RECEIVED
May 01 2025
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 REPLY BRIEF OF APPELLANT

Cynthia Jordan Lowery (SC Bar No. 12499)
E. Brandon Gaskins (SC Bar No. 73274)
Reid E. Dyer (SC Bar No. 79155)
Moore & Van Allen PLLC
78 Wentworth Street
P.O. Box 22828
Charleston, SC 29413-2828
Telephone: (843) 579-7000
cynthialowery@mvalaw.com
brandongaskins@mvalaw.com
reiddyer@mvalaw.com

Attorneys for Appellant
South Carolina Federal Credit Union

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

ARGUMENT

I. SCFCU's amendment of the account agreement with an arbitration clause was permissible under the change-of-terms provision that Page agreed to in her original agreement.

A. A party's ability to amend a general dispute-resolution or forum selection clause with an arbitration clause is well-established under precedent cited by SCFCU and Page.

In this case, the predominant question is whether SCFCU was permitted to amend Page's account agreement by changing the forum-selection-clause in her original account agreement to require mandatory arbitration. For the reasons explained in SCFCU's initial brief, the answer to that question is "yes." However, Page attempts to avoid that conclusion by relying on precedent from other jurisdictions that present facts distinct from those existing here.

Page first relies on the Indiana Supreme Court's decision in *Decker v. Star Fin. Grp., Inc.*, 204 N.E.3d 918 (Ind. 2023), to argue that "change-of-terms" provisions do not permit a party to add wholly new terms on new topics. For the purposes of this appeal, SCFCU does not challenge that assertion or holding. It argues that, instead of adding a new term, it changed the "Governing Law" provision, which required disputes be resolved in the county in which, to require disputes be resolved through arbitration. Thus, the SCFCU arbitration provision was not a "wholly new term."

Unlike Page's agreement, the account agreement involved in *Decker* did not contain a general dispute-resolution provision, which was key to the *Decker's* court ruling. As that court explained, "the original agreement contained neither a general dispute-resolution provision nor a specific arbitration or no-class-action provision.

Thus, there was not 'any term' of the agreement the Bank could 'change' to effectuate the result it sought here through its [arbitration] addendum." *Id.* at 921. The court further explained that the lack of a general dispute-resolution provision in that agreement was a "key distinction" from other judicial decisions allowing a general dispute-resolution provision to be changed to require arbitration. *Id.* at 922.

That "key distinction" exists here as well. The "Governing Law" provision in Page's original agreement specifically included a general dispute-resolution provision requiring disputes be resolved in certain venues. And pursuant to the change-of-terms provision in the original agreement, the SCFCU account agreement merely changed the required forum to arbitration. Thus, it replaced an existing account term, as Page concedes is permissible. (Resp.'s Initial Br., p. 20) ("In other words, the plain and ordinary meaning of the [change-of-terms] clause is that, at most, SCFCU may replace existing account terms . . .).

For the same reason, Page's reliance on *Sears Roebuck & Co. v. Avery*, 163 N.C. App. 207, 593 S.E.2d 424 (Ct. App. 2004), is misplaced. As in *Decker*, the account agreement in *Avery* "made no reference to arbitration or any other dispute resolution procedures and did not in any manner address the forum in which a customer could have disputes resolved." *Id.* at 208, 593 S.E.2d at 426. In fact, the North Carolina Court of Appeals later distinguished *Avery* based on this fact in its decision in *Canteen v. Charlotte Metro Credit Union*, 286 N.C. App. 539, 542, 881 S.E.2d 753, 756 (Ct. App. 2022), to enforce an arbitration provision which was effectuated pursuant to a change-of-terms provision. According to the *Canteen* court, the

agreement in that case, like the one in the Page's original account agreement, contained "a 'Governing Law' provision, which outlined the appropriate choice of law and forum for settling disputes." *Id.* Therefore, the court reasoned that the plaintiff was on notice that the credit union "could change the provision to allow for disputes to be settled, not in the court where [the credit union] was located, but rather in another forum, including before an arbitrator." *Id.*[1]

The other cases relied on by Page fair no better. In *Maestle v. Best Buy Co.*, No. 79827, 2005 Ohio App. LEXIS 3759, *P28 (Ohio Ct. App. Aug. 11, 2005), the court refused to enforce the arbitration provision added pursuant to a change-of-terms provision because "nowhere in the contract is there a clause addressing forums of dispute." Likewise, in *Sevier County Schs. Fed. Credit Union v. Branch Banking & Trust*, 990 F.3d 470, 479 (6th Cir. 2021), the court recognized that the original agreement "made no mention of dispute resolution." And in *Badie v. Bank of Am.*, 67 Cal. App. 4th 779, 800 (1998), the court similarly based its ruling on the fact that "the method and forum for dispute resolution . . . is not discussed at all" in the customer agreement.

