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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM MARION COUNTY
Court of Common Pleas

The Honorable Michael G. Nettles, Circuit Court Judge

Appellate Case No.: 2024-001597
Case No.: 2023-CP-33-00574

Versie T. Page, on behalf of herself and all others similarly situated…….Respondent,

v.

South Carolina Federal Credit Union…….. Appellant.

INITIAL BRIEF OF APPELLANT

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II. Whether a party's assent to an amendment to a contract is required when the party has agreed to a change-of-terms provision?

III. Whether the circuit court erred in concluding that reasonable notice of an arbitration amendment was not provided when the appellant provided testimony of such notice and the respondent offered no evidence in rebuttal?

IV. Whether a party is estopped from avoiding arbitration on the basis that no arbitration agreement exists when she seeks to enforce other parts of the contract that are beneficial to her?

STATEMENT OF THE CASE

This case involves a dispute between Respondent Versie T. Page and Appellant South Carolina Federal Credit Union ("SCFCU") about whether SCFCU's practices of charging overcharge fees violate the parties' contract. With respect to this appeal, the issue is whether the dispute is subject to mandatory arbitration under SCFCU's account agreement.

On October 24, 2023, Page filed a class-action complaint against SCFCU, asserting three separate claims for breach of contract and one for unjust enrichment. (Compl.) In the complaint, Page alleges that she and SCFCU "contracted for bank account services" and that SCFCU breached that contract by improperly assessing (1) overdraft fees on transactions that did not overdraw the account, (2) overdraft fees on debit card transactions authorized on sufficient funds, and (3) multiple overdraft fees on single transactions with insufficient funds. (*Id.*)

In response to the complaint, SCFCU filed its Motion to Dismiss or, in the Alternative, Motion to Stay and Compel Arbitration on December 1, 2023. (Mot. Dismiss.) In the motion, SCFCU moved to compel arbitration of the claims because they are subject to the arbitration provisions of the account agreement between SCFCU and Page, which contains an arbitration clause. (*Id.* at ¶ 3.) Page filed her Memorandum in Opposition to SCFCU's Motion to Dismiss or, in the Alternative, Motion to Stay and Compel Arbitration on March 13, 2024, asserting that SCFCU had not provided evidence that Page agreed to arbitration. (Memo. Opp. Mot. Dismiss.)

SCFCU filed its Reply in Support of Motion to Dismiss or, in the Alternative, Motion to Stay and Compel Arbitration on March 15, 2024. (Reply Support Mot. Dismiss.) Contemporaneously filed with its Reply was the Affidavit of Jessica Blackstone, a Senior Risk Analyst employed by SCFCU, who attested to the account agreement with Page that contained the arbitration provision. (Reply Support Mot. Dismiss, Blackstone Aff.)

On March 18, 2024, a hearing on SCFCU's Motion to Dismiss was held by Judge Michael G. Nettles. (Hr'g Tr., Mar. 18, 2024.) Judge Nettles issued his Order denying SCFCU's motion on March 25, 2024. (Order, Mar. 25, 2024.) In the Order, Judge Nettles concluded that SCFCU failed to meet the burden to prove that an agreement to arbitrate was formed. (*Id.* at ¶ 28.)

SCFCU filed its Motion for Reconsideration of the Court's Order on April 3, 2024. (Mot. Reconsider.) Page filed her Memorandum in Opposition to SCFCU's Motion for Reconsideration on April 11, 2024. (Memo Opp. Mot. Reconsider). On September 16, 2024, a hearing on SCFCU's Motion for Reconsideration was heard, and Judge Nettles issued his Order denying SCFCU's motion on September 20, 2024. (Hr'g Tr., Sept. 16, 204; Order, Sept. 20, 2024.) SCFCU filed its Notice of Appeal with the Court of Appeals on September 23, 2024. (Not. Appeal.)

