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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
DeAndrea Gist Benjamin, Circuit Court Judge

Appellate Case No. 2023-000452
Circuit Court Case No.: 2017-CP-40-03697

Amanda Leigh Huskins and Jay R. Huskins, **Appellants,**

v.

Mungo Homes, LLC, **Respondent.**

PETITION FOR REHEARING

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Respondent Mungo Homes, LLC respectfully petitions this Court pursuant to Rule 221(a), SCACR for a rehearing of the Court's December 11, 2024 Opinion in the above-captioned matter.

SUMMARY

In this case, Petitioners Amanda Leigh Huskins and Jay R. Huskins (the "Huskins) appealed the Court of Appeals decision affirming the Circuit Court's grant of Mungo Homes, LLC's ("Mungo") motion to compel arbitration. The issue in this petition was weather a provision included in the "Arbitration and Claims" section of the purchase contract, which included the arbitration agreement, purporting to reduce the statute of limitations for claims by either party to ninety days renders the entire arbitration agreement unenforceable.

The Court of Appeals held that the subject provision was to be ignored pursuant to S.C. Code Ann §15-3-140 (2005), while the agreement to arbitrate all disputes remained valid.

This Court, in its opinion filed December 11, 2024, reversed the Court of Appeals holding that the subject provision could not be severed from the arbitration agreement, and thus, the entire arbitration agreement was unenforceable.

Respectfully, this Court erred in misapprehending the Federal Arbitration Act's broad pre-emptive authority as it related to enforcement of arbitration agreements by placing arbitration agreements on disfavored footing as compared to other contracts in South Carolina.

In its opinion, this Court declined to follow S.C. Code Ann §15-3-140 (2005) which states that an attempt to shorten the statute of limitations is unenforceable, and an action brought upon a contract with a provision that seeks to reduce the statute of limitations is subject to the general statute of limitations in the South Carolina Code.

Instead, this Court elected to rescind the entire agreement. This decision either 1) disfavors arbitration agreements by rescinded them when other contracts containing a provision attempting

to reduce the statute of limitations would not be rescinded, or 2) requires that any contract with a provision purporting to reduce the statute of limitations must be rescinded as well. In the former instance, arbitration agreements are placed on disfavored grounds as opposed to other contracts, running afoul of the United States Supreme Court's precedent regarding the FAA. In the latter instance, S.C. Code Ann §15-3-140 (2005) would be inapplicable in any circumstance, thereby abrogating the legislature's intent.

Accordingly, Mungo respectfully requests that this Court rehear this Petition and affirm the Court of Appeals.

ARGUMENT

1. The Court misapprehended the requirements of the Federal Arbitration Act to place arbitration agreements on equal footing with all other contracts.

Arbitration is a matter of contract. The Federal Arbitration Act (FAA), which applies here, provides that arbitration contracts are "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 (emphasis added). "A court may invalidate an arbitration agreement based on "generally applicable contract defenses" like fraud or unconscionability, but not on legal rules that "apply only to arbitration ***or that derive their meaning from the fact that an agreement to arbitrate is at issue***." *AT&T Mobility LLC* v. *Concepcion*, 563 U. S. 333, 339, 131 S. Ct. 1740, 179 L. Ed. 2d 742 (2011)(emphasis added). The Act thus preempts any state rule that discriminates on its face against arbitration ***or that covertly accomplishes the same objective by disfavoring contracts that have the defining features of arbitration agreements***. *Kindred Nursing Center, Ltd. v. Clark*, 581 U.S. 246, 251, 137 S.Ct. 1421, 1429, 197 L. Ed. 2d 806 (2017)(emphasis added).

In the matter at bar, the agreement to arbitrate by the parties is clear and unambiguous. It provides for an unbiased decision by neutral decision makers, applies mutually to both parties, and

does not limit the remedies available by law. See, *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 25, 644 S.E.2d 663 (2007). Thus, absent the final two sentences of the "Arbitration and Claims" section of the Contract, there would be no question as to the enforceability of the arbitration agreement. Nonetheless, this Court struck the entire arbitration agreement based upon the final two sentences which purport to reduce the statute of limitations, despite the requirement of S.C. Code Ann §15-3-140 (2005).