The only case relied on by Page that involves an agreement with a dispute-resolution or forum-selection provision similar to the one involved in this case and *Canteen* is *Pruett v. WESTconsin Credit Union*, 409 Wis.2d 607, 998 N.W.2d 529 (Ct. App. 2023). In that case, the court noted the similarities in the applicable provisions

[1] The North Carolina Supreme Court affirmed the North Carolina Court of Appeals decision in *Canteen v. Charlotte Metro Credit Union*, 386 N.C. 18, 900 S.E.2d 890 (2024), on which SCFCU primarily relies in its initial brief.

involved in *Pruett* and *Canteen* but nevertheless rejected the North Carolina Court of Appeals' reasoning in *Canteen*. However, in doing so, the Wisconsin Court of Appeals was motivated by the credit union's lack of good faith based on the arbitration clause being undertaken to protect the credit union retroactively from alleged wrongdoing. *Id.* at 640-41, 998 N.W.2d at 546.

In contrast, no bad faith exists here. SCFCU did not attempt to retroactively change the terms of its customer agreement with Page or to protect itself from any wrongdoing. Instead, SCFCU acquired Page's account in a merger with HFFCU and then provided notice that her account would be governed by SCFCU's account agreement, which included an arbitration provision, as a result of the merger. (Blackstone Aff. ¶¶ 6-7, Ex. C.) Put simply, SCFCU merely made Page's account subject to the same terms and conditions that governed every other SCFCU customer account as practically required by the merger.

In sum, the cases on which SCFCU and Page rely are not necessarily inconsistent. Instead, they all generally hold that change-of-terms provisions permit a change to the terms but not the addition of wholly new terms. And they further show that a modification requiring arbitration of disputes is a permissible change if the original agreement contains a general dispute-resolution or forum-selection clause and if the change is made in good faith. Because the North Carolina Supreme Court's decision in *Canteen*[2] presents the case most factually analogous to this one,

---

[2] In her attempt to distinguish *Canteen*, Page argues that the SCFCU arbitration provision is a new term because it contains a class action waiver and the HFFCU contained no similar term. (Resp.'s Initial Br. p. 24.) However, there is no indication

(continued on next page)

the Court should follow that decision and rule that SCFCU's arbitration provision was a permissible change under the change-of-terms provision in the original account agreement.

B. South Carolina law clearly permits a party to make unilateral amendments to bilateral contracts pursuant to the parties' agreement.

Page also argues that the Court should reject SCFCU's appeal because South Carolina law prohibits one party to a bilateral contract from unilaterally altering the contract's terms. (Resp.'s Initial Br. p. 27.) While this is true enough as a general principle of contract law, that principle does not govern when the parties have expressly agreed to a provision that allows a party to unilaterally alter the contract. Indeed, none of the cases cited by Page to support her argument involves a contract containing a change-of-terms provision.

To be sure, this Court has enforced arbitration provisions unilaterally added by one party where the parties agreed that their agreement could be amended. In *McMillan v. Gold Kist*, 353 S.C. 353, 577 S.E.2d 482 (Ct. App. 2003), this Court rejected a party's argument that he was not subject to an arbitration provision unilaterally adopted by the other party because he did not agree to it. In that case, McMillan was a member of Gold Kist, which was an agricultural cooperative. *Id.* at 356, 577 S.E.2d at 483. When he became a member, McMillan signed a membership

---

that the original agreement involved in *Canteen* contained a class-action waiver, but the amendment requiring arbitration did include a class action waiver, just as SCFCU's account agreement does. As a result, *Canteen* is not distinguishable on this basis. Regardless, SCFCU has not attempted to apply the class action waiver to this dispute, and therefore, any possible distinction based on this ground is irrelevant.

agreement in which he agreed to be bound by Gold Kist's bylaws and any future amendments adopted by its board of directors. *Id.* Years later, Gold Kist's board of directors adopted an arbitration policy and amended its bylaws to reflect the new policy. *Id.*, 577 S.E.2d at 484.