STATEMENT OF FACTS

I. Page and SCFCU's Relationship

In August 2016, Page opened a checking account with Health Facilities Federal Credit Union ("HFFCU") and signed an HFFCU account card. (Reply Support Mot. Dismiss, Ex. 1 - Blackstone Aff. ¶ 3, Ex. A.) When Page signed the account card, Page agreed to the terms and conditions of HFFCU's Membership and Account Agreement and "any amendment the Credit Union makes from time to time . . ." (*Id.*)

HFFCU's Membership and Account Agreement established the terms and conditions governing HFFCU and Page's relationship. The introductory paragraphs state that, by signing the account card, Page agreed to "the terms and conditions in the Agreement, . . . and any amendments . . ." (*Id.* at Ex. B.) The HFFCU agreement included a "Notice of Amendments" provision, which provided that "[e]xcept as prohibited by applicable law, [HFFCU] may change the terms of this Agreement at any time." (*Id.* at § 23.b.) The Membership and Account Agreement also contained a "Governing Law" provision, which included a forum selection clause providing that Page "agree[d] that any legal action regarding this Agreement shall be brought in the county in which the Credit Union is located." (*Id.* at § 34.)

The members of HFFCU and SCFCU agreed to a merger of the two credit unions in November 2019, and SCFCU was the surviving entity. (Reply Support Mot. Dismiss, Ex. 1 - Blackstone Aff. ¶ 5.) As a result of the merger, SCFCU mailed a welcome notice to former HFFCU members whose accounts were being transferred to SCFCU. (*Id.* at ¶ 6; Ex. C.) The welcome notice informed HFFCU members that

their deposit accounts would become governed by SCFCU's account agreement starting on March 1, 2020. (*Id.* at ¶ 7; Mot. Dismiss Ex. 1.). The welcome notice also explained that the SCFCU account agreement "may be different than" the HFFCU agreements and identified certain provisions that may be different, including SCFCU's arbitration clause. (*Id.* at Ex. C.) Finally, the welcome notice included a website link where members could download a copy of SCFCU's account agreement. (*Id.*)

The SCFCU account agreement provides that it governs the relationship with Page, including "all services whether opened now or in the future." (Mot. Dismiss – Ex. 1, p. 1.) The SCFCU account agreement contains an arbitration clause, which provides that the customer and SCFCU "agree that any dispute affecting your accounts and /or services and arising out of or relating to this *Agreement* will be resolved by **BINDING ARBITRATION** . . ." (*Id.* at pp. 19-20, § 32) (emphasis original).

The SCFCU account agreement also provides that "Rates and Fees applicable to all accounts are set forth in the Truth in Savings Rate and Fee Schedule (Schedule), which you agree we may change from time to time with proper notice as required by law." (*Id.* at p. 2.) Also, the SCFCU account agreement contains multiple provisions referencing or incorporating the Schedule. Of relevance here, it provides that transactions presented without sufficient funds in the customer account "will be subject to a charge, per item, whether paid or returned as set forth in our Schedule…

Any fees associated with nonsufficient funds, Courtesy Pay, transfers or negative balances, if any, are set forth in our Schedule." (*Id.* at p. 13.)

SCFCU did not receive from Page any objection to the terms in the account agreement or a request to close her account (Reply Support Mot. Dismiss, Ex. 1 - Blackstone Aff. ¶ 8.) Instead, Page maintained her account at SCFCU and later opened a second checking account in September 2020. (*Id.* at ¶ 9.)

II. Page's Complaint & Motion to Compel Arbitration

Page commenced this lawsuit as a proposed class-action in October 2023, alleging that SCFCU has improperly assessed overdraft fees on various transactions. Page's complaint asserts three separate claims for breach of contract and another claim for unjust enrichment. (Compl. ¶¶ 127-173.) Throughout the complaint, Page repeatedly references the contractual relationship between herself and SCFCU and contends that the Schedule, which is referenced in the account agreement as governing SCFCU's relationship with the customer, is one of the contracts that has been breached by SCFCU. (*Id.* at ¶¶ 2, 16, 37, 39, and Ex. A.)

After SCFCU was served with Page's complaint, it filed a motion to compel arbitration under the account agreement. In response to this motion, Page denied that a valid agreement to arbitrate between the parties had been formed. The circuit court adopted Page's arguments and refused to compel arbitration. According to the court, the change-of-terms provision found in the HFFCU account agreement did not permit SCFCU to "add" a new arbitration clause and SCFCU did not provide reasonable notice to Page of the arbitration clause. (Order, Mar. 25, 2024.)

STANDARD OF REVIEW

"The determination of whether a claim is subject to arbitration is subject to *de novo* review." *Wellman, Inc. v. Square D. Co.*, 366 S.C. 61, 67, 620 S.E.2d 86, 89 (Ct. App. 2005). However, the factual findings of the trial court will not be reversed on appeal if there is any evidence reasonably supporting them. *Id.*

ARGUMENT

I. The arbitration clause in SCFCU's account agreement was permissible under the change-of-terms provision in Page's original account agreement with HFFCU because it was related to the parties' original forum selection clause.

