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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

Case No. 2023-CP-07-00646
App. 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.

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Of whom Regions Bank,
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Services, and Christopher Lazurek are,Appellants.

RECORD ON APPEAL
(Volume II of II)

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1 STATE OF SOUTH CAROLINA) IN THE SOUTH CAROLINA CIRCUIT COURT 14

2 COUNTY OF BEAUFORT) COURT C.A NO.. 2023-CP-07-00646

3

4 Amber Leigh Lovelace, by and through)

5 her Conservator Richard Cooler,)

6 Plaintiff,)

7 Versus)

8 Steven Lovelace, Regions Bank, Cetera)

9 Investment Services d/b/a Regions)

10 Investment Services, and Christopher)

11 Lazurek)

12 Defendant.)

13

14 H E A R I N G

15

16 DATE: May 2, 2024

17

18 LOCATION: South Carolina Circuit Court 14

19

20 JUDGE: Michael G. Nettles

21

22 TRANSCRIBED BY: ERIN REILLY

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(None marked)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH IS
REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

PROCEEDINGS

1
2 THE COURT: Mr. Rawl good to see you. Can you hear me
3 all right?

4 MR. RAWL: I can, Your Honor. Sorry. The --

5 THE COURT: All right. And I'll be glad to hear from
6 you. This is your motion.

7 MR. RAWL: All right. Thank you, Your Honor. And I
8 do want to thank the Court for fitting this in its schedule on
9 -- so thank you for that. As you just pointed out, Your Honor,
10 this is our motion to reconsider. We've raised and this is on
11 behalf of Regions Bank, Cetera Investment Services, doing
12 business as Regions Bank, or do -- sorry, doing business as
13 Regions Investment Services and Christopher Lazurek.

14 And we've raised in our briefing, there's two memoranda
15 but we've raised what we believe are 10 errors with the
16 December 7th order. But for purposes of this hearing today,
17 I'm going to focus on some of those key points that relate to
18 Defendant's burden and some of the defenses raised in the
19 order.

20 The first, Your Honor, is that I want to point out
21 that we believe there was a valid arbitration agreement that
22 exists between Mr. Cooler as Conservator and Cetera and
23 Regions. It's undisputed that Mr. Cooler signed the new
24 account application for Cetera, and that he signed the Region's
25 fiduciary account maintenance and signature form on January

1 30th, 2023. And it's also clear in reading these documents
2 that Plaintiff was informed that he was agreeing to arbitrate.
3 Above Mr. Cooler's signature on the Cetera new account
4 application, it reads, I understand that this agreement
5 contains a pre-dispute arbitration clause that is fully set
6 forth in paragraph 20 on page 9 of this form.

7 And then as it relates to the Region's form right
8 beside his signature, it states that he was acknowledging and
9 agreeing to each and every term, condition, provision, and the
10 deposit agreement, including without limitation the arbitration
11 and waiver of jury trial provisions. So, Plaintiff then
12 alleges that he wasn't provided the final three pages of the
13 Cetera account agreement that -- or contain -- that contain the
14 Cetera arbitration provision. And he alleges that he wasn't
15 provided the new -- or excuse me, the Region's deposit
16 agreement that contained the Region's arbitration agreement.

17 We presented -- Defense presented evidence that
18 suggests that (indiscernible) reports to say that he was given
19 this information. We provided affidavits for this court that
20 say that in the ordinary course of business, he would've been
21 given this information and that there's no reason to think that
22 that didn't happen in this case. And so, with that evidence in
23 the record, we think that there is ample evidence that this
24 Court could have concluded that an arbitration agreement was
25 reached. But even if the Court were to believe Plaintiff's

1 | allegations the case law still provides that an arbitration
2 | agreement was reached.

3 | And this is -- looking at the Cetera agreement,
4 | first, under Minnesota law, we cite the case of BAM Navigation,
5 | LLC. v. Wells Fargo & Company. And in that opinion the
6 | Plaintiff came into the Wells Fargo, he signed -- he was
7 | opening up a new account, he signed an application, and on the
8 | application, he agreed to be bound by a list of terms and
9 | conditions and a separate account agreement that includes an
10 | arbitration agreement. The Plaintiff also acknowledged receipt
11 | of the account agreement. All of this is similar to the case
12 | at hand.

13 | And the Court in that case ruled that when a contract
14 | incorporates another document by reference, a party cannot
15 | avoid its obligations under the incorporated document by
16 | claiming it did not read or receive it. Similar to the
17 | Plaintiff here, the Court found that the Plaintiff read and
18 | signed the application, which put the Plaintiff on notice, not
19 | only the account agreement but also that it contained an
20 | arbitration agreement.

21 | And then as it relates to regions, we believe that
22 | the case of Tolls, the United Healthcare and Jenkins VC
23 | Financial, are equally instructive. Their employees attempted
24 | to avoid arbitration agreements that they claim they didn't
25 | have actual notice of. And in both of those cases, the

1 Plaintiff signed forms saying that they had received
2 arbitration agreements. And the Court said that by signing the
3 respective acknowledgement or receipt forms, neither Plaintiff
4 could legitimately claim the Defendant failed to provide actual
5 notice of the arbitration provisions because the law does not
6 impose a duty to explain a document's contents to an individual
7 when the individual can learn the contents simply by reading
8 the document.

9 So, with that in mind, Your Honor, we think that an
10 arbitration agreement was reached. The next issue I want to
11 point out, Your Honor, is that the order is silent as to
12 whether the FAA applies, which we say that it does. And this
13 is important because the application of the FAA controls or
14 determines what law is controlling. The FAA applies to any
15 transaction involving commerce. And the phrase involving
16 commerce as used in the FAA is the functional equivalent of the
17 more familiar term affecting commerce that's used, that's
18 typically signals Congress's Commerce Clause power.

19 And in the recent case of Hickson Limited, Inc, the
20 Universe Corp, which is a 2023 South Carolina Supreme Court
21 opinion there, the Supreme Court instructed that FAA's
22 concurred that the Commerce Clause under the FAA may be
23 exercised in individual cases without a showing of any specific
24 effect upon interstate commerce if the economic activity in
25 question would represent a general practice subject to federal

1 control.

2 Here, this is banking and it specifically referenced
3 banking as an example. That's exactly what we have here, Your
4 Honor. So, we think under Hicks it's very clear that the FAA
5 applies, but even then, the FAA has been found to apply in
6 cases where you have parties of different states as alleged in
7 Plaintiff's complaint. Cetera and Regions are both banks
8 outside the jurisdiction of South Carolina. So, we think it's
9 clear that the FAA applies. And with the FAA applying, Your
10 Honor, that means that unless the Court can say without
11 positive assurance that the arbitration clause is not
12 susceptible to any interpretation that would cover this
13 dispute, the arbitration should be generally ordered.