After a dispute between McMillan and Gold Kist later arose, Gold Kist moved to compel arbitration under its policy and bylaws. *Id.* at 357, 577 S.E.2d at 484. The circuit court rejected Gold Kist's motion, finding that Gold Kist had failed to prove McMillan was aware of the arbitration policy in the bylaws or that he had agreed to be subject to that amendment. *Id.* at 357-58, 577 S.E.2d at 484. On appeal, this Court reversed on the grounds he was bound to the arbitration policy.

> As a condition of membership, McMillan agreed that future amendments to the bylaws would be binding on him. We find that this agreement did in fact bind McMillan to the subsequent amendment requiring arbitration. Although McMillan did not specifically consent to the adoption of the arbitration policy in the bylaws, his agreement in his membership application to confer the power to amend bylaws upon the directors amounted to consent to the amendment and did not affect the substance of his contract with Gold Kist. Further, although there is no evidence in the record that McMillan was given actual notice of the amendment of the bylaws to include an arbitration policy, he is still bound by the amendment because it did not affect the validity of his contract with Gold Kist.

Id. at 362, 577 S.E.2d at 486-87 (citations omitted). Thus, contrary to Page's argument, the validity of unilateral amendments made pursuant to the contracting parties' agreement has been recognized under South Carolina law.

McMillan provides the clearest authority from a South Carolina appellate court that unilateral amendments can be made to a contract when one party consents

to a change-of-terms provision, and it should be followed here. Just as McMillan signed an agreement agreeing to be bound by future amendments to Gold Kist's bylaws, Page agreed to be bound by amendments to the account agreement. And like the Gold Kist board which amended the bylaws to require that disputes with its members be subject to arbitration, SCFCU amended the account agreement to require mandatory arbitration of disputes with its members. Moreover, a credit union, such as HFFCU and SCFCU, is similar to an agricultural cooperative because they both have members that combine and cooperate for their mutual benefit. *See* 12 U.S.C. § 1752 (defining "federal credit union" as a "cooperative association organized with the provisions of this Act for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes"). So just as Gold Kist's amendment requiring arbitration of disputes with its members was enforceable, SCFCU's arbitration provision should be binding on Page.

Nor does *Lampo v. Amedisys Holding, LLC*, Op. No. 28265 (S.C. Sup. Ct. Mar. 5, 2025) (Davis Adv. Sh. No. 10), dictate a different result, as Page posits. The underlying facts and the questions presented in *Lampo* differ significantly from those presented in this case. Most notably, *Lampo*, unlike this case, does not involve an arbitration provision effectuated by an amendment made pursuant to a change-of-terms provision. Also, the party attempting to avoid arbitration in *Lampo* did not agree to be bound by future amendments to the agreement with the other party, as Page did. Put simply, *Lampo* does not prohibit a party from making unilateral

amendments to a contract when the parties have expressly agreed that such amendments will be binding on them.

Moreover, it is difficult to take Page's argument seriously considering her admission of a contractual relationship with SCFCU and allegations that SCFCU wrongfully charged overdraft fees in violation of that agreement. However, that admission raises the obvious question of how that contract came to exist. It appears undisputed that Page never executed the SCFCU account agreement and that her contractual relationship with SCFCU arose through HFFCU's merger with SCFCU. Yet, Page does not allege that SCFCU violated the HFFCU account agreement or any documents incorporated therein. Instead, she expressly alleges that SCFCU breached its own contractual terms governing overdraft fees. And the only way SCFCU's overdraft policies are contractually binding on its relationship with Page is through SCFCU's amendment of the HFFCU account agreement with the SCFCU account agreement and any subsequent amendments thereunder. Therefore, Page's own theory of her case implicitly accepts that SCFCU can unilaterally amend its bilateral contract with her, otherwise SCFCU's overdraft policies would not be binding.