In refusing to compel arbitration, the circuit court erroneously concluded that there was no agreement between Page and SCFCU to arbitrate disputes. Specifically, the circuit court ruled the HFFCU account agreement did not permit SCFCU to amend its agreement with Page with an arbitration provision. In so doing, it relied on non-binding decisions from other jurisdictions and disregarded the plain terms of the HFFCU account agreement that allow for changes and amendments to the agreement.

Here, there does not appear to be any dispute that a contract between Page and SCFCU exists. By signing the HFFCU account card, Page agreed that her account with HFFCU would be covered by its account agreement and any amendments thereto. Nor does Page contend that the contractual relationship was severed by the merger of HFFCU and SCFCU. Indeed, Page alleges that she "contracted for bank account services" from SCFCU and asserts three separate claims for breach of contract arising from the parties' agreement. As a result, the issue

before the Court is whether SCFCU was permitted to amend Page's account agreement by changing the forum-selection clause in the HFFCU account agreement to an arbitration clause.

The circuit court concluded that SCFCU could not change the agreement in such a manner because the HFFCU account agreement permits only "changes" but not the "addition" of new terms. The circuit court's conclusion was not based on any precedent from South Carolina courts. Rather, it relied on judicial decisions from other jurisdictions, while also disregarding counter-authority from other courts. To be sure, the issue does not appear to have been directly addressed by any South Carolina court. This case, therefore, raises a novel issue about the extent of amendments or changes that can be made under "change of terms" provisions that allow a party to make unilateral amendments to contracts, which are routinely included in customer contracts for bank, credit union, and credit card relationships.

To resolve this novel issue, South Carolina courts should follow the decision of the North Carolina Supreme Court in *Canteen v. Charlotte Metro Credit Union*, 386 N.C. 18, 900 S.E.2d 890 (2024), which is directly analogous to the present case. In that case, the plaintiff opened a checking account with the Charlotte Metro Credit Union, whose standard membership agreement included a "Notice of Amendments" provision, which provided that "[e]xcept as prohibited by applicable law, [defendant] may change the terms of this Agreement." *Id.* at 20, 900 S.E.2d at 892. The membership agreement also included a "Governing Law" provision that provided, "[a]s permitted by applicable law, [the plaintiff] agree[s] that any legal action

regarding this Agreement shall be brought in the county in which the credit union is located." *Id.* After the plaintiff opened her account, the credit union amended its membership agreement to require arbitration of certain disputes and provided the plaintiff with notice of that amendment via email. *Id.* at 20-21, 900 S.E.2d at 893.

The plaintiff later commenced a class-action lawsuit against the credit union for its practice of collecting overdraft fees on accounts that were never overdrawn. *Id.* The credit union then moved to compel arbitration, which the trial court denied. *Id.* According to the trial court, the "Notice of Amendments" provision did not permit the credit union to unilaterally "add" a wholly new arbitration provision. *Id.*

The credit union appealed this ruling to the North Carolina Court of Appeals, which reversed the trial court. *Id.* at 21-22, 900 S.E.2d at 893-94. On further appeal, the North Carolina Supreme Court affirmed the Court of Appeals' ruling and concluded that the amendment providing for arbitration changed the "Governing Law" provision and was, therefore, permitted under the "Notice of Amendments" provision. *Id.*

According to the court, "when parties have mutually agreed to a unilateral change-of-terms provision, said 'must be enforced as it is written,' subject to certain limitations." *Id.* at 23, 900 S.E.2d at 894. Thus, mutual assent and consideration is not required for changes stemming from a valid unilateral change-of-terms provision. *Id.* However, the court explained that such provisions do not grant a party "free rein to alter a valid agreement." *Id.* Instead, such changes must comply with the implied covenant of good faith and fair dealing. *Id.* at 23, 900 S.E.2d at 895. To comply with

the covenant, the changes must "must fall within the same 'universe of terms'" by relating to the "general subject matter which was anticipated when the contract was entered into." *Id.*

Applying this principle, the court concluded that the arbitration provision complied with the covenant of good faith and fair dealing because it was within the same "universe of terms" as the forum selection clause found in the "Governing Law" provision. *Id.* at 25, 900 S.E.2d at 896. According to the court, "if the original agreement includes any provisions relating to forums or methods for dispute resolution, then a modification to include an arbitration agreement is within the same universe of terms and therefore permissible under a change-of-terms provision." *Id.* Thus, the court concluded that the arbitration amendment simply changed the forum in which the parties could raise their dispute. *Id.* at 26, 900 S.E.2d at 897.

