 U.S. 105, 111–12 (2019) ("A delegation clause gives an arbitrator authority to decide even the initial question [of] whether the parties' dispute is subject to arbitration."); *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 65 (2019) ("When the parties' contract delegates the arbitrability question to an arbitrator, the courts must respect the parties' decision as embodied in the contract."); *Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 68–69, 69 n.1 (2010) (stating 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"); *In re Little*, 610 B.R. 558, 565 (Bankr. D.S.C. 2020) ("[W]hile it is the default procedure for the court to decide [whether a valid agreement to arbitrate exists and whether the specific dispute falls within the agreement's scope], the parties may delegate this determination to an arbitrator if the parties clearly and unmistakably agree to do so in their arbitration agreement."); *Rent-A-Ctr.*, 561 U.S. at 72 (concluding that unless the delegation provision is challenged specifically, the court must treat it as valid and enforce it, leaving any challenge to the validity of the arbitration agreement as a whole for the arbitrator).

Here, there is no dispute that a contract existed between the parties. Respondent signed the Equipment Contract, (R. __ (Anderson Aff., Ex. A at p. 6)), and rented a vehicle from UHSC. (R. __ (Compl. ¶ 5)). There is no dispute that pursuant to the terms of the Equipment Contract she signed, Respondent "agree[d] to submit all legal claims in accordance with the U-Haul Arbitration Agreement," which document was expressly "incorporated by reference" into the Equipment Contract. (R. __ (Anderson Aff., Ex. A at p. 6)). And Respondent raised no challenge to the delegation provision of the Arbitration Agreement specifically. (*See* R. __ (Transcript at pp. 4 – 15)). Instead, the dispute before the circuit court was solely whether or not the Arbitration Agreement is enforceable, and that issue is expressly delegated to an arbitrator.

The full text of the Arbitration Agreement (including Paragraph 19(d)) was in evidence before the Circuit Court. (R. __ (Anderson Aff., Ex. B at ¶ 19, p. 10)). Appellant's counsel also raised the delegation of arbitrability questions to the arbitrator during the hearing, specifically referencing Paragraph 19(d) of the Arbitration Agreement. (R. __ (Transcript at 6:12 – 6:15)). The court's order denying Appellant's motion to compel arbitration, however, found as fact that "[i]n this case, there is nothing in the arbitration clause of the Equipment Contract or in the separate Arbitration Agreement that reserves the issue of arbitrability for the arbiter instead of the court." (R. __ (Order at pp. 1 – 2)). While this Court must "honor the factual findings of the circuit court pertinent to its arbitration ruling if those findings are reasonably supported by evidence in the record," *Sanders*, 440 S.C. at 382, 892 S.E.2d at 114 (citing *Partain*, 386 S.C. at 491, 689 S.E.2d at 603), no evidence in this record supports this factual finding. The circuit court's ruling that "[i]n the absence of any provision that reserves these gateway issues for the arbiter," the enforceability of the Arbitration Agreement "is an issue of law for the court, applying South Carolina contract law" was error.

Further, the circuit court's written order did not analyze or reference any challenge to enforceability based on unconscionability. (*See* R. __ (Order at pp. 1 – 3)). The circuit court did not find that the Arbitration Agreement was unenforceable on grounds of unconscionability, but instead ruled that "there was no meeting of the minds to arbitrate [Respondent's] claims[.]" (*Id.* at p. 3). This Court has recently reiterated that under the Supreme Court's decision in *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 644 S.E.2d 663 (2007), "in South Carolina, if an arbitration provision is challenged on grounds of unconscionability, the question of the clause's validity is for courts to decide, even if the clause delegates issues of validity[.]" *315 Corley CW LLC*, Op. No. 6074 (Davis Adv. Sh. No. 44 at 17).