Finally, the Court should not adopt a rule that forbids unilateral amendments to a contract made pursuant to a change-of-terms provision because of the impact it would have on commercial relationships and the economy in South Carolina for the reasons argued in SCFCU's initial brief. As the North Carolina Supreme Court asked in *Canteen*, how will "products and services be efficiently delivered if, under such a

limited view of the modern market, consumer contracts had to be canceled and renegotiated with every necessary update, some of which benefit consumers?" *Canteen*, 386 N.C. at 25, 900 S.E.2d at 896, fn. 6. Page cannot adequately answer this question, and the adoption of her argument would have a dramatic impact on every South Carolinian's ability to efficiently procure products and services for nearly every aspect of their lives.

II. The circuit court erred by requiring SCFCU to prove Page's assent to the arbitration clause and by refusing to allow limited discovery on the issue of notice.

A. Page's assent to the arbitration clause was not required because she previously agreed to be bound by changes to account agreement.

Page also urges the Court to affirm the circuit court's refusal to compel arbitration based on its finding that Page did not receive reasonable notice of the arbitration clause. Based on this finding, the circuit court declared that it "cannot conclude she agreed to it." (Order, Mar. 25, 2024, ¶ 25.) As argued previously in SCFCU initial brief, the circuit court's ruling on this issue was in error because there was no requirement that Page assent to the arbitration provision as she had previously agreed to be bound by any change to the terms of the original account agreement. (App.'s Initial Br., pp. 13-15.)

Instead of confronting SCFCU's argument head on, Page attempts to avoid it by couching her argument regarding notice within the framework of contract formation. However, this case is not about contract formation. It is undisputed that a contract was formed between HFFCU and Page when she opened her account there and signed the signature card. In doing so, she agreed to the "Notice of Amendments"

provision, which demonstrated her agreement to be bound by any change in terms. Thus, the arbitration clause "was not an 'offer' which required mutual assent." *Canteen*, 386 N.C. at 28, 900 S.E.2d at 898.

Not only is this conclusion warranted under *Canteen*, it is also correct under *McMillan*. As recounted above, McMillan argued similarly as Page does that he was not bound by the arbitration amendment because he did not agree to or have notice of it. This Court directly rejected that argument, ruling that McMillan's "agreement in his membership application to confer the power to amend bylaws upon the directors amounted to consent to the amendment," regardless of whether he specifically consented to or had actual notice of it. *McMillan*, 353 at 362, 577 S.E.2d at 486-87.

Although *McMillan* supports the proposition that SCFCU need not establish that Page had actual notice of the arbitration clause, Page nevertheless attempts to establish lack of notice because the notice provided by SCFCU only generally informed her that the SCFCU account agreement included an arbitration clause, which could be accessed through an internet link. According to Page and the circuit court, this was not sufficiently clear and conspicuousness enough to provide reasonable notice of the arbitration requirement.

Notwithstanding Page's and the circuit court's failure to support their conclusion with any authority under South Carolina law, their rationale is belied by the allegations in Page's complaint. The same notice that informed Page of the arbitration clause also provided notice of the rate and fee schedule and overdraft fee

disclosure, which are referenced and incorporated in the account agreement, and a link to access them. (Blackston Aff. Ex. C.) Significantly, these are the documents which Page alleges created a binding contract between her and SCFCU and were breached by SCFCU in her breach of contract claims. (Compl. ¶¶ 2, 15-16, 36-37, 128-129, 142-143, 156-157.) So Page does not deny and implicitly admits that she received adequate notice for the rate and fee schedule and overdraft fee disclosure to become contractually binding on the parties, but she denies that the exact same notice of the arbitration clause was deficient and, therefore, does not bind her to mandatory arbitration. These positions are logically irreconcilable and should be rejected accordingly.

