THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable G. Thomas Cooper, Jr., Circuit Court Judge

Circuit Court Case No. 2010-CP-40-4244

Melissa Anne York and Olga Joanne Cristy, ... Appellants,

v.

Dodgeland of Columbia, Inc. and Jim Hudson Automotive Group,
and Jim Hudson Superstore, a/k/a Jim Hudson Hyundai. . . . . Respondents,

---

RESPONDENTS' RETURN IN OPPOSITION TO APPELLANT'S PETITION FOR REHEARING AND PETITION FOR EN BANC

Respondents Dodgeland of Columbia, Inc., Jim Hudson Automotive Group (who is improperly named and who had no transaction with the Plaintiffs) and Jim Hudson Superstore a/k/a Jim Hudson Hyundai, whose true name is Jim Hudson Cars, LLC d/b/a Jim Hudson Hyundai (who is also improperly named), (referred to herein as "Respondents"), respond and oppose Appellants' Petition for Rehearing and Petition for En Banc Review. The Appellants' assert that the Court erred in its decision by failing to address three issues. The Court's decision correctly ruled on the disputed issues and did not err in its analysis or

application of them; the Decision issued by the Court should remain in place and the parties allowed to proceed in arbitration.

I. THE COURT DID NOT ERR IN HOLDING THAT APPELLANTS' ABANDONED THE ISSUE RELATING TO ARBITRATION-RELATED DISCOVERY.

The Court did not err in holding that Appellants abandoned the issue relating to arbitration-related discovery. Appellants' arguments on this issue were based on two premises: (1) arbitration cannot be granted until arbitration-related discovery takes place; and (2) if discovery had taken place, the arbitration agreement would have been invalidated. The Court correctly noted that these *particular* arguments were attenuated and contained summary conclusions. Therefore, Appellants' Petition should be denied.

Appellants argued that discovery was needed because the trial court made factual determinations without any factual record. (*See* Br. of Appellant 7.) Specifically, Appellants asserted that the trial court improperly analyzed material outside of the Complaint, i.e. the arbitration agreements,[1] and thus made a determination regarding the validity of the arbitration agreements without allowing discovery. However, the trial court held:

> Finally, plaintiffs' argument that discovery is necessary before determining whether the arbitration clauses are valid is unavailing. To allow these cases to proceed in discovery *when the existence of enforceable arbitration clauses are clear from the face of the sales documents* would completely defeat the purpose of the arbitration clause, which is to avoid litigation in state or federal court in order to resolve any pending individual disputes. Again, plaintiffs may raise these and other issues in arbitration, as each of the Arbitration Agreements provides for the arbitrator to determine issues related to the validity of specific provisions of the arbitration clause.
>
> (R. p. 16).

[1] Both the trial court and the Court of Appeals at oral argument noted the logical inconsistency of Appellants' attempt to ignore reference to the arbitration clauses that were located on the same page of the sales documents as the closing fee challenged by the Appellants.

In their briefs and at oral arguments, Appellants never argued or provided any legal authority for the proposition that discovery must be held in every case before arbitration is compelled. Particularly, in this case, where the law of the case is that the existence of an enforceable arbitration clause was clear from the face of the contract, Appellants never provided any indication as to what information that might be gleaned from discovery would affect or alter the ruling by the trial court. Where an agreement is clear and capable of legal interpretation, a court's only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it. Park Regency, LLC v. R & D Development of the Carolinas, LLC, 741 S.E.2d 528 (Ct. App. 2012); *see also* Laser Supply and Services, Inc. v. Orchard Park Associates, 676 S.E.2d 139 (Ct. App. 2009) (holding that when the language of a contract is clear and unambiguous, the determination of the parties' intent is a question of law for the court). Accordingly, because Appellants only summarily argued that they were somehow entitled to discovery without respect to the trial court's finding that the parties intent to arbitrate was clear from the express terms of the contract, the Court of Appeals properly held that Appellants abandoned this issue.

Moreover, during oral argument, the Court itself noted that if there was some factual issue[2] regarding the plaintiffs' execution of the sales contract documents that would have affected the trial court's ruling, Appellants certainly could have raised this issue by way of affidavit in response to Respondents' Motion to Compel Arbitration. Thus, not only was there no argument offered with supporting authority as to the Appellants' alleged blanket right to discovery in every case before an arbitration agreement is reviewed by a Court to determine if the Agreement shall be enforced, but also Appellants never provided any

[2] The example given at oral argument in a question posed to Appellants' counsel involved the possibility that the signature of the plaintiff(s) on the sales contract documents was not authentic.

indication of what specific facts could be uncovered in discovery that would invalidate unambiguous terms in a contract that evidenced an intent to arbitrate all disputes. The Record clearly demonstrates that the Appellants did not argue or contend that they did not sign or enter into an arbitration agreement, but only that they claimed the arbitration agreements were unenforceable. (R. p. 236, ln 13-16).