14 And with the FAA applying, the FAA says that
15 arbitration can be compelled when fourth criteria are met. The
16 first one being the existence of a dispute, that's clearly
17 satisfied, Your Honor, because there's clearly a dispute. The
18 third being in a relationship evidenced by an agreement to
19 interstate or foreign commerce for the reasons I just stated,
20 Your Honor, we feel that's been met. The fourth being a
21 failure, neglect, or refusal of a party to arbitrate the
22 dispute. We're here in court, Your Honor, not in arbitration,
23 so we think that's been met. So, the second one, a written
24 agreement that includes an arbitration provision, which
25 purports to cover the dispute. And in the December 7th order,

1 the Court found that the arbitration provisions did not cover
2 the dispute. And so, taking them separately the Cetera
3 arbitration agreement broadly covers any dispute between
4 Plaintiff and Cetera arising out of this agreement.

5 The Region's arbitration agreement is even broader.
6 It applies to any controversy, claim, counterclaim dispute,
7 disagreement involving any account, any alleged contractor
8 toward arising of, out of, or relating in any way to the
9 agreement, any business interaction, it -- anything, you know,
10 it's much broader and incorporates much more. And so, the
11 order said that the arise out of this agreement language and
12 the Cetera agreement prevented compelling arbitration. But
13 case law has instructed, this is under Minnesota and South
14 Carolina. Under Minnesota it says where a broad arbitration
15 clause is involved, a dispute must refer -- be referred
16 arbitration as long as the underlying factual allegations
17 simply touch on a matter covered by the agreement.

18 Similarly, in South Carolina just says that there
19 needs to be a significant relationship. And here, Your Honor,
20 these agreements form the -- you know, create the relationship
21 between the Plaintiff and the Defendant and would naturally
22 either be significantly related or at least touch on the claims
23 here. And Plaintiff is asserting claims of negligence, gross
24 negligence violation of SC Code 62-5-420, negligent hiring,
25 training, supervision, breach of contract, conversion, and

1 violation of South Carolina's Unfair Trade Practices Act. So,
2 we think that, you know, they're certainly broad enough to
3 cover this dispute. And again, that this agreement language
4 would only be applicable to Cetera and not Regions.

5 And then moving ahead, Your Honor, I do want to touch
6 on the defenses that were raised and Plaintiff's original
7 memorandum and that we're provided for in the December 7th
8 order. The first one being unconscionability. You know,
9 unconscionability, and this is from the Colletti v. Monitronics
10 International Incorporated case, Your Honor, that's a cite of
11 2016WL11563370. That case instructs that unconscionability is
12 a high burden. And unconscionability requires procedural and
13 substantive unconscionability in order to rise to the level of
14 unconscionability. Moreover, the Court's focus on
15 unconscionability should be on whether the arbitration clause
16 is geared towards achieving an unbiased decision by a neutral
17 decision maker. There's no allegations that an arbitrator
18 would be or any -- there's no allegations, there's no proof
19 that an arbitrator would be unbiased towards Plaintiff.
20 Moreover, there's no allegations or evidence of any substantive
21 unconscionability in the arbitration agreements, Your Honor.

22 The December 7th order focuses entirely on procedural
23 unconscionability and it relies heavily on the Damico opinion.
24 And in that case, which is distinguishable from the case before
25 us, Your Honor. Because Damico, in the Damico opinion, the

1 Court goes into great detail about how two provisions in
2 particular were substantively unconscionable, and how the
3 Defendant was essentially creating a liability shield through
4 its arbitration provision. None of that is present in this
5 case, Your Honor. There's been no indication of any provision
6 within either arbitration agreement that is substantively
7 unconscionable. So, we think that the burden of
8 unconscionability has not been met and that there shouldn't be
9 a finding of any unconscionability here.

10 Second, as far as the defenses are concerned there's
11 a finding that there was no consideration. And we feel that
12 the December 7th order overlooks clear law in South Carolina
13 that says mutual promises to arbitrate counts as consideration.
14 And this is in the St. Alban case that we cite in our brief,
15 Your Honor, there found that we further hold that the
16 arbitration agreement was supported by the valuable
17 consideration of mutual promises. Here the arbitration
18 provisions require both parties to arbitrate. So, we think
19 that there is adequate consideration.

20 And then tied into the unconscionability finding,
21 Your Honor, was a mention of a lack of conspicuousness on the
22 part of the Cetera provision. It's essentially incorporating
23 what is SC Code 154810. That code has been preempted in cases
24 where the FAA applies, which we contend it does, Your Honor.
25 In the Munoz's opinion cited in our brief, it says it was

1 specifically referring to the portion of the SC code a -- of
2 that set -- code section that requires notice that a contract
3 is subject to arbitration, be typed and underlined, capital
4 letters or rubber stamped prominently on the first page of the
5 contract.

6 And like I said, it doesn't mention that provision
7 but it essentially is requiring much of the same things in
8 saying that it wasn't conspicuous. We think that that
9 requirement doesn't apply in this case because of the FAA's
10 application. Therefore, we think that to the extent that that
11 was a basis of denying the Motion to Compel arbitration, we
12 think that was an error. And then finally the last sort of
13 section of the order talks about waiver.

14 And if I'm understanding the argument correctly, Your
15 Honor, the waiver finding is based on Cetera but then
16 conservator Mr -- or Defendant Steven Lovelace entering into a
17 new account agreement -- excuse me, a restricted account
18 agreement provided by the Beaufort County Probate Court in
19 2016. And then it jumps ahead seven years to the January, 2023
20 order where Mr. Cooler was appointed as a successor
21 conservator.

22 And then the 2023 order says that by signing a
23 restricted account agreement, you are consenting to the
24 jurisdiction of the probate court and that -- so therefore, and
25 that these things are to be read together. And so therefore

1 we've waived the right to arbitration because Cetera and Mr.
2 Cooler or Mr. Lovelace entered into an arbitration or the
3 restricted account agreement in 2016. We think there's several
4 issues with this, Your Honor. The first being that on the face
5 of that 2023 order appointing Mr. Cooler, it only applies to
6 subsequent restricted account agreements not to previous
7 restricted account agreements. It reads in that regard and
8 wherever else appropriate this order shall be read and
9 construed in part of material with a restricted account
10 agreement required to be signed subsequent to the entry of this
11 order. Between the conservator and one or more financial
12 institutions and any other such agreements being hereby
13 incorporated by reference herein.

14 So, there -- it specifically talks about subsequent
15 restrictive account agreements not previous ones. Moreover --
16 and the Plaintiffs noted this in their memorandum and
17 opposition to the Motion to Compel, there is no such restricted
18 account agreement with Regions. So, to -- that analysis would
19 not seem to apply to Regions.

20 And more importantly, Your Honor, this raises -- we think
21 severe due process concerns. My clients were not parties to
22 the 2023 probate court proceedings, they had no notice of it.
23 They weren't there to protect their interests, which would've
24 included, you know, this arbitration provision. And waiver is
25 the voluntary and intentional relinquishment of a known right.

1 We could not have voluntarily or intentionally relinquished
2 anything as we weren't present.

3 And then finally, Your Honor, the December 7th order
4 applied a clear and convincing standard. We believe this was -
5 - we believe this was not the standard that should have been
6 applied. Plaintiff's brief that was filed yesterday references
7 a Betzenberg opinion, but that's simply siding to the Hill
8 opinion. And in the Hill case, Your Honor, that was a four-
9 circuit opinion, but it was applying the laws of Virginia,
10 Kentucky, West Virginia, and Ohio. And in particular there
11 evidentiary -- evidentiary laws from those jurisdictions, Your
12 Honor. Those evidentiary laws wouldn't be at play in this
13 case. So, we think the district court should apply the prima
14 facie standard that was applied in the district court opinions
15 we cited, Your Honor.