For the same reason, Page's argument, and the circuit court's ruling, that the failure to provide the actual arbitration terms in the welcome packet was inadequate notice fails. Just as the welcome packet only included a general statement that SCFCU account agreement contained an arbitration clause but did not contain the clause's actual terms, the welcome packet also only provided notice that the SCFCU account agreement may include different terms regarding nonsufficient funds and overdraft fees without including the actual terms and schedules related to those matters. Nevertheless, Page does not contest that she received adequate notice of those terms and conditions. Instead, she argues that SCFCU is contractually bound to honor those terms and conditions. Again, the inconsistency between Page's argument that notice of the arbitration clause was inadequate and her allegations that SCFCU is bound to follow the nonsufficient funds and overdraft terms and fees,

of which SCFCU provided notice in the same welcome packet providing notice of the arbitration clause, undermines her argument that she is not bound to mandatory arbitration based on a lack of notice. Therefore, the Court should overturn the circuit court's decision refusing to compel arbitration based on the alleged lack of reasonable notice of the arbitration clause.

B. SCFCU, at minimum, should have been granted the opportunity to conduct discovery about whether Page had notice of the arbitration clause.

At the very least, the Court erred by denying SCFCU the ability to conduct limited discovery to determine if Page had notice of the arbitration clause. SCFCU submitted direct and circumstantial evidence that it provided notice to Page that her membership would be governed by SCFCU's account agreement containing an arbitration clause. In response, Page has presented no evidence in rebuttal and instead argues that the notice was not reasonable and did not clearly and conspicuously alert her to the amended terms. However, even if that argument is accepted, that does not preclude her from having actual notice of the arbitration clause.

Page claims that no further discovery on the issue is needed because the circuit court found the actual notice submitted by SCFCU to be inadequate. (Resp.'s Initial Br. p. 19, fn. 4.) That argument misconstrues what actual notice is. Whether Page had actual notice of the arbitration requirement is not dependent on the form and substance of the notice provided by SCFCU. Instead, "[a]ctual notice is synonymous with knowledge. Notice is regarded as actual where the person sought to be charged therewith either knows of the existence of the particular facts in question or is

conscious of having the means of knowing it, even though such means may not be employed by him." *Blind Tiger, LLC v. City of Charleston*, 366 S.C. 182, 186, 621 S.E.2d 361, 363 (Ct. App. 2005). Thus, Page may have had actual notice of the arbitration clause regardless of whether it was obtained from the welcome packet, through her research after receiving he welcome packet, or from some other source or means.

Of course, the procedures to compel arbitration precluded SCFCU from engaging in any discovery to determine what Page knew about the arbitration clause. Had SCFCU attempted to conduct discovery on this issue, it risked waiving its right to arbitrate Page's claims. *See Johnson v. Heritage Healthcare of Estill, LLC*, 416 S.C. 508, 788 S.E.2d 216 (2016) (ruling that party waived its right to enforce arbitration agreement by engaging in discovery before moving to compel arbitration). And Page has submitted no testimony either confirming or denying that she knew of the arbitration clause. As a result, SCFCU, as well as the circuit court, was only left to speculate as to whether she had actual notice. The only way to avoid speculation is to allow discovery, and the circuit court's refusal to allow it was an abuse of discretion that should be overturned.

III. SCFCU raised the issue of estoppel prior to the motion to reconsider, and it was not required to establish detrimental reliance or the other elements of estoppel for the doctrine to apply in the arbitration context.

In opposition to SCFCU's argument that Page should be equitably estopped from avoiding arbitration, Page argues that (1) the issue was not preserved for appeal because SCFCU could not raise the issue for the first time on a motion to reconsider,

and (2) SCFCU failed to establish all elements for equitable estoppel to apply, including SCFCU's detrimental reliance on Page's conduct. Both arguments fail.

First, SCFCU did not raise the issue of estoppel for the first time in its motion to reconsider but instead raised it during the hearing on the original motion. As the transcript of the hearing on SCFCU's motion reveals, SCFCU argued in support of arbitration by highlighting the inconsistency of Page, on one hand, acknowledging the existence of the contract when it is convenient for her and, on the other hand, denying the obligation to arbitrate under that contract when it is not convenient for her. (Tr., Mar. 18, 2024, pp. 11-12.)