Finally, Appellants' argument in their Petition for Rehearing that only egregious errors properly result in abandonment is unpersuasive. As the Court of Appeals correctly noted in its opinion, an issue is abandoned if the party fails to provide arguments with proper supporting authority. *See* First Sav. Bank v. McLean, 314 S.C. 361, 444 S.E.2d 513 (1994) (citing Matthews v. City of Greenwood, 305 S.C. 267, 407 S.E.2d 668 (Ct. App. 1991)); and Martin v. Rapid Plumbing, 369 S.C. 278, 631 S.E.2d 547 (Ct. App. 2006) (holding "[c]onclusory arguments constitute an abandonment of the issue on appeal"). Although Appellants note in their Petition that they cited the South Carolina Rules of Civil Procedure, seven cases, and one South Carolina statute, none of those cases support their contention that discovery must always be allowed before determining the validity of an arbitration agreement. In fact, the majority of the cases cited are for the proposition that the trial court must initially decide the validity of an arbitration agreement. That is exactly what the trial court did in this case by using well-settled principles of contract law and holding that the intent to arbitrate was "clear from the face of the sales documents." (R. p. 16) The fact that no discovery took place into issues such as bargaining power, sophistication of the parties, surprise, etc., has nothing to do with the trial court's ruling, as such inquiries are not proper if the terms of the contract are unambiguous, which the trial court determined. Thus, Appellants only available argument regarding discovery without any citations of authority is

that discovery must always be allowed before granting a Motion to Compel Arbitration. Because Appellants only provided conclusory arguments on this particular issue, the Court correctly held that the issue was abandoned. The Appellants' Motion(s) should be denied.

II. THE COURT DID NOT ERR IN ADDRESSING WHEN THE BUYER'S ORDER AND INSTALLMENT CONTRACT WERE SIGNED IN THE CRISTY TRANSACTION

The Court did not err in making a finding that the Retail Installment Contract was signed after the Ms. Cristy agreed to purchase the vehicle as explained in footnote 3. The Court correctly noted that the documents in the record show a $450 difference in the balance due in the Buyer's Order and in the amount of money that Ms. Cristy financed to actually purchase her vehicle as evidenced by the Retail Installment Contract (R.p. 151, 275-278). The $450 difference reflects the election by Ms. Cristy to purchase GAP insurance in her financing transaction. (R.p. 275). The record clearly reflects that the decision by Ms. Cristy to purchase and then finance GAP insurance occurred after she agreed to purchase the vehicle as evidenced by the Buyer's Order.

The Appellant's Petition for Hearing and Petition for En Banc, the Appellant does not deny what the transaction documents show on their face. As the Court noted in footnote 3, in order for the transaction to be completed and for Ms. Cristy to take actual possession of the vehicle. Appellants merely assert that there is no evidence in the Record to support the finding by the Court – which they admit has the authority to make a finding of fact. However, the Appellants conveniently ignore that the both the Buyer's Order and Retail Installment Contract are both in the Record, as well as the Complaint. Ms. Cristy states that she purchased a vehicle from Jim Hudson Hyundai and was charged a $289.00 "processing" or closing fee. (R.p. 25, ¶2; R.p. 34, ¶2, ¶15). The trial court noted that the Appellants' did

acknowledge during oral argument on the Motion to Compel Arbitration "an awareness of the arbitration provision and the signing by both plaintiffs [appellants] of the retail installment sales contract, invoice, buyer's order or contract of sale to allege payment [of a $289.00] by the respective Plaintiffs [Appellants] of a "closing fee," "administrative fee," or "processing fee." (R.p. 11; see also, R.p. 246 - 249).