This Court should follow *Canteen* for multiple reasons.

First, ***Canteen* is based on facts that are substantially similar to those presented here.** While courts across the country have reached different conclusions about whether a change-of-terms provision permits a party to amend a contract with an arbitration provision based on the particular facts of each case, the contractual provisions involved in *Canteen* are materially the same as those involved here. In fact, it appears that the HFFCU account agreement and the pre-amendment Charlotte Metro Credit Union membership agreement had the exact same "Notice of Amendments" and "Governing Law" provisions. And SCFCU's arbitration provision in its membership agreement merely changed the forum for disputes, just as the

arbitration amendment did in *Canteen*. Thus, the SCFCU arbitration provision is within the universe of terms permissible under the change-of-terms provision that Page agreed to when she opened her HFFCU account.

Second, ***Canteen* best captures the needs of consumer contracts in the modern economy**. As the *Canteen* court explained, "Given the nature of the modern economy, change-of-terms provisions are a necessary and efficient way for companies to update contractual provisions without canceling accounts and renegotiating contractual terms every time modification may be required." *Id.* at 25, 900 S.E.2d at 896. Change-of-terms provisions have become ubiquitous in consumer contracts and serve an important function of keeping transaction costs low, which benefits both parties to a consumer contract. Daniel Watkins, *Terms Subject to Change: Assent and Unconscionability in Contracts that Contemplate Amendment*, 32 Cardozo L. Rev. 545, 545-46 (2009); *see also, Badie v. Bank of America*, 67 Cal. App. 4th 779, 787 (Cal. Ct. App. 1998) (stating that bank's expert witness testified that that including a change of terms provision in account agreements had been the standard industry practice since the 1960's). Also, change-of-terms provisions provide businesses with flexibility and the ability to adjust quickly to ever-changing market, regulatory, and legal developments. Put simply, adopting the rationale of *Canteen* will ensure that businesses operating in South Carolina can operate efficiently and nimbly, while also requiring compliance with the implied covenant of good faith and fair dealing.[1]

[1] Issuing a decision consistent with *Canteen* will also promote comity and consistency between the law of North Carolina and South Carolina. This is a compelling rationale in the context of credit union and banking relationships because many credit unions
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Third, ***Canteen's* rationale appears consistent with South Carolina law allowing unilateral contractual amendments in other contexts**. Although it does not appear that South Carolina courts have addressed the specific issue presented by this appeal[2], South Carolina law has long recognized that contracts may be unilaterally amended. In *Fleming v. Borden*, 316 S.C. 452, 463, 450 S.E.2d 589, 595 (1994), the South Carolina Supreme Court held that employers have authority to modify unilateral contracts of employment as long as the employee has reasonable notice of the modification. While *Fleming* arose from the employment context, its rationale applies equally to consumer contracts. As the *Fleming* court explained, the relationship between employer and employee is "not static," and an employer must have a mechanism to alter its contract with employees "to meet the changing needs of both business and employees." *Id.* Likewise, the nature of the modern economy is not static and requires that businesses be able to change their consumer contracts to meet their changing needs.

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and banks operate in both states. Instead of following the lead of our neighbors to the north, the circuit court relied on decisions from the states of Indiana and Wisconsin. *See* Order, Mar. 25, 2024, ¶ 24. Because South Carolina's credit union and banking industries are more intertwined with those industries in North Carolina than with banks and credit unions in other jurisdictions, such as Indiana and Wisconsin, and because the two states have similar economies, it makes sense to fashion our state's law consistently with the law of North Carolina.

[2] In *Ward v. Discover Bank*, Case No.: 3-19-cv-02124-SAL, 2020 U.S. Dist. LEXIS 69976 (D.S.C. 2020), the United States District Court for the District of South Carolina ruled that a credit card company could amend its customer contract with an arbitration clause pursuant to a change-of-terms provision. Although the court's decision was made under Delaware law, the court also noted that the plaintiff had failed to establish any South Carolina public policy that disallows unilateral amendments under a change-of-terms provision. *Id.* at *17.