Although SCFCU did not expressly reference the doctrine of estoppel, it was not required to do so in order to preserve that issue for further consideration on a motion to reconsider or on appeal. Indeed, issue preservation rules should be applied "with a practical eye and not in a rigid, hyper-technical manner." *Herron v. Century BMW*, 395 S.C. 461, 470, 719 S.E.2d 640, 644 (2011). Any doubts as to whether an appellant has preserved an argument should be resolved in favor of finding the argument preserved. *See State v. Jenkins*, 408 S.C. 560, 568 n.7, 759 S.E.2d 759, 763 n.7 (Ct. App. 2014) (resolving doubt about issue preservation in favor of appellant) (citing *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 330, 730 S.E.2d 282, 285 (2012)) (recognizing "it may be good practice for [the appellate court] to reach the merits of an issue when error preservation is doubtful"). Under these principles, SCFCU adequately presented the issue of estoppel prior to its motion to reconsider.

Second, courts applying the doctrine of equitable estoppel in the arbitration context have not required all elements of estoppel, including detrimental reliance, be established as they do in other contexts. For example, in the cases which SCFCU cites in support of estoppel – *R.J. Griffin & Co. v. Beach Club II Homeowners Ass'n*, 384 F.3d 157 (4th Cir. 2004) and *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 733 S.E.2d 597 (2012) – the courts applied the doctrine of estoppel to compel arbitration without any reference to the elements of estoppel cited by Page, including detrimental reliance, much less required those elements be proven.

The refusal to require a party to prove all elements of equitable estoppel in the arbitration context is logical because it does not neatly fit with the issues at play when a party seeks the benefits of contract but attempts to avoid its burdens. As one court has noted, "equitable estoppel" is a "misnomer" in the arbitration context because "detrimental reliance is not required." *Schuele v. Case Handyman & Remodeling Servs., LLC*, 412 Md. 555, 563, 989 A.2d 210, 214 fn. 3 (2010); *see also, Turtle Ridge Media Group, Inc. v. Pacific Bell Directory*, 140 Cal. App. 4th 828, 835 (Ct. App. 2d App. Dist. 2006) (stating that the phrase "equitable estoppel is a bit of a misnomer, for detrimental reliance is not necessary" for equitable estoppel to apply to an arbitration agreement). Instead, the doctrine applies to ensure that a party "cannot play fast and loose with its contractual obligations by selectively enforcing" it. *Id.*

Yet, that is exactly what Page attempts to do in this case. When SCFCU merged with HFFCU, her membership became governed by SCFCU's account

agreement, which includes and incorporates the non-sufficient funds and overdraft fee terms and schedules, as well as the arbitration clause. She now desires the benefit of certain portions of that agreement – just not the obligation to arbitrate her claims. Notions of equity and fairness prohibit such selective and self-serving enforcement of the parties' agreement, and the circuit court erred by refusing to compel arbitration on the grounds of estoppel.

IV. The circuit court did not rule that SCFCU was in "default" or "waived" its right to arbitration by failing to register with the AAA.

Finally, Page incorrectly argues in her initial brief that the circuit court's decision should be affirmed because SCFCU has failed to challenge on appeal the circuit court's "additional, independent reason for denying" the motion to compel. (Resp. Initial Br. p. 30.) Specifically, Page claims that the circuit court ruled that "SCFCU was in default on and waived any arbitration agreement because it never registered the clause with the AAA . . . and continued to sue in court despite the clause purportedly being mandatory." (*Id.*) In making this argument, Page has grossly misrepresented the circuit court's ruling.

To be sure, the circuit court did not rule that SCFCU was in "default" or that it "waived" its right to pursue arbitration. In fact, the circuit court's order does not even contain the term "default." And it uses "waive" or "waiver" only twice, but just to refer to the class action "waiver" found in SCFCU's account agreement. Instead of making any ruling regarding "default" or "waiver," the circuit court merely noted that SCFCU's failure to register with the AAA "calls into doubt whether SCFCU ever truly intended to engage in mandatory arbitration or whether it instead acted contrary to

the clause by engaging in litigation when it chose." (Order, Mar. 25, 2024, ¶ 27) (emphasis added). At most, the circuit court viewed the failure to register as evidence to support its conclusion that arbitration should not be compelled. But it was not an "independent" reason for denying the motion as Page now contends.