16 So, as to the remaining objections we raised in our
17 brief, Your Honor, I'm happy to answer any questions you may
18 have about those. But for purposes of right now, I would just
19 stand on the brief on those. Unless this Court has any
20 questions.

21 THE COURT: Ms. Amundson, I'd be glad to hear from
22 you.

23 MS. AMUNDSON: Thank you, Your Honor. As we set
24 forth in the brief that we filed with your Court earlier this
25 week, the Defendants have not raised any issues that we believe

1 warrant reconsideration. As you're aware, motions for
2 reconsideration are not to be granted unless there are highly
3 unusual circumstances. And in looking at the matters that the
4 Defendants are wishing to raise in this motion, they're
5 essentially re-arguing everything that we've argued before. We
6 came before you late last year, as you're aware, and we had
7 arguments in court prior to that, we briefed these things. The
8 case law and the factual situations that they are arguing today
9 are all things that this Court has already considered. And
10 while they may disagree with Your Honor's order, we don't
11 believe that there's anything in their motion for
12 reconsideration that actually warrants that a new order be
13 issued.

14 Just few things that I wanted to point out. One of
15 the things that Mr. Rowl's was discussing was the application
16 of the FAA, the Federal Arbitration Act. There was nothing in
17 Your Honor's order that said that the FAA did not apply, but
18 when -- even if the FAA applies, Courts are to review the
19 agreements in light of contract defenses, which Your Honor did.
20 And there were a number of contract defenses, as you know, that
21 were raised in this matter and we believe that Your Honor fully
22 evaluated those defenses and issued a proper order on them. We
23 don't believe that there's anything that they've raised again,
24 that warrants, Your Honor's reconsideration of your prior
25 order.

1 The final argument that Mr. Rawls just made about the
2 clear and convincing standard, Your Honor, as you'll see in the
3 memo or brief that we is -- we submitted earlier this week, the
4 Betzenberg case cites Hill, which was the case that Mr. Rawls
5 discussed and was saying that this clear and conclusive
6 standard was inapplicable. With Hill, there was an accusation
7 that some arbitration agreements were missing from certain
8 Plaintiffs.

9 And so, he said that clear and conclusive standard is
10 limited to those circumstances. Well, that was certainly not
11 the case in the Betzenberg decision. In that case, it was
12 clear that there were arbitration agreements in place, and the
13 Court still applied that clear and conclusive standard. So,
14 Your Honor, we believe that everything was correct in your
15 order, and we would ask that you deny the Defendant's motion
16 for reconsideration at this time.

17 THE COURT: Well, I've read the memos and taking all
18 of them into consideration. You very well might be right. I'm
19 going to stand by my order and I'm going to ask that my law
20 clerk just prepare a Form 4 order saying that Motion for
21 Reconsideration was considered but denied. I just know that we
22 had a hearing today, it was fully discussed. And after hearing
23 arguments and reviewing the memorandums I'm going to standby
24 the previous order, the Motion for Reconsideration is denied.
25 I wish you all the best of luck. Good luck to you.

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MR. RAWL: Okay. Thank you, Your Honor.
MS. AMUNDSON: Thank you, Your Honor.
THE COURT: Thank you.
[END OF HEARING]

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CERTIFICATE OF TRANSCRIBER

I, ERIN REILLY, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 14, South Carolina, on the 2nd day of May, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

July 17th, 2024
ERIN REILLY
TRANSCRIBER

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) FOURTEENTH JUDICIAL CIRCUIT

Amber Leigh Lovelace, by and through her) Case No. 2023-CP-07-00646
Conservator Richard Cooler,)

Plaintiff,)

vs.)

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

Defendants.)

**[PROPOSED] ORDER REGARDING
DEFENDANTS’ MOTION TO COMPEL
ARBITRATION**

Defendants, Regions Bank, Cetera Investment Services d/b/a Regions Investment Services, and Christopher Lazurek (collectively, “Defendants,” but individually “Regions,” “Cetera,” and “Lazurek,” respectively), have moved this Court for an Order compelling arbitration and dismissing, or in the alternative, staying the action set forth in the Complaint filed by Plaintiff Conservator Richard Cooler on behalf of the minor Amber Leigh Lovelace. As set forth below, because there is a written agreement to arbitrate the claims in dispute, Defendants’ Motion is granted and Plaintiff’s action as to these defendants is dismissed with prejudice.

FACTUAL BACKGROUND

Plaintiff filed his Complaint in this action on April 6, 2023. Plaintiff’s Complaint alleges that the Defendants failed to prevent Defendant Steven Lovelace (“Defendant Lovelace”) from wrongfully removing funds subject to a court appointed conservatorship from two accounts in violation of a Restricted Account Agreement and charged improper fees for services performed for the accounts at issue. (Compl. ¶¶ 24–29.) Defendants filed this *Motion to Compel Arbitration*

and to Dismiss or Stay the Action Set Forth in the Complaint on June 16, 2023. As noted in the hearing, due to the procedural setting of this matter, there has not been any discovery to date.

Defendant Steven Lovelace, the father of the minor Amber Leigh Lovelace, was originally appointed as conservator on February 3, 2016. (Compl. ¶ 13.) The conservatorship was established to protect the Minor's funds received in connection with the untimely death of her mother and in a motor vehicle accident. (Compl. ¶ 14.) As conservator, Defendant Steven Lovelace placed the funds in an investment account with Cetera and a savings account with Regions (Compl. ¶ 16.) While Defendant Steven Lovelace and Cetera entered into a Restricted Account Agreement required by the Beaufort County Probate Court, nothing in this Restricted Account Agreement precluded Defendant Lovelace from moving the conservator funds to another institution, but simply prevented Defendant Steven Lovelace from removing funds without Court approval. (Compl. 18–19.) Additionally, nothing in the Restricted Account Agreement addresses arbitration, or dispute resolution between the conservator or the financial institutions signing the Restricted Account Agreement. Plaintiff alleges that Defendant Steven Lovelace removed thousands of dollars from the Regions and Cetera accounts in violation of restrictions on those funds. Plaintiff further alleges that Defendant Regions, Cetera and Lazurek did not stop him from doing so. Defendant Lovelace resigned on October 13, 2022, and Plaintiff was appointed as the successor conservator on January 13, 2023. (*Id.* at ¶ 31–32.)

After Plaintiff was appointed conservator, he entered into agreements with Regions and Cetera to arbitrate claims he has against Regions and Cetera and their respective employees and/or agents. As it relates to Cetera, Plaintiff completed a New Account Application on or about January 30, 2023. The Cetera New Account Application is a nine-page document. The sixth page of the Cetera New Account Application is the signature page. It is undisputed that Plaintiff signed the

New Account Application with Cetera. Above his signature, Plaintiff 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.”