Arbitrability determinations are subject to *de novo review*." Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 22, 644 S.E.2d 663, 667 (2007) (citing Wellman, Inc. v. Square D Co., 366 S.C. 61, 67, 620 S.E.2d 86, 89 (Ct.App.2005)). However, the trial court's "factual findings will not be reversed on appeal if any evidence reasonably supports the findings." *Id.* (citing Thornton v. Trident Med. Ctr., L.L.C., 357 S.C. 91, 94, 592 S.E.2d 50, 51 (Ct.App.2003))." The Court is authorized to review the Record on Appeal and make its own review without deference to the trial court's rulings. Generally, a court's findings are not disturbed unless there is no evidence that would reasonably support the findings. Auto–Owners Ins. Co. v. Rhodes, --- S.E.2d ----, 2013 WL 5348381 at * 3 (2013). Here, there is clear evidence in the Record on Appeal which supports the factual determination by the Court. Without the information (i.e., sales price, trade allowance, rebate, tax, title, tag fees, and "processing" or closing fee) first included on the Buyer's Order that reflects the negotiations between the buyer and dealer, then how could this same exact information be included in the Retail Installment Contract as it is undisputed that Ms. Cristy did obtain custody and use of the vehicle after a payment for the vehicle was tendered to the dealer by the entity that financed the purchase transaction. The Court's finding is a logical conclusion that flows directly from the evidence found in the Record. The Court did err in its finding

and its decision as it is clearly supported in the underlying Record. The Appellants' Motion(s) should be denied.

III. THE COURT DID NOT ERR IN FINDING THAT THE CRISTY BUYER'S ORDER AND INSTALLMENT CONTRACT SHOULD NOT BE CONSTRUED TOGETHER

The Court did not err in making a finding that the Buyer's Order and Retail Installment Contract should not be construed together. The Appellants argue that the error was made because there was no meeting of the minds between Ms. Cristy and Defendant Jim Hudson to establish such limitation or demarcation since there are purported slight differences between the language in the Buyer's Order and the Retail Installment agreement. As the Court noted in its Decision, the rules of contract law apply in the review of an arbitration agreement. Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 24, 644 S.E.2d 663, 668 (2007) (General contract principles of state law apply in a court's evaluation of the enforceability of an arbitration clause, but there is a strong presumption strong in favor of the validity of arbitration). In the matter at hand, the Court stated that "the cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language." York v. Dodgeland of Columbia, Inc., --- S.E.2d ----, 2013 WL 4734569 at *6 (S.C.App. 2013) (quoting Harris v. Ideal Solutions, Inc., 385 S.C. 74, 79, 682 S.E .2d 523, 526 (Ct.App.2009).

The Retail Installment Contract that Ms. Cristy entered into and used to obtain the funds required for her to take actual possession and title of the vehicle referenced in paragraph 2 of the Complaint and Amended Complaint from Jim Hudson Hyundai provides:

> This contract for sale is entered into between Jim Hudson Hyundai, hereinafter called Dealer, and Customer, as identified below. *Any retail installment contract* or other document executed by Customer in connection herewith *is simply a means of satisfying* Customer's obligations under *this*

Contract of Sale ....

(emphasis added) York v. Dodgeland of Columbia, Inc., --- S.E.2d ----, 2013 WL 4734569 at *6 (S.C.App. 2013). The language of this contract is clear and unambiguous that the Buyers' Order and Retail Installment Contract must be examined to determine the intent of the parties. Ward v. West Oil Co., 379 S.C. 225, 239, 665 S.E.2d 618, 626 (Ct.App.2008) (when an agreement is found to be ambiguous, the court should seek to determine the parties' intent); Charles v. B & B Theatres, Inc., 234 S.C. 15, 18, 106 S.E.2d 455, 456 (1959) (if an written contract is ambiguous in its terms, ... parol and other extrinsic evidence will be admitted to determine the intent of the parties). Following examination of the full Record on Appeal, the Court determined the existence of a demarcation between the two contracts using principles of contract interpretation by examining the actual contractual language to learn the intentions of Ms. Cristy and Jim Hudson Hyundai so that such intention would be given legal effect. McGill v. Moore, 381 S.C. 179, 185-86, 672 S.E.2d 571, 575 (2009).

Moreover, the Court further made the analysis of "what if" the Buyer's Order and Retail Installment Contract are construed together. The Court concluded from the evidence in the Record that Paragraph 15 of the Buyer's Order specifically provides that the terms of the Buyer's Order can be modified and binding "only if evidenced in writing and signed by Customer and an authorized representative of Dealer." (R.p. 152). U.S. Bank Trustee Nat'l Ass'n v. Bell, 385 S.C. 364, 374, 684 S.e.2d 199, 204 (Ct. App. 2009). Since the Retail Installment Contract is a validly executed modification of the arbitration terms of the Buyer's Order, there is no inconsistency of terms in the two agreements under the Appellants' own theory and argument. The Court correctly concluded that it was clear from the multiple documents in the Record that the consistent intent between the parties was to arbitrate all

disputes. There has been a strong presumption for the courts to enforce arbitration agreements going back many years.[3] The Record and arguments of Appellants' counsel, who argued that the arbitration agreements are unconscionable because they are not enforceable, admit that with enforceable arbitration agreements, the Appellant's disputes can be addressed and handled by the Arbitrator. (R.p. 265, ln 13-16).