Because of the limited import of the court's statement on SCFCU's alleged failure to register the arbitration clause with the AAA, it was not crucial to the dispositive rulings that SCFCU was not permitted to amend the original account agreement with an arbitration clause under the change-of-terms provision and that SCFCU failed to provide adequate notice. As such, the circuit court's statements regarding the failure to register are mere dicta, and there is no need for SCFCU to appeal that issue. *See Nash v. Tindall Corp.*, 375 S.C. 36, 40, 650 S.E.2d 81, 83 (Ct. App. 2007) ("Judicial dicta is 'not essential to the decision.'"). If the Court agrees with SCFCU's arguments presented above, it must overturn the circuit court's denial of the motion, notwithstanding the circuit court's superfluous dicta questioning SCFCU's failure to register with the AAA.

CONCLUSION

Based on the foregoing discussion and analysis, SCFCU respectfully renews its request 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

Cynthia Jordan Lowery (SC Bar No. 12499)
E. Brandon Gaskins (SC Bar No. 73274)
Reid E. Dyer (SC Bar No. 79155)
Moore & Van Allen PLLC
78 Wentworth Street
P.O. Box 22828
Charleston, SC 29413-2828
Telephone: (843) 579-7000
cynthialowery@mvalaw.com
brandongaskins@mvalaw.com
reiddyer@mvalaw.com

Attorneys for Appellant
South Carolina Federal Credit Union

May 1, 2025
Charleston, South Carolina

RECEIVED
May 01 2025
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.

PROOF OF SERVICE

This is to certify that I have this day served counsel in the foregoing matter with a copy of the ***Initial Reply Brief of Appellant*** via electronic mail only, addressed as follows:

John B. White, Jr., Esq.
Marghretta H. Shisko, Esq.
Griffin L. Lynch, Esq.
John B. White, Jr. PA
291 S. Pine Street
Spartanburg, SC 29302
jwhite@johnbwhitelaw.com
mshisko@johnbwhitelaw.com
glynch@johnbwhitelaw.com

Vess A. Miller, Esq. *(Admitted Pro Hac Vice)*
Cohen & Malad, LLP
One Indiana Square, Suite 1400
Indianapolis, IN 46204
vmiller@cohenandmalad.com

J. Gerard Stranch, IV, Esq. *(Admitted Pro Hac Vice)*
Stranch, Jennings & Garvey, PLLC
223 Rosa L. Parks Avenue, Suite 200
Nashville, TN 37203
gstranch@stranchlaw.com

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

s/ E. Brandon Gaskins
Cynthia Jordan Lowery (SC Bar No. 12499)
E. Brandon Gaskins (SC Bar No. 73274)
Reid E. Dyer (SC Bar No. 79155)
Moore & Van Allen PLLC
78 Wentworth Street
P.O. Box 22828
Charleston, SC 29413-2828
Telephone: (843) 579-7000
cynthialowery@mvalaw.com
brandongaskins@mvalaw.com
reiddyer@mvalaw.com

Attorneys for Appellant
South Carolina Federal Credit Union

May 1, 2025
Charleston, South Carolina

Moore&VanAllen

E. Brandon Gaskins
Attorney at Law

T 843 579 7038
F 843 579 8738
brandongaskins@mvalaw.com

Moore & Van Allen PLLC

78 Wentworth Street
Charleston, SC 29401-1428

Mailing Address:
Post Office Box 22828
Charleston, SC 29413-2828

May 1, 2025

VIA E-FILING
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211
ctappfilings@sccourts.org

Re: Versie T. Page, on behalf of herself and all others similarly situated vs. South Carolina Federal Credit Union
Civil Action No.: 2023-CP-33-00574
Appellate Case No.: 2024-001597
MVA File No.: 041653.000119

Dear Ms. Kitchings,

With regard to the above-referenced matter, please accept the following for filing:

1. Initial Reply Brief of Appellant South Carolina Federal Credit Union; and

2. Proof of Service.

By copy of this letter, I am serving Respondent's attorneys with a copy of the Initial Reply Brief of Appellant.

Thank you for your assistance in this matter. If you should have any questions or concerns, please feel free to contact me.

Sincerely,

MOORE & VAN ALLEN PLLC

E. Brandon Gaskins

EBG/llp

Enclosures: As Stated.

cc: **VIA EMAIL ONLY**
John B. White, Jr., Esq.
Marghretta H. Shisko, Esq.
Griffin L. Lynch, Esq.
Vess A. Miller, Esq.
J. Gerard Stranch, IV, Esq.