By affidavit, Plaintiff swears that he was not presented with all nine pages of the New Account Application, but instead was only presented with the first six pages. Consequently, Plaintiff avers that he was never presented with the full text of the Cetera arbitration provision referenced above his signature on the New Account Application. Cetera professional, Kenneth Cobb, provided an affidavit that provides that the Cetera New Account Application is indeed a nine-page document, with the sixth page being the signature page. Pages seven through nine contain terms and conditions that govern the relationship between Cetera and its account holders, including the arbitration agreement that is part of any client’s relationship with Cetera. As part of the ordinary course of business, an account application would be provided all nine pages and provided an opportunity to review the entire document prior to signing.

On January 30, 2023, Plaintiff also completed the Fiduciary Account Maintenance and Signature Form with Regions. Beside Plaintiff’s signature, the form provides in bolded font,

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.

The Deposit Agreement is a separate document from the Fiduciary Account Maintenance and Signature form. The Deposit Agreement contains the arbitration agreement between Regions and its customers, including Plaintiff. Similar to the Cetera arbitration agreement, Plaintiff swears that he was never provided a copy of the Regions’ Deposit Agreement. Mark J. Weeks, the Regions representative that Plaintiff allegedly met with when he signed the Fiduciary Account and

Signature Form, provided an affidavit that as part of the ordinary course of business, when a new applicant completes paperwork associated with an account at Regions, the applicant is provided a copy of the Deposit Agreement. He further added that he had no reason to believe that Mr. Cooler was not given a copy of the Deposit Agreement.¹

The Cetera Arbitration Agreement is found on page 9 and provides as follows:

- 20. Arbitration.** THIS AGREEMENT CONTAINS A PREDISPUTE ARBITRATION CLAUSE. BY SIGNING AN ARBITRATION AGREEMENT THE PARTIES AGREE AS FOLLOWS:
- (A) ALL PARTIES TO THIS AGREEMENT ARE GIVING UP THE RIGHT TO SUE EACH OTHER IN COURT, INCLUDING THE RIGHT TO A TRIAL BY JURY, EXCEPT AS PROVIDED BY THE RULES OF THE ARBITRATION FORUM IN WHICH A CLAIM IS FILED.
 - (B) ARBITRATION AWARDS ARE GENERALLY FINAL AND BINDING; A PARTY'S ABILITY TO HAVE A COURT REVERSE OR MODIFY AN ARBITRATION AWARD IS VERY LIMITED.
 - (C) THE ABILITY OF THE PARTIES TO OBTAIN DOCUMENTS, WITNESS STATEMENTS AND OTHER DISCOVERY IS GENERALLY MORE LIMITED IN ARBITRATION THAN IN COURT PROCEEDINGS.
 - (D) THE ARBITRATORS DO NOT HAVE TO EXPLAIN THE REASON(S) FOR THEIR AWARD UNLESS, IN AN ELIGIBLE CASE, A JOINT REQUEST FOR AN EXPLAINED DECISION HAS BEEN SUBMITTED TO ALL PARTIES TO THE PANEL AT LEAST 20 DAYS PRIOR TO THE FIRST SCHEDULED HEARING DATE.
 - (E) THE PANEL OF ARBITRATORS WILL TYPICALLY INCLUDE A MINORITY OF ARBITRATORS WHO WERE OR ARE AFFILIATED WITH THE SECURITIES INDUSTRY.
 - (F) THE RULES OF SOME ARBITRATION FORUMS MAY IMPOSE TIME LIMITS FOR BRINGING A CLAIM IN ARBITRATION. IN SOME CASES, A CLAIM THAT IS INELIGIBLE FOR ARBITRATION MAY BE BROUGHT IN COURT.
 - (G) THE RULES OF THE ARBITRATION FORUM IN WHICH THE CLAIM IS FILED, AND ANY AMENDMENTS THERETO, SHALL BE INCORPORATED INTO THIS AGREEMENT.

¹ It appears that the Deposit Agreement is readily available online. The Deposit Agreement can be found at <https://www.regions.com/-/media/pdfs/terms/Deposit-Agreement.pdf?6123>.

ARBITRATION CLAUSE: I AGREE THAT ANY DISPUTE BETWEEN ME AND YOU ARISING OUT OF THIS AGREEMENT SHALL BE SUBMITTED TO ARBITRATION CONDUCTED UNDER THE PROVISIONS OF THE FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC.'S CODE OF ARBITRATION PROCEDURE ADMINISTERED BY FINRA DISPUTE RESOLUTION, INC. ARBITRATION MUST BE COMMENCED WITHIN THE STATUTORY LIMITATION PERIODS APPLICABLE TO THE CLAIMS. I FURTHER AGREE THAT, IF THE FINRA ARBITRATION FORUM IS NOT AVAILABLE FOR THE DISPUTE, THE DISPUTE WILL BE SUBMITTED TO ARBITRATION CONDUCTED BY THE AMERICAN ARBITRATION ASSOCIATION.

NO PERSON SHALL BRING A PUTATIVE OR CERTIFIED CLASS ACTION TO ARBITRATION, NOR SEEK TO ENFORCE ANY PRE-DISPUTE ARBITRATION AGREEMENT AGAINST ANY PERSON WHO HAS INITIATED IN COURT A PUTATIVE CLASS ACTION, OR WHO IS A MEMBER OF A PUTATIVE CLASS WHO HAS NOT OPTED OUT OF THE CLASS WITH RESPECT TO ANY CLAIMS ENCOMPASSED BY THE PUTATIVE CLASS ACTION UNTIL: (i) THE CLASS CERTIFICATION IS DENIED; (ii) THE CLASS IS DECERTIFIED; OR (iii) THE CUSTOMER IS EXCLUDED FROM THE CLASS BY THE COURT. SUCH FORBEARANCE TO ENFORCE AN AGREEMENT TO ARBITRATE SHALL NOT CONSTITUTE A WAIVER OF ANY RIGHTS UNDER THIS AGREEMENT EXCEPT TO THE EXTENT STATED HEREIN.

("Cetera Arbitration Agreement"). The Cetera New Account Application also provides that the statutory and common laws of the State of Minnesota excluding its conflicts of law provisions govern the interpretation of the Agreement.²

The Deposit Agreement contains an arbitration agreement between Plaintiff and Regions. On the first two pages of the Deposit Agreement, the Plaintiff was notified that that either party could be require any claims to be submitted to binding arbitration. Page one of the Deposit Agreement provides that "[t]his Agreement covers any and all deposit accounts you have or have had from time to time with Regions Bank, by whatever name or description, including, but not limited to, checking accounts, savings accounts, money market deposit accounts, time deposit accounts, and certificates of deposit."

² However, as there is no substantive difference in the law between South Carolina and Minnesota for purposes of Defendants' Motion, there is no need for the Court to decide any choice of law issues at this time.