It is clear that the Court properly applied the rules of contract construction when reviewing the Record on Appeal. There is substantial and uncontradicted evidence to support the Court's findings. The Court did not err in finding that finding that the Buyer's Order and Retail Installment Contract should not be construed together; thus, the Appellants' Petition(s) should be denied.

CONCLUSION

For the reasons stated herein, the Respondents respectfully request that the Appellants' Petition for Rehearing and Petition for En Banc Review be denied. The Respondents respectfully request that the Court's Decision remain as issued on September 4, 2013 affirming as modified the trial court's Order and then, the parties can proceed to arbitration.

---

[3] There is a strong presumption in favor of the validity of arbitration agreements because of the strong public policy favoring arbitration. Bradley v. Brentwood Homes, Inc., 398 S.C. 447, 455, 730 S.E.2d 312, 316 (2012) (quoting Towles, 338 S.C. at 37, 524 S.E.2d at 844). Arbitration is contractual by nature and therefore, the courts are required to enforce the bargain of the parties to arbitrate. Thomson–CSF, S.A. v. Am. Arbitration Ass'n, 64 F.3d 773, 776 (2d Cir.1995); *see also* Towles v. United HealthCare Corp., 338 S.C. 29, 37, 524 S.E.2d 839, 842, 843-844 (Ct.App.1999) ("Arbitration is available only when the parties involved contractually agree to arbitrate."); KPMG, LLP v. Cocchi, ——U.S. ——, 132 S.Ct. 23, 25, 181 L.Ed.2d 323 (2011) (quoting Dean Witter Reynolds Inc. v. Byrd, 470 U.S. 213, 217, 105 S.Ct. 1238, 84 L.Ed.2d 158 (1985) (the policy of favoring arbitration, as contained within the FAA, requires courts to enforce the bargain of the parties to arbitrate.); *see also* Zabinski v. Bright Acres Assocs, 346 S.C. 580, 592, 553 S.E.2d 110, 116 (2001).

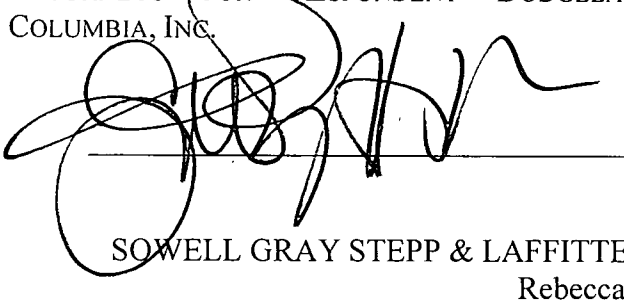
Respectfully submitted this 30th day of September, 2013.

ATTORNEYS FOR RESPONDENT JIM HUDSON AUTOMOTIVE GROUP, AND JIM HUDSON SUPERSTORE, A/K/A JIM HUDSON WHOSE TRUE AND CORRECT NAME IS JIM HUDSON CARS, LLC D/B/A JIM HUDSON HYUNDAI

RICHARDSON PLOWDEN & ROBINSON, P.A.
Steven W. Hamm
C. Jo Anne Wessinger Hill
Post Office Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400
(803) 779-0016 facsimile

MERRITT, FLEBOTTE, WILSON, WEBB & CARUSO, PLLC
C.E. "Skip" Hardin, Jr.
Merritt, Flebotte, Wilson, Webb &
Caruso, PLLC
P.O. Box 11879
Columbia, South Carolina 29211
803-255-0620
803-779-4822 facsimile

ATTORNEYS FOR RESPONDENT DODGELAND OF COLUMBIA, INC.



SOWELL GRAY STEPP & LAFFITTE, L.L.C.
Rebecca Laffitte
J. Michael Montgomery
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400
rlaffitte@sowellgray.com
mmontgomery@sowellgray.com

RICHARDSON PLOWDEN & ROBINSON, P.A.
Steven W. Hamm
C. Jo Anne Wessinger Hill
Post Office Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400
(803) 779-0016 facsimile

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable G. Thomas Cooper, Jr., Circuit Court Judge

Circuit Court Case No. 2010-CP-40-4244

Melissa Anne York and Olga Joanne Christy,

Appellants,

v.

Dodgeland of Columbia, Inc., and Jim Hudson Automotive Group, and Jim Hudson Superstore, a/k/a Jim Hudson Hyundai,

Respondents.