Arbitration clauses are separable from the contracts in which they are imbedded. *Hous. Auth. of Columbia v. Cornerstone Hous., LLC*, 356 S.C. 328, 338, 588 S.E.2d 617, 622 (Ct. App. 2003)). Whether an arbitration clause is valid "is distinct from the substantive validity of the contract as a whole." *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 540, 542 S.E.2d 360, 364 (2001). In this respect, an arbitration clause is, in effect, a separate agreement than the entirety of the contract in which it is embedded.

Therefore, under this Court's decision, although the subject provision appears within the "Arbitration and Claims" paragraph of the Contract, to comply with the United States Supreme Court's precedent arising out of *Concepcion*, 563 U. S. 333, any provision purporting to reduce the statute of limitations, regardless of the subject nature of the contract, renders the entire agreement in which it appears unenforceable.

The effect of this holding will ultimately lead to unworkable results. For instance, if the subject provision was contained in any other portion of the purchase contract in this case, under this Court's decision, absent severance or application of S.C. Code Ann §15-3-140 (2005), the entire purchase and sale agreement would therefore be unenforceable—leading to a result in which the Huskins have been in possession of a home for nearly a decade despite there being no valid contract for the home. In such circumstances, does the home need to be returned to Mungo? Does Mungo

need to return the purchase price to the Huskins? If so, is there an allocation to Mungo for wear and tear? Is Mungo entitled to compensation for the increase in value of the property that it has not been able to realize during the past ten years?

While the aforementioned hypothetical may seem absurd, and unlikely to occur in a South Carolina Court, any other result would place arbitration agreements on unequal footing with other contracts in South Carolina, contravening *Concepcion* and its progeny. *See, Concepcion*, 563 U. S. 333, *Kindred Nursing Center, Ltd.* 581 U.S. 246.

Accordingly, Respondent's respectfully submit that this Court's decision failed to follow the United States Supreme Court's precedent that an arbitration provision cannot be invalidated based upon an application of State law that applies "only to arbitration *or that derive their meaning from the fact that an agreement to arbitrate is at issue."* *Concepcion*, 563 U. S. 333, 339, 131 S. Ct. 1740 (emphasis added).

2. This Court misapprehended the effect of the subject provision being void *ab initio* by concluded that upholding the arbitration agreement would amount to a rewriting of the contract.

In its decision, this Court determined that since there was no severability clause within the agreement, the parties did not intend for any provision to be severed, and therefore, the entire arbitration agreement must fail if one clause is unenforceable. In doing so, this Court stated:

> If we lifted out the clause [reducing the statute of limitations], the legal statute of limitations period (which in most cases allows claims to be filed within three years of their reasonable discovery) would drop in. This would rewrite the arbitration agreement to expand the statute of limitations by several orders of magnitude.

Huskins v. Mungo Homes, LLC, __ S.C. ___, __ S.E.2d. __, Op. 28245 at pg. 4 (Sup. Ct. Dec. 11, 2024).

However, the application of a statute to a contract is required as a matter of law, unless the statute allows the parties to contract outside of the statute[1]. In this respect, a contract generally will not contain terms seeking to identify the statute of limitations. Thus, when a Court enforces the statute of limitations, it is not considered a rewriting of the contract, as there is no need to include a contractual term which reiterates a statute that cannot be altered by contract.

In this case, both the statute of limitations is mandated by statute (S.C. Code Ann. §15-3-530) as the legislature's directive that any contractual provision seeking to reduce the statute of limitations should be ignored and unenforceable, i.e. void *ab initio*. These provisions do not need to be written into the contract, as they are enforced as a matter of law.

Therefore, Respondent respectfully believes that this Court erred in its conclusion that application of the South Carolina Code would amount to a rewriting of the parties' agreement. Rather, the application of the South Carolina Code leaves a valid and enforceable arbitration agreement that is subject to the South Carolina Code.