The Regions account at issue is a savings account. Page one is also clarifies in conspicuous type that “BINDING ARBITRATION provisions set forth in [the] Agreement also apply to any account, contract, loan, credit, transaction, business, contact, interaction or relationship you may have or have had with us from time to time.” For the avoidance of all doubt, page 2 of the Deposit Agreement contains the following notice:

▶ ARBITRATION AND WAIVER OF JURY TRIAL. THIS AGREEMENT CONTAINS PROVISIONS FOR BINDING ARBITRATION AND WAIVER OF JURY TRIAL. YOUR ACCEPTANCE OF THIS AGREEMENT INCLUDES YOUR ACCEPTANCE OF AND AGREEMENT TO SUCH PROVISIONS. WHEN ARBITRATION IS INVOKED FOR CLAIMS SUBJECT TO ARBITRATION, YOU AND REGIONS WILL NOT HAVE THE RIGHT TO PURSUE THAT CLAIM IN COURT OR HAVE A JURY DECIDE THE CLAIM AND YOU WILL NOT HAVE THE RIGHT TO BRING OR PARTICIPATE IN ANY CLASS ACTION OR SIMILAR PROCEEDING IN COURT OR IN ARBITRATION.

The Regions Arbitration Provision broadly applies to “any controversy, claim, counterclaim, dispute or disagreement” claim relating to, *inter alia*, any account; any alleged contract or tort arising out of or relating in any way to the Agreement, any account, any agreement, any transaction, any advertisement or solicitation, or your business, interaction or relationship with Regions; any property loss or damage; or any claim, demand or request for compensation or damages from or against Regions would be required to be settled by binding Arbitration under the Federal Arbitration Act (“FAA”) if either party elects to arbitrate. (“Regions Arbitration Agreement”).

LEGAL STANDARD

The policy of the United States and of South Carolina is to favor arbitration of disputes. *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)). Similarly, Minnesota law “clearly favors arbitration of disputes.” *Minnesota Teamsters Pub. & L. Enft Employees' Union, Loc. No. 320 v. Cnty. of St. Louis*, 611 N.W.2d 355, 358 (Minn. Ct. App. 2000). “In interpreting agreements within the scope of the FAA, ‘due regard must be given to the federal policy favoring arbitration, and ambiguities as to the scope of the arbitration clause itself resolved in favor of arbitration.’” *Carolina Care Plan, Inc. v. United HealthCare Servs., Inc.*, 361 S.C. 544, 550, 606 S.E.2d 752, 755 (2004) (quoting *Stokes v. Metropolitan Life Ins. Co.*, 351 S.C. 606, 610, 571 S.E.2d 711, 714 (Ct. App. 2002)); also see *Onvoy, Inc. v. SHAL, LLC*, 669 N.W.2d 344, 351 (Minn. 2003) (citing *Volt Info. Sciences, Inc. v. Leland Stanford Jr. Univ.*, 489 U.S. 468, 476, (1989)) (noting the FAA’s strong presumption in favor of arbitration, and that “[a]ny doubt with respect to the intent of the parties regarding the scope of arbitration should be resolved in favor of arbitration”).

Arbitration is a matter of contract law and general contract principles of state law apply to a court’s evaluation of the enforceability of an arbitration clause. *Parsons*, 418 S.C. at 6, 791 S.E.2d at 131; *Mainville v. Coll. Town Pizza, Inc.*, 629 F. Supp. 3d 913, 920 (D. Minn. 2022) (“Although state contract law governs whether an enforceable agreement exists, federal law governs whether the dispute is within the scope of the parties’ arbitration agreement.”). 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*, 418 S.C. at 7, 791 S.E.2d at 131; *Lynch v. Condominiums of Buena Vista, Inc.*, No. A22-0864, 2023 WL 2230342, at *3 (Minn. Ct. App. Feb. 27, 2023), review denied (June 20, 2023) (quoting *Amdahl v. Green Giant Co.*, 497 N.W.2d 319, 322 (Minn. App. 1993) (“When considering a motion to compel arbitration, the court’s inquiry is limited to (1) whether a valid arbitration agreement exists, and (2) whether the dispute falls within the scope of the arbitration agreement.”)).

The heavy presumption in favor of arbitrability requires that when the scope of the arbitration clause is open to question, a court must decide the question in favor of arbitration. *Parsons*, 418 S.C. at 7, 791 S.E.2d at 131 (citing *Landers v. Fed. Deposit Ins. Corp.*, 402 S.C. 100, 109, 739 S.E.2d 209, 213 (2013)); . “[A]greements to arbitrate must be enforced, absent a ground for revocation of the contractual agreement.” *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985). “[T]he party resisting arbitration bears the burden of proving that the claims at issue are unsuitable for arbitration.” *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 379, 759 S.E.2d 727, 731 (2014) (quoting *Green Tree Fin. Corp.-Ala. v. Randolph*, 531 U.S. 79, 91, 121 S.Ct. 513, 148 L.Ed.2d 373 (2000)); *Onvoy, Inc. v. SHAL, LLC*, 669 N.W.2d 344, 349 (Minn. 2003) (“The party opposing arbitration bears the burden of proving that the dispute is outside the scope of the agreement.”).

Once the Court determines that the FAA applies to the arbitration provision in the Account Agreement, as incorporated by reference into the Account Application, the Act directs the Court to stay this action pending arbitration of the dispute in accordance with the Account Agreement. 9 U.S.C. § 3. However, courts have expressly recognized that this Court may also properly dismiss this action with or without prejudice, as the Court deems proper, pending arbitration pursuant to the parties’ agreement.³

³ See, e.g., *Green Tree Financial Corp.-Alabama v. Randolph*, 531 U.S. 79, 86–87 (2000); *Widener v. Fort Mill Ford*, 674 S.E.2d 172, 173 (S.C. Ct. App. 2009); *Bam Navigation, LLC v. Wells Fargo & Co.*, No. 20-CV-1345 (NEB/ECW), 2021 WL 533692, at *6 (D. Minn. Feb. 12, 2021) (noting that “courts sometimes dismiss the case instead when it is clear the entire controversy between the parties will be resolved by arbitration.”) (internal citations omitted).

ANALYSIS

A. Plaintiff Entered into Binding Arbitration Agreements with Cetera and Regions.

1. The Signed Cetera New Account Application and Regions Fiduciary Account Maintenance and Signature Form Represent Agreements to Arbitrate the Disputes between Plaintiff and Defendants.

By affidavit, Plaintiff swears he has not seen a copy of the Cetera Arbitration Agreement, or the Regions Arbitration Agreement contained in the Regions Deposit Agreement prior to signing the Cetera New Account Application or the Regions Fiduciary Account Maintenance and Signature Form. Conversely, Regions and Cetera provided affidavits suggesting that in the ordinary business course, Plaintiff would have been provided copies of both arbitration agreements, and that Regions and Cetera know of no reason why Plaintiff would be an exception.

Whether Plaintiff actually reviewed the Cetera Arbitration Agreement or the Regions Arbitration Agreement prior to signing the Cetera New Account Application or the Regions Fiduciary Account Maintenance and Signature Form, he entered into an arbitration agreement with Cetera and Regions. What is undisputed is that Plaintiff signed both the Cetera New Account Application and the Regions Fiduciary Account Maintenance and Signature Form. On both documents Plaintiff was put on actual notice that he was agreeing to arbitrate claims he had against Cetera and Regions.