CERTIFICATE OF SERVICE

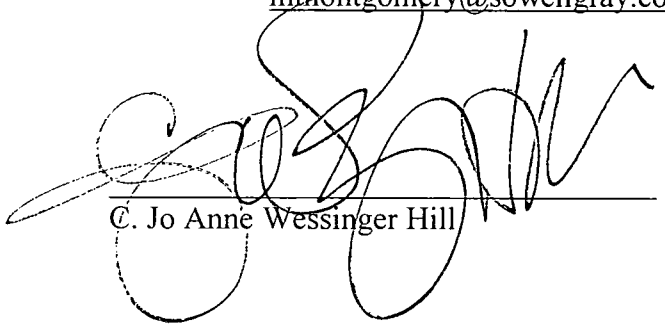
I, the undersigned attorney with the firm of Richardson, Plowden and Robinson, P.A., attorneys for the Defendants do hereby certify that the foregoing **RESPONDENTS' RETURN IN OPPOSITION TO APPELLANT'S PETITION FOR REHEARING AND PETITION FOR EN BANC** was served upon the following parties by electronic mail as indicated, and also being deposited in a United States Postal Service mailbox, postage prepaid, return address clearly indicated, on September 30, 2013, addressed to the following:

Susan F. Campbell
McGowan Hood & Felder LLC
1517 Hampton Street
Columbia, SC 29202
SCampbell@mcgowanhood.com

William Angus McKinnon, Esq.
McGowan Hood & Felder LLC
1539 Healthcare Drive
Rock Hill, SC 29732
WMckinnon@mcgowanhood.com

Patrick Knie, Esq.
PO Box 5159
Spartanburg, SC 29304-5159
pknie@knielaw.com

Rebecca Laffitte, Esq.
J. Michael Montgomery, Esq.
Sowell Gray Stepp & Laffitte, LLC
PO Box 11449
Columbia, SC 29211
rlaffitte@sowellgray.com
mmontgomery@sowellgray.com



C. Jo Anne Wessinger Hill

Columbia, South Carolina
September 30, 2013

RICHARDSON PLOWDEN
RICHARDSON PLOWDEN ROBINSON, P.A.
ATTORNEYS AT LAW

COLUMBIA P.O. Drawer 7788 • Columbia, SC 29202
1900 Barnwell St., Columbia, SC 29201 P 803.771.4400 F 803.779.0016

MYRTLE BEACH P.O. Box 3646 • Myrtle Beach, SC 29578
2103 Farlow St., Myrtle Beach, SC 29577 P 843.448.1008 F 843.448.1533

CHARLESTON 40 Calhoun St., Suite 220 • Charleston, SC 29401
P 843.805.6550 F 843.805.6599

www.richardsonplowden.com

Reply to: Columbia
jhill@RichardsonPlowden.com
Direct: 803-576-3714
shamm@RichardsonPlowden.com
Direct: 803-576-3713

September 30, 2013

The Hon. Jenny Abbott Kitchings
Clerk
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

Re: York, Melissa et al v. Dodgeland of Columbia et al - Case No. 2011-199006

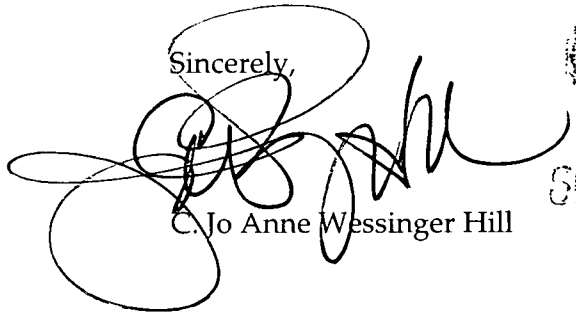
Dear Ms. Kitchings:

Please find enclosed the original and eight copies of **RESPONDENTS' RETURN IN OPPOSITION TO APPELLANT'S PETITION FOR REHEARING AND PETITION FOR EN BANC** in the above-referenced matter, as well as a Certificate of Service. Please return two clocked copies to the undersigned.

If you should have any questions or concerns, please do not hesitate to contact this office.

With kindest regards, I am

Sincerely,



C. Jo Anne Wessinger Hill

JWH/kjt
Enclosures
cc: Susan F. Campbell, w/encs.
William Angus McKinnon, Esq., w/encs.
Rebecca Laffitte, Esq., w/encs.
J. Michael Montgomery, Esq., w/encs.

RECEIVED
SEP 30 2013
SC Court of Appeals

Patrick Knie, Esq., w/encs.