3. Under this Court's decision invalidating the arbitration agreement, it also appears to render the entire purchase and sale agreement unenforceable.

As discussed in Section 1 of this petition, a conclusion that the contract between the Huskins and Mungo Homes is entirely unenforceable is unworkable, as the Huskins have occupied the home for nearly a decade, the Huskins paid the subject purchase price, have likely serviced a loan on the original purchase price, and the property has likely substantially increased in value for which

[1] For instance, in the context of business entities, an operating or shareholders agreement may contain terms that increase or reduce protections afforded by the South Carolina Code. However, the statute of limitations does not have such language, and furthermore, S.C. Code Ann §15-3-140 (2005) states any such attempt to shorten the statute of limitations is unenforceable.

the Huskins have or could have benefitted during the past ten years, and for which Mungo has not received a benefit[2].

Yet, based upon the decision of this Court, at least as it relates to this specific purchase and sale contract, the finding of an invalid provision in the contract renders the entire contract invalid in the absence of a severability clause. By striking the "Arbitration and Claims" paragraph of the contract, this Court has determined that there is an invalid provision in the agreement. Thus it follows, although the Respondent doubts the Court intended to reach the overall merits of the dispute, that this Court has deemed the entire agreement between the parties to also be invalid.

It is undisputed that the purchase and sale agreement does not contain a severability clause. This Court also identified that the purchase and sale agreement and the arbitration agreement were adhesion contracts. Thus, there is no discernable difference between the analysis of an invalid term that would apply to an arbitration agreement, embedded within the purchase and sale contract, or the purchase and sale contract itself. To do so—sever the entire "Arbitration and Claims" paragraph, despite no severability clause—but allow the remainder of the contract to be litigated despite severance of the "Arbitration and Claims" clause would "discriminate[] on its face against arbitration or [] covertly accomplish[] the same objective by disfavoring contracts that have the defining features of arbitration agreements." *Kindred Nursing Center, Ltd.* 581 U.S. 246.

In this respect, the Court of Appeal's decision reached a reasonable conclusion that ultimately enforces the intent of the parties to arbitrate, while remaining consistent with both S.C. Code Ann §15-3-140 (2005) and the FAA.

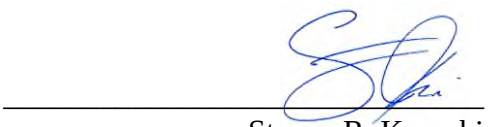
[2] Respondent notes that the Huskins did not allege a defective condition with the home, but rather seek compensation for waivers of certain implied warranties. Thus, the Huskins have enjoyed the benefit of a suitable home that was purchased and sold in accordance with the terms of the subject contract for approximately ten years.

Respondent does not suggest that a statute of limitations less than three years applies to Huskins' claims, and did not assert such a defense. Likewise, the Huskins have never asserted that they did not agree to arbitrate, nor that they were unaware of an arbitration provision when they signed the contract[3]. The Court of Appeals correctly held that the final two sentences of the "Arbitration and Claims" paragraph are not enforceable in this dispute, and the Huskins claims are subject to arbitration.

Accordingly, Respondent respectfully submits that this Court erred in striking the entire arbitration agreement, including its holding that the lack of a severability clause deemed an entire contract invalid upon the presence of one unenforceable term.

CONCLUSION

For the reasons stated herein, Respondent respectfully requests that this Court rehear this matter and affirm the Court of Appeals decision.



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[3] The Huskins initialed directly below the arbitration provision. Furthermore, it is well established in South Carolina that a contracting party—regardless of whether the contract is an adhesion contract or not—cannot avoid the effect of the document by claiming he did not read it. *Sims v. Tyler*, 276 S.C. 640, 643, 281 S.E.2d 229, 230 (1981); see also, *Citizens & S. Nat'l Bank of South Carolina v. Lanford*, 313 S.C. 540, 545, 443 S.E.2d 549, 551 (1994)("The law does not impose a duty on the bank to explain to an individual what he could learn from simply reading the document.").