As it relates to Cetera, the case of *Bam Navigation, LLC v. Wells Fargo & Co.*, No. 20-CV-1345 (NEB/ECW), 2021 WL 533692 (D. Minn. Feb. 12, 2021) is compelling. In *Bam Navigation*, the representative for the plaintiff applied for an account with the defendant bank. *Id.* at *1. On the third page of the application, he agreed to a list of terms and conditions. *Id.* Specifically the plaintiff agreed to be bound by a separate “account agreement that includes the Arbitration Agreement.” *Id.* The plaintiff also acknowledged receipt of the account agreement. *Id.*

The court in *Bam Navigation* expressly rejected the plaintiff's arguments that he could not be bound by the arbitration agreements because he never signed the arbitration agreement and claims to have never received the account agreement. *Id.* at *3. The court ruled that "when a contract incorporates another document by reference, a party cannot avoid its obligations under the incorporated document by claiming it did not read or receive it. *Id.*, at *3 (internal citations omitted). Similar to the Plaintiff here, the court found that the plaintiff "read and signed the Application, which put [the plaintiff] on notice not only of the [a]ccount [a]greement, but also the fact that it contained an arbitration agreement."

Therefore, I find that Plaintiff entered into a valid arbitration agreement with Cetera when he completed the New Account Application. Even if he did not receive all nine pages of the New Account Application, the page he signed contained language putting him on notice that he was agreeing to arbitrate any claims he had against Cetera.

As it relates to Regions, South Carolina courts have enforced arbitration agreements where the plaintiff has claimed not to have actual notice of the arbitration agreement. *See Jenkins v. CitiFinancial, Inc.*, No. CV 2:05-1199-PMD-GCK, 2007 WL 9753133, at *6 (D.S.C. Jan. 16, 2007) (rejecting the argument that because plaintiff did not read the arbitration agreement, she did not accept the offer to arbitrate). In the analogous cases of *Towles v. United HealthCare Corp.*, 338 S.C. 29, 524 S.E.2d 839 (Ct. App. 1999) and *Jenkins v. CitiFinancial, Inc.*, No. CV 2:05-1199-PMD-GCK, 2007 WL 9753133 (D.S.C. Jan. 16, 2007), employees attempted to avoid arbitration agreements by claiming, in part, that they never received actual notice of the arbitration provision *Towles*, 338 S.C. at 34, 524 S.E.2d at 842; *Jenkins*, 2007 WL 9753133, at *2. The plaintiff in *Towles* claimed to have never received actual notice of the arbitration provisions. *Towles*, 338 S.C. at 37, 524 S.E.2d at 844. The plaintiff in *Jenkins* said she was not given an

opportunity to read the employee handbook, or the receipt form she signed, and her manager told her that it was solely for purposes of processing payroll and benefits. *Jenkins*, 2007 WL 9753133 at *2. The plaintiff in *Jenkins* also claims to not have had actual notice of the arbitration agreement contained in the handbook at the time she signed the receipt form stating she had received it. *Id.* Similarly, the plaintiff in *Towles* signed a Code of Conduct and Employee Handbook Acknowledgement form that summarized the arbitration policy. *Towles*, 338 S.C. at 34, 524 S.E.2d at 842.

The courts in both *Towles* and *Jenkins* concluded that by signing the respective acknowledgment or receipt forms, neither plaintiff could “legitimately claim [the defendant] failed to provide actual notice of the arbitration provisions because the law does not impose a duty to explain a document's contents to an individual when the individual can learn the contents from simply reading the document.” *Towles*, 338 S.C. at 39, 524 S.E.2d at 845. Similarly, Plaintiff was put on notice of the existence of the Regions Arbitration Agreement when he signed the Fiduciary Account Maintenance and Signature Form. Regions informed Plaintiff right beside the signature line in bold and conspicuous text that he “acknowledged receiving and agree[ing] to each and every term, condition, and provision of the Deposit Agreement (including, without limitation, the ARBITRATION AND WAIVER OF JURY TRIAL provisions” *See Citizens & S. Nat. Bank of S.C. 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.”) Therefore, I find that that Plaintiff entered into the arbitration agreement with Regions. *See Bootle, et al. v. Morrison et al.*, Case Nos. 2019-CP-15-00195/00196/00197, at *5–6 (S.C. Court of Common Pleas August 19, 2019) (J. Carmen Mullen) (compelling arbitration in an action brought by clients against a bank, brokerage firm, and investment adviser where plaintiffs

signed an application putting them on notice of an arbitration agreement contained in a master account agreement).

Plaintiff argues that there could not have been any consideration for these arbitration agreements because Plaintiff was merely substituting into the place of Defendant Steven Lovelace as the court appointed conservator. (Pl. Mem. in Opp. 7.) Valuable consideration may consist of “some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other.” *Hennes v. Shaw*, 397 S.C. 391, 399, 725 S.E.2d 501, 505 (Ct. App. 2012); *see also Powell v. MVE Holdings, Inc.*, 626 N.W.2d 451, 463 (Minn. Ct. App. 2001) (*quoting Deli v. Hasselmo*, 542 N.W.2d 649, 656 (Minn.App.1996), review denied (Minn. Apr. 16, 1996)) (“Consideration is ‘something of value given in return for a performance or promise of performance,’ and requires that a contractual promise be the product of a bargain.”). Here, Plaintiff was required to enter into the respective agreements with Cetera and Regions to continue banking and investing with each. His signature and continued banking and investing with Regions and Cetera, like the continued employment in *Towles* and *Jenkins*, constitutes consideration sufficient to show acceptance of the Cetera Arbitration Agreement and the Regions Arbitration Agreement. *See 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’”).

2. The Cetera Arbitration Agreement and the Regions Arbitration Agreement are Not Unconscionable.

Plaintiff's brief argues that the arbitration agreements are unconscionable because he was only signing them as a court-ordered conservator and was substituting for the former conservator. (Pl. Mem. in Opp. 8.) For the reasons set forth below, the Court rejects this argument.

“[U]nconscionability is the absence of meaningful choice on the part of one party due to one-sided contract provisions together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them” *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 541, 542 S.E.2d 360, 365 (2001) (citing *Fanning v. Fritz's Pontiac–Cadillac–Buick, Inc.*, 322 S.C. 399, 472 S.E.2d 242 (1996)); *see also Bam Navigation, LLC v. Wells Fargo & Co.*, No. 20-CV-1345 (NEB/ECW), 2021 WL 533692, at *4 (D. Minn. Feb. 12, 2021) (citing *TEM Capital, LLC v. Leonard*, Nos. A13-0158, A13-0215, 2013 WL 6152186, at *4 (Minn. Ct. App. Nov. 25, 2013)) (“Under Minnesota law, a party claiming that a contract is unconscionable must establish that he or she had no meaningful choice but to accept the contract terms as offered and that the terms of the contract were unreasonably favorable to the other party.”) (internal quotations omitted).