Unlike the circuit court in *315 Corley*, however, the circuit court here did not rule on the issue of unconscionability. *See 315 Corley CW LLC*, Op. No. 6074 (Davis Adv. Sh. No. 44 at 18) ("The circuit court concluded that the arbitration agreement in the Club Documents was unenforceable because it is unconscionable."). *Simpson* and subsequent decisions reserving arbitrability questions to the court rather than the arbitrator, notwithstanding a valid delegation clause, where enforceability is challenged on unconscionability grounds thus do not support the circuit court's usurpation of the authority delegated to the arbitrator under Paragraph 19(d) of the Arbitration Agreement here.[1]

Pursuant to established and controlling precedent from the United States Supreme Court and the Supreme Court of South Carolina, the circuit court should have reserved any question concerning the enforceability of the Arbitration Agreements for an arbitrator, in accordance with the clear delegation of authority set out in Paragraph 19(d). The failure to do so was error, and should be reversed.

II. Even if the Parties Had Not Expressly Delegated the Issue of Enforceability to the Arbitrator, the Arbitration Agreement is Valid and Enforceable.

In opposition to Appellant's motion to compel arbitration, Respondent submitted no evidence of any kind. Respondent did not testify at the hearing, nor did she submit testimony in affidavit form. Indeed, Respondent's counsel did not even argue at the hearing that Respondent

[1] Even if this were not the case, the rule established in *Simpson* with respect to challenges to arbitration terms on unconscionability grounds is preempted by the FAA, which the Supreme Court of South Carolina recognized some six years prior to *Simpson* in *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 553 S.E.2d 110 (2001). "Parties are free to enter into a contract providing for arbitration under rules established by state law rather than rules established by the FAA." *Zabinski*, 346 S.C. at 592, 553 S.E.2d at 116 (citation omitted). "While the parties may agree to enforce arbitration agreements under state rules rather than FAA rules," however, "the FAA will preempt any state law that completely invalidates the parties' agreement to arbitrate." *Id.* (citations omitted).

had not in fact received the Arbitration Agreement. (*See* R. __ (Transcript at pp. 4 – 15)). Thus, even if the issue of enforceability was properly before the circuit court here, Respondent's failure to submit evidence supporting her assertion that the Arbitration Agreement is unenforceable should have ended that inquiry. "[T]he party resisting arbitration bears the burden of proving that the claims at issue are unsuitable for arbitration." *Masters*, 431 S.C. at 37, 846 S.E.2d at 897 (citing *Green Tree Fin. Corp.–Alabama v. Randolph*, 531 U.S. 79, 91 (2000)); *see also, e.g.*, *Hoffman v. Greenville Cnty.*, 242 S.C. 34, 39, 129 S.E.2d 757, 760 (1963) ("The burden of proof is upon the party who by the pleadings has the affirmative on the issue."); *McCabe v. Sloan*, 184 S.C. 158, 162, 191 S.E. 905, 906 (1937) ("It seems unnecessary to cite authorities in support of the postulate that when one pleads an affirmative defense, the burden is on him to prove it.")).

Despite the absence of any evidence put forward by Respondent to satisfy this burden of proof, the circuit court found that she "was not provided with a copy of the [Arbitration Agreement]," and concluded from this finding that Respondent could not "have agreed to the terms set forth in the separate Arbitration Agreement[.]" (R. __ (Order at p. 2)). "Applying basic contract principles," the Circuit Court ruled that "there was no meeting of the minds to arbitrate the claims[.]" (*Id.* at p. 3). Under South Carolina law, however, a valid agreement to arbitrate can arise solely through reference to documents other than the contract signed by the party against whom enforcement of the arbitration term is sought:

> Arbitration of disputes arising under a contract may be provided for by reference to outside documents. Thus, mercantile contracts often provide that the contract is to be governed by or subject to the rules of a particular association and where the rules or regulations referred to provide the arbitration, the reference is generally held to be sufficient to bind the parties to future arbitration, provided the reference is clear and inclusive.

First Baptist Church of Timmonsville v. George A. Creed & Son, Inc., 276 S.C. 597, 599, 281 S.E.2d 121, 122–23 (1981) (quoting 5 AM. JUR. 2D *Arbitration and Award* § 16 (1962)); *see also,*

e.g., *Devs. Sur. & Indem. Co. v. Carothers Constr., Inc.*, No. CV 9:17-1419-RMG, 2017 WL 3054646, at *3 (D.S.C. July 18, 2017) ("Under South Carolina law, '[a]rbitration of disputes arising under a contract may be provided for by reference to outside documents.'").