In sum, the Court should adopt the reasoning articulated in *Canteen*, which presents directly analogous facts, accurately reflects the needs of the modern economy, and is consistent with South Carolina law. Under this reasoning, SCFCU's arbitration provision is within the universe of terms agreed to by HFFCU and Page under the forum-selection clause found in the "Governing Law" provision of the HFFCU account agreement, and the circuit court's decision below should be reversed accordingly.

II. Page's assent to the arbitration clause was not required, and the arbitration clause is valid because SCFCU provided Page with reasonable notice of its applicability.

The circuit court also erred in refusing to compel arbitration on the basis that Page did not "agree" or "assent" to the arbitration clause in the SCFCU account agreement. (Order, Mar. 25, 2024, ¶ 25.) As the *Canteen* court explained, contractual amendments made pursuant to a change-of-terms provision that are within the "universe of terms" of the original agreement do not require mutual assent and consideration to be effective. *Canteen*, 386 N.C. at 23, 900 S.E.2d at 894. When a party consents to a change-of-terms provision in the original agreement, the other party is free to change the terms upon notice. *Id.* at 28, 900 S.E.2d at 897-98.

This principle is consistent with the law of South Carolina as articulated in *Fleming*. In holding that an employer may make unilateral changes to an employee handbook, the Supreme Court did not require that the employee agree or assent to such changes. Instead, the court explained that only reasonable notice is required.

Fleming, 316 S.C. at 463, 450 S.E.2d at 595. Thus, the circuit court erred by requiring that SCFCU prove Page's assent to the arbitration clause.

To the extent that the circuit court ruled that SCFCU failed to provide Page with reasonable notice of its arbitration clause, that ruling is not supported by any evidence in the record. On this point, a party attempting to prove sufficient notice of a change in terms is not held to an "exacting burden." *Marsh v. First USA Bank, N.A.*, 103 F. Supp. 2d 909, 918 (N.D. Tex. 2000). Rather, a defendant "need only prove that it properly mailed the arbitration card to its [customer]. It is not necessary that Defendant prove actual receipt of the notice. Proof of mailing may be accomplished by presenting circumstantial evidence, including evidence of customary mailing practices used in the sender's business." *Id.* (citing *Wells Fargo Bus. Credit v. Ben Kozloff, Inc.*, 695 F.2d 940, 944 (5th Cir. 1983); *Myer v. Callahan*, 974 F. Supp. 578, 584, fn. 7 (E.D. Tex. 1997); *Mt. Vernon Fire Ins. Co. v. East Side Renaissance Assoc.*, 893 F. Supp. 242, 245 (S.D.N.Y. 1995)).

Here, SCFCU submitted sufficient testimony to show that it provided Page with notice of its account agreement and arbitration provision. Specifically, SCFCU submitted the affidavit of one of its employees, who confirmed that SCFCU sent HFFCU members a welcome notice advising them of the merger and that their accounts would be transferred to SCFCU. That notice further explained to the HFFCU members that their accounts would be governed by the SCFCU account agreement, which included an arbitration provision and a link to the agreement. This

notice was reasonable, and it sufficiently informed Page that her account would be governed by new terms that were accessible to her.

Page presented no evidence that disputes the testimony offered by SCFCU. Also, Page has not denied that she received the welcome notice of the merger or that she was aware that her account would be governed by the SCFCU account agreement. Nor has Page offered any evidence that she was unaware of the arbitration provision in the SCFCU account agreement. Instead, the evidence shows that, after SCFCU sent the welcome notice, Page maintained her account with SCFCU and later opened another account.

As a result, SCFCU presented sufficient and unchallenged evidence that it provided notice to Page of its account agreement and the arbitration provision. In contrast, Page did not contest receiving the notice or deny that she was aware of the arbitration provision. Therefore, the circuit court erred in concluding that SCFCU did not provide Page with reasonable notice of the arbitration provision in its account agreement. *See Marsh*, 103 F. Supp. 2d at 918-19 (ruling that plaintiffs failed to rebut presumption that credit card company provided adequate notice of arbitration clause); *Geotsch v. Shell Oil Co.*, 197 F.R.D. 574, (W.D.N.C. 2000) (rejecting plaintiff's argument that notice was not effective because he did not actually receive it).[3]

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[3] If there was any doubt about whether such notice was adequate, then the circuit court should have granted SCFCU the ability to conduct limited discovery on this issue, as SCFCU requested. (Mot. Reconsider pp. 6-7.) Therefore, if the Court finds that there are questions of fact about the sufficiency of the notice, it should reverse the circuit court's denial of SCFCU's request for limited discovery on the issue of notice. *See Deputy v. Lehman Bros., Inc.*, 345 F.3d 494, 511 (7th Cir. 2003) (ruling
(continued on next page)

III. Page is equitably estopped from avoiding application of the arbitration clause because she seeks to enforce other obligations under her agreement with SCFCU.