Plaintiff argues that these arbitration agreements were contracts of adhesion. (Pl. Mem. in Opp. 5.) Without addressing whether the Cetera or Regions agreements are contracts of adhesion, even if they were, Plaintiff did not raise any issue of substantive unconscionability contained in either arbitration provisions. The fact that a contract is one of adhesion does not render it unconscionable. *Munoz*, 343 S.C. at 541, 542 S.E.2d at 365; *see also Bam Navigation*, 2021 WL 533692, at *4 (citing *Vierkant v. AMCO Ins. Co.*, 543 N.W.2d 117, 120 (Minn. Ct. App. 1996)) (“A contract is not unconscionable merely because the parties to it possess unequal bargaining power.”).

Moreover, the inclusion of an arbitration clause is not unconscionable in an adhesion contract. *Jenkins v. CitiFinancial, Inc.*, No. CV 2:05-1199-PMD-GCK, 2007 WL 9753133, at *7 (D.S.C. Jan. 16, 2007) (citing *Munoz*, 343 S.C. at 541, 542 S.E.2d at 365; *see also Bam Navigation*, 2021 WL 533692, at *4 (finding that an arbitration agreement contained in an account agreement separate and apart from the application was not unconscionable because the plaintiff “could have instead opted not to open an account at [the defendant bank]”).

Therefore, the Court finds that the arbitration agreements with Cetera and Regions are not unconscionable.

B. The Arbitration Agreements Cover the Plaintiff’s Claims and the FAA Requires the Arbitration Agreements to be Enforced.

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 a 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 (emphasis added). The FAA manifests “an emphatic federal policy in favor of arbitral dispute resolution,” and requires that courts “rigorously enforce agreements to arbitrate.” *Mitsubishi Motors Corp. v. Soler Chrysler–Plymouth, Inc.*, 473 U.S. 614, 631 (1985). When the FAA applies, federal substantive law regarding arbitrability controls. *Landers v. Fed. Deposit Ins. Corp.*, 402 S.C. 100, 108, 739 S.E.2d 209, 213 (2013) (citing *Mitsubishi*, 473 U.S. at 626); *see also Churchill Env’t & Indus. Equity Partners, L.P. v. Ernst & Young, L.L.P.*, 643 N.W.2d 333, 335–36 (Minn. Ct. App. 2002) (“The FAA creates a body of federal substantive law applicable to any arbitration agreement within the coverage of the Act.”) (internal citations omitted).

A litigant can compel arbitration under the FAA where there is:

(1) the existence of a dispute between the parties, (2) a written agreement that includes an arbitration provision which purports to cover the dispute, (3) the relationship of the transaction, which is evidenced by the agreement, to interstate or foreign commerce, and (4) the failure, neglect or refusal of [a party] to arbitrate the dispute.

Adkins v. Labor Ready, Inc., 303 F.3d 496, 500–01 (4th Cir. 2002); *Churchill Env't & Indus. Equity Partners, L.P.*, 643 N.W.2d at 337 (“When a party moves to compel arbitration, the court is limited to determining whether an arbitration agreement exists and, if so, whether the dispute falls within the scope of that agreement.”). Criteria one and four are clearly satisfied as there is clearly a dispute between the parties and Plaintiff has brought this claim in state court rather than arbitration. Criterion two and three will be addressed below.

1. Plaintiff’s Claims are Covered by the Arbitration Agreements.

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, 7, 791 S.E.2d 128, 131 (2016) (citations omitted); *Lynch v. Condominiums of Buena Vista, Inc.*, No. A22-0864, 2023 WL 2230342, at *3 (Minn. Ct. App. Feb. 27, 2023), review denied (June 20, 2023) (quoting *Amdahl v. Green Giant Co.*, 497 N.W.2d 319, 322 (Minn. App. 1993) (“When considering a motion to compel arbitration, the court’s inquiry is limited to (1) whether a valid arbitration agreement exists, and (2) whether the dispute falls within the scope of the arbitration agreement.”))

The Cetera Arbitration Agreement broadly covers “any dispute” between Plaintiff and Cetera “arising out of this agreement.” Similarly, the Regions Arbitration Agreement applies to “any controversy, claim, counterclaim, dispute or disagreement between you and [Regions]” This applies to any account; any alleged contract or tort arising out of or relating in any way to the Agreement, any account, any agreement, any transaction, any advertisement or solicitation, or

Plaintiff's business, interaction or relationship with Regions; any property loss or damage; or any claim, demand or request for compensation or damages from or against Regions.

Here, the Court finds that the arbitration agreements cover the instant dispute between the parties. Plaintiff brings claims against some or all of the Defendants alleging causes of action for negligence/gross negligence, violation of S.C. Code Ann. § 62-5-420, negligent hiring/training/supervision, breach of contract, conversion, and violation of the South Carolina Unfair Trade Practices Act arising out Plaintiff's relationship with Cetera and Regions. Consequently, his allegations clearly fall within the broad language of the arbitration agreements. *York v. Dodgeland of Columbia, Inc.*, 406 S.C. 67, 95, 749 S.E.2d 139, 153 (Ct. App. 2013) ("Unless a court can say with positive assurance that the arbitration clause is not susceptible to any interpretation that covers the dispute[,] arbitration should generally be ordered.") (internal citations omitted); *Minnesota Teamsters Pub. & L. Enft Employees' Union, Loc. No. 320 v. Cnty. of St. Louis*, 611 N.W.2d 355, 358 (Minn. Ct. App. 2000) ("Doubts concerning the scope of arbitrable issues are resolved in favor of arbitration."). The broad language of "any dispute" and "any controversy" or "claim" represents an unambiguous, mutual intent to arbitrate. *See York*, 406 S.C. at 81, 749 S.E.2d at 146 (finding that contractual language using "any and all disputes" "indicated the parties' unambiguous, mutual intent to arbitrate").

At the hearing, Plaintiff argued that this dispute centers on Defendants violation of the Restricted Account Agreement issued by the Beaufort County Probate Court, and not the Cetera New Account Application or the Regions Fiduciary Account Maintenance and Signature Form, but this argument is not persuasive. As noted above, the Regions Arbitration Agreement covers disputes that arise outside of Plaintiff's agreement with Regions, including any controversy or claim relating to any account. While the Cetera Arbitration Agreement provides that it covers "any

dispute between [Plaintiff] and [Cetera] arising out of this agreement . . . ,” this language is broad; and “where 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.”).

2. Interstate Commerce is Involved and Requires the Application of the FAA.

“Generally, any arbitration agreement affecting interstate commerce is subject to the FAA.” *Cape Romain Contractors, Inc. v. Wando E., LLC*, 405 S.C. 115, 121, 747 S.E.2d 461, 464 (2013) (internal citations omitted). “The phrase ‘involving commerce’ as used in the FAA is ‘the functional equivalent of the more familiar term “affecting commerce”—words of art that ordinarily signal the broadest permissible exercise of Congress’ Commerce Clause power.” *Hicks Unlimited, Inc. v. UniFirst Corp.*, 439 S.C. 623, 633, 889 S.E.2d 564, 569 (2023) (quoting *Citizens Bank v. Alafabco, Inc.*, 539 U.S. 52, 56, 123 S.Ct. 2037, 156 L.Ed.2d 46 (2003)); *see also DSAI, Inc. v. Mkt. Direct, LLC*, No. CIV. 06-4545 MJD/SRN, 2007 WL 551614, at *3 (D. Minn. Feb. 21, 2007) (same). Under the FAA, Congress’ Commerce Clause power may be exercised in individual cases without a showing of any specific effect upon interstate commerce if the economic activity in question would represent a general practice subject to federal control. *Hicks*, 439 S.C. at 634, 889 S.E.2d at 569; *DSAI, Inc.*, 2007 WL 55164 at *3. The South Carolina Supreme Court has determined that the banking industry is “an activity that is, in general, subject to federal control.” *Hicks*, 439 S.C. at 634, 889 S.E.2d at 569.