In *First Baptist Church of Timmonsville*, the plaintiff church solicited bids for construction of a sanctuary and educational building. 276 S.C. at 598, 281 S.E.2d at 122. Defendant was the winning bidder, and the parties entered an AIA Standard Form of Agreement Between Owner and Contractor. *Id.* That contract incorporated by reference an entirely separate AIA form titled "General Conditions of the Contract for Construction," and this separate document – not the document signed by the parties – contained a mandatory arbitration clause applying to all claims arising from or related to the existing contract. *Id.*

Although the signed contract itself made no reference to arbitration, and incorporated by reference a separate form document containing an arbitration clause that the contracting parties themselves never read, the Supreme Court of South Carolina enforced the incorporated arbitration provision. *Id.* at 600, 281 S.E.2d at 123. The Court explained that "in the absence of a 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.'" *Id.* at 599, 281 S.E.2d at 123 (citation omitted). "This is especially true where, as here, the party seeking to avoid the provision does not dispute the validity of the contract or that it was entered into[.]" *Id.* (citations omitted).

Here, as in *First Baptist Church of Timmonsville*, there has been no showing of fraud, mistake, unfair dealing, or facts warranting similar descriptive terms. Respondent has made no showing at all. Indeed, unlike the signed contract at issue in *First Baptist Church of Timmonsville*, the Equipment Contract that Respondent signed here explicitly references arbitration and the

Arbitration Agreement that it incorporates by reference. (R. __ (Anderson Aff., Ex. A at p. 6)) ("I agree to submit all legal claims in accordance with the U-Haul Arbitration Agreement, incorporated by reference, and available at uhaul.com/arbitration or from my local U-Haul representative.").

Even if the circuit court's finding that Respondent was not given a copy of the Arbitration Agreement was supported by evidence (and it is not), that finding is immaterial to whether or not the parties formed an enforceable agreement to arbitrate Respondent's claim. Appellant had no obligation to provide Respondent with a copy of the Arbitration Agreement that was incorporated by reference into the Equipment Contract that she signed. "The law does not impose a duty on [Appellant] to explain to an individual what [s]he could learn from simply reading the document." *Citizens & S. Nat. Bank of S.C. v. Lanford*, 313 S.C. 540, 545, 443 S.E.2d 549, 551 (1994). And "a person who can read is bound to read an agreement before signing it." *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 541 and n. 6, 542 S.E.2d 360, 365 (2001) (explaining that "[t]his rule is consistent with federal cases holding that arbitration agreements governed by the FAA will not be set aside on the ground the arbitration clause was not noticed or explained since the party signing the agreement is presumed to have read it") (citations omitted).

By reading the Equipment Contract that she signed, as South Carolina law constructively charges her with having done, Respondent would have learned that by signing she was agreeing to the terms of the Arbitration Agreement, and she would have learned how and where she could obtain a complete copy of the Arbitration Agreement. *See Citizens & S. Nat. Bank of S.C.*, 313 S.C. at 545, 443 S.E.2d at 551; *Munoz*, 343 S.C. at 541 and n. 6, 542 S.E.2d at 365. That Respondent "was not provided with a copy of the [Arbitration Agreement]" thus has no relevance on whether there was "a meeting of the minds to arbitrate [Respondent's] claims"— Respondent

"agreed to the terms set forth in the separate Arbitration Agreement" when she signed the Equipment Contract, as a matter of law. *See First Baptist Church of Timmonsville*, 276 S.C. at 599, 281 S.E.2d at 123; (R. __ (Order at pp. 2 – 3)).

Accordingly, even if Paragraph 19(d) of the Arbitration Agreement had not reserved the threshold question of enforceability to an arbitrator, under South Carolina law the parties entered an enforceable agreement to arbitrate Respondent's claim against UHSC. The Circuit Court erred by ruling otherwise, and that decision should be reversed.

CONCLUSION

For the reasons stated herein, this Court should reverse the Circuit Court's order denying Appellant's motion to compel arbitration, and remand for an order compelling arbitration.

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December 16, 2024

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PROOF OF SERVICE

I hereby certify that copies of the **Initial Brief of Appellant** and the **Appellant's Designation of Matter on Appeal** was served on counsel for the Respondent, by United States Mail, postage prepaid, and by email, addressed as follows:

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December 16, 2024

/s/ Lindsay Bray

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