Regardless of whether SCFCU's arbitration clause was allowed by the change-of-terms provision or whether proper notice of such clause was provided, the circuit court erred in rejecting SCFCU's argument that Page is estopped from avoiding its application.

"Equitable estoppel operates to prevent one party from holding another to the terms of an agreement while simultaneously avoiding the same agreement's arbitration clause." *R.J. Griffin & Co. v. Beach Club II Homeowners Ass'n*, 384 F.3d 157, 165 (4th Cir. 2004) (citing *Hughes Masonry Co. v. Greater Clark County School Bldg. Corp.*, 659 F.2d 836, 838 (7th Cir. 1981)). Under this principle, a "party may not 'rely on the contract when it works to its advantage, and repudiate it when it works to its disadvantage.'" *Pearson v Hilton Head Hosp.*, 400 S.C. 281, 295, 733 S.E.2d 597, 604 (Ct. App. 2012). "When a signatory seeks to enforce an arbitration agreement against a non-signatory, the doctrine estops the non-signatory from claiming that he is not bound to the arbitration agreement when he receives a 'direct benefit' from a contract containing an arbitration clause." *Id.* "To allow a plaintiff to claim the benefit of the contract and simultaneously avoid its burden would both disregard equity and contravene the purposes underlying enactment of the Arbitration Act." *Id.* at 290, 733 S.E.2d at 601.

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that it was an abuse of discretion for trial court to deny limited discovery on issues surrounding whether plaintiff signed arbitration agreement).

Here, Page attempts to do exactly what the principles discussed above forbid. She is attempting to enforce SCFCU's alleged contractual obligations for her advantage, while also attempting to avoid arbitration under the same contract. In her complaint, Page repeatedly admits that she has a contractual relationship with SCFCU, and she asserts three separate claims for breach of contract. While Page does not expressly claim that the SCFCU account agreement containing the arbitration clause constitutes the contract governing their relationship, she identifies SCFCU's Truth-In-Savings/Rate and Fee Schedule (the "Schedule") as one of the contracts between herself and SCFCU that has been breached. The Schedule includes a provision entitled "Fees for Overdrawing Accounts," which provides that fees may be imposed on each transaction that is drawn on an insufficient available account balance. (Compl., Ex. A, p. 2 § 7.) That section further instructs the customer to refer to the SCFCU account agreement "for details about Nonsufficient Funds and Overdrafts," thereby indicating that the charge of overdraft fees is governed by the more thorough provisions found in the account agreement.

Similarly, the SCFCU account agreement provides that the Schedule governs SCFCU's relationship with the customer. (Mot. Dismiss, Ex. 1.) That agreement provides that transactions on overdrawn accounts "will be subject to a charge, per item, whether paid or returned as set for the in our Schedule." In other words, the account agreement makes the Schedule contractually binding on SCFCU, and the two documents are inextricably intertwined as to the administration of overdraft fees.

Based on the allegations in Page's own complaint, she should not be permitted to selectively choose which contractual provisions that she gets to enforce and avoid those provisions that she deems unfavorable. Likewise, Page should not benefit from artfully pleading her complaint by avoiding reference to the SCFCU account agreement that contains the arbitration clause when that agreement binds SCFCU to the Schedule, which Page claims is the contract that was breached. As a result, Page should be estopped from avoiding arbitration, and the circuit court erred in refusing to compel arbitration on that basis.

CONCLUSION

Based on the foregoing discussion and analysis, SCFCU respectfully requests that the Court reverse the circuit court's order denying SCFCU's motion to dismiss or, in the alternative, motion to stay and compel arbitration and order the dispute be arbitrated in accordance with SCFCU's account agreement.

Respectfully submitted,

s/ E. Brandon Gaskins

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