Additionally, where parties from different states are involved, interstate commerce is found to be present. *Cape Romain Contractors, Inc.*, 405 S.C. at 123–24, 747 S.E.2d at 465 (noting that use of materials and services from out-of-state sources is an indicator of interstate commerce); *DSAI, Inc.*, 2007 WL 55164 at *3 (finding that a dispute between a Connecticut company and two Minnesota residents and their Minnesota-based business implicated interstate commerce). Plaintiff’s allegations acknowledge that Defendants Regions and Cetera are out of state defendants. (Compl. ¶ 4-5.) Plaintiff does not make any argument that the FAA should not apply. With all four criteria satisfied, the FAA applies with its emphatic policy of favoring arbitration of dispute. A court “has no choice but to grant a motion to compel arbitration where a valid arbitration agreement exists and the issues in a case fall within its purview.” *Cape Romain Contractors, Inc.*, 405 S.C. at 128, 747 S.E.2d at 468 (citing *Adkins*, 303 F.3d at 500).

Having found that Plaintiff entered into the Cetera Arbitration Agreement and the Regions Arbitration Agreement, and that those respective Agreements are subject to the FAA’s policy favoring arbitration of disputes, the Court finds that Plaintiff’s claims are covered by the respective arbitration agreements.

C. Defendant Lazurek is Entitled to Enforce the Arbitration Agreements

Even though Defendant Lazurek is not a named party to the Cetera Arbitration Agreement, he is entitled to enforce the Cetera Arbitration Agreement. Well-established common law principles dictate that in an appropriate case a nonsignatory can enforce, or be bound by, an arbitration provision within a contract executed by other parties. *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 288, 733 S.E.2d 597, 600 (Ct. App. 2012). A signatory is equitably estopped from denying the enforcement of an arbitration agreement, “*when the signatory to the contract containing an arbitration clause raises allegations of substantially interdependent and concerted*

*misconduct by both the nonsignatory and one or more of the signatories to the contract.” Pearson, 400 S.C. at 295, 733 S.E.2d at 604 (citing Goer v. Jasco Indus. Inc., 395 F. Supp. 308, 314 n.9 (D.S.C.)) (emphasis in original); ev3 Inc. v. Collins, No. A08-1816, 2009 WL 2432348, at *3 (Minn. Ct. App. Aug. 11, 2009) (internal quotations omitted) (Minnesota law also permits a nonsignatory to compel arbitration against a signatory, “when the signatory to the contract containing the arbitration clause raises allegations of substantially interdependent and concerted misconduct by both the nonsignatory and one or more of the signatories to the contract.”).*

Plaintiff is estopped from denying the existence of the Cetera Arbitration Agreement as it relates to Defendant Lazurek. Plaintiff seeks to hold Defendant Lazurek liable arising out of the same set of facts for which it seeks to hold Defendant Cetera liable. *Id.* at 293, 733 S.E.2d at 603 (Courts “have been willing to estop a signatory from avoiding arbitration with a nonsignatory when the issues the nonsignatory is seeking to resolve in arbitration are intertwined with the agreement that the estopped party has signed.”) (internal citations omitted.); *Bam Navigation, LLC v. Wells Fargo & Co.*, No. 20-CV-1345 (NEB/ECW), 2021 WL 533692, at *5 (D. Minn. Feb. 12, 2021) (finding a nonsignatory could enforce an arbitration agreement when the complaint makes “no distinction between [the signatory and nonsignatory] when making its allegations against them.”). “[A] party should not be allowed to avoid an arbitration agreement by naming nonsignatory parties in his complaint because this would nullify the rule requiring arbitration.” *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 288, 733 S.E.2d 597, 600 (Ct. App. 2012) (internal quotations omitted).

D. The Dispute Between Plaintiff and Defendants is Subject to Arbitration Even Though Plaintiff and Defendant Lovelace Did Not Agree to Arbitrate.

The FAA, “both through its plain meaning and the strong federal policy it reflects, requires courts to enforce the bargain of the parties to arbitrate, and not to substitute its own views of economy and efficiency for those of Congress.” *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213,

217 (1985) (internal quotations omitted). Providing that agreements to arbitrate “shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of the of any contract,” 9 U.S.C. 2, the FAA “leaves no place for exercise of discretion by a [court], but instead mandates that [courts] shall direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed.” *Id.* at 218; *Wellman, Inc. v. Square D Co.*, 366 S.C. 61, 69, 620 S.E.2d 86, 90 (Ct. App. 2005). The legislative history of the FAA illustrates that the driving purpose behind its passage “was to ensure judicial enforcement of privately made agreements to arbitrate” *Dean Witter Reynolds, Inc.*, 470 U.S. at 219. Arbitration agreements should be rigorously enforced “even if the result is ‘piecemeal’ litigation” *Id.* at 221.

Under these facts, this Court is required to compel Plaintiff to arbitrate his claims against Regions, Cetera, and Lazurek despite Plaintiff’s claims against Defendant Steven Lovelace remaining in this Court. To hold otherwise could lead to arbitration being foreclosed by simply adding as a defendant a person not a party to an arbitration agreement. *Wellman, Inc. v. Square D Co.*, 366 S.C. 61, 70–71, 620 S.E.2d 86, 91 (Ct. App. 2005).

CONCLUSION

The FAA governs enforcement of the arbitration agreements in this case because all requirements for a valid and enforceable arbitration agreement are met, and the agreements must be enforced.

Accordingly, Plaintiffs’ Complaints are hereby dismissed with prejudice as to Defendants Regions Bank, Cetera Investment Services d/b/a Regions Investment Services, and Christopher Lazurek.

IT IS SO ORDERED.

HONORABLE MICHAEL G. NETTLES
PRESIDING JUDGE

Date: November ____, 2023

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

Case No. 2023-CP-07-00646

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.

NOTICE OF APPEAL

Pursuant to Rule 203, SCACR, Appellants, Regions Bank, Cetera Investment Services d/b/a Regions Investment Services, and Christopher Lazurek, hereby timely appeal the Order on their Motion to Compel Arbitration and Dismiss or Stay the Action, dated December 7, 2023 (“December 7 Order”), and the Order denying their Motion to Reconsider, Alter and/or Amend, dated May 6, 2024, but received on May 7, 2024 (“May 6 Order”). Both Orders were issued in the Court of Common Pleas by the Honorable Michael G. Nettles. (*See* December 7 Order, and May 6 attached hereto as Exhibits A and B).

Respectfully submitted,

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