THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM BERKLEY COUNTY
Court of Common Pleas

Dale E. Van Slambrook, Circuit Court Judge

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Case No. 2024-CP-08-02013

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Gillam & Associates, Inc., .....Appellant,

v.

Pampa Bay Landscape Construction, LLC,..... Respondent.

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# BRIEF OF APPELLANT

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## STATEMENT OF ISSUES ON APPEAL

1. Did the circuit court err by refusing to stay the pending action and compel arbitration in a construction lawsuit, finding that the Federal Arbitration Act (9 U.S.C. § 1) did not apply and applying the South Carolina Arbitration Act (S.C. Code Ann. § 15-48-10), and finding that a construction contract did not involve interstate commerce?

## STATEMENT OF THE CASE

This dispute arises out of a construction contract entered into for the improvement of real estate located at 343 College Park Rd., Ladson, SC 29456 on or around June 23, 2023 whereby Respondent contracted to supply labor and materials for landscaping. (*See* Compl.¶ 7; R. __; Contract; R __). Disputes arose and Respondent filed a lien claiming monies owed. (*Id.* ¶ 22).

On July 19, 2024, Respondent filed its Complaint to foreclose the mechanic's lien. (Complaint; R__). On August 26, 2024, Appellant filed its Answer and Counterclaim subject to a Motion to Stay the Action) (Answer; R. __); Appellant subsequently on the same day, file its Motion to Stay Action Pending Arbitration between the Parties. (Motion to Stay; R. __).

The Contract in question contains an arbitration clause, subject to South Carolina law and the Construction Industry Arbitration Rules of the American Arbitration Association ("AAA"). (Ex. A to Complaint, R __). The contract clause in question provides as follows:

> 10.1 All claims, disputes and other matters in question arising out of, or relating to, this Subcontract or the breach thereof shall be addressed by in-person meeting between corporate officers of the Contractor and the Subcontractor within twenty-five (25) calendar days after notice of the claim is first delivered. Additional meetings may be agreed to in writing by Contractor. Subcontractor's failure to attend that meeting for reasons beyond the control of the Contractor shall constitute a waiver of the claim or dispute if the claim or dispute is initiated by the Subcontractor for additional money or time. All claims, disputes and other matters in question arising out of, or relating to, this Subcontract or the breach thereof not resolved at the meeting described in the first sentence of this paragraph or in a subsequent meeting agreed to in writing by Contractor, and not waived by Subcontractor's failure to meet, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association ("AAA") then obtaining unless the parties mutually agree in writing otherwise. The parties agree that the arbitration shall be administered by the arbitrator selected by agreement of the parties and not by the AAA unless the parties cannot agree on an arbitrator within 30 days of the submission of a demand for arbitration to the other party. If the parties cannot agree on an arbitrator within 30 days of the submission of a demand for arbitration to the other party then the arbitration shall be administered through the AAA, the arbitrator shall be selected through the rules and procedures of the AAA, and the parties shall be responsible

> for payment of AAA fees according to the Construction Industry Arbitration Rules of the AAA. This agreement to arbitrate shall be specifically enforceable under the arbitration law of South Carolina. The arbitration hearing shall take place in Aiken or Columbia, South Carolina and the arbitrator shall be a South Carolina resident. The award rendered by the arbitrator(s) shall be final, and judgment may be entered in accordance with applicable law in any court having jurisdiction thereof. The foregoing notwithstanding, in the event the dispute resolution procedures in the Prime Contract differ from those set forth in this Subcontract, the claim and dispute resolution procedures of the Prime Contract shall govern disputes between Contractor and Subcontractor and supersede the prior terms of this subparagraph 10.1 to the extent Contractor determines, in its sole discretion, that disputes between the Contractor and the Subcontractor involve common issues of fact or law with disputes between the Contractor and the Owner. Subcontractor agrees that as to any disputes it has with the Contractor which the Contractor deems to involve common issues of fact or law with disputes with Owner or other subcontractors, then the disputes between Contractor and Subcontractor may be consolidated or joined in the same dispute resolution procedure with other subcontractors, the Owner, and other entities as Contractor deems appropriate in its sole discretion.

(Contract, Art. 10.1, R. __).

Appellant moved to stay the lawsuit and to compel arbitration based upon the construction contract being subject to the Federal Arbitration Act ( 9 U.S.C. § 1) ("FAA").

The circuit court held a hearing on Gillam's motion on January 7, 2025 (Trans., R _) and issued an Order denying the motion on February 12, 2025 (*See* Order, R. __). Gillam timely filed a motion to appeal on February 27, 2025 (Gillam's Notice of Appeal, R. __).

## STANDARD OF REVIEW

"Appeal from the denial of a motion to compel arbitration is subject to de novo review." *Chassereau v. Global-Sun Pools, Inc.*, 363 S.C. 628, 631, 611 S.E.2d 305, 307 (Ct. App. 2005), *aff'd as modified on other grounds*, 373 S.C. 168, 644 S.E.2d 718 (2007). Notwithstanding, "a circuit court's factual findings will not be reversed on appeal if any evidence reasonably supports those findings." *Wilson v. Willis*, 426 S.C. 326, 335, 827 S.E.2d 167, 172 (2019).

## ARGUMENTS

This Court should reverse and remand this matter to the trial court, in order for the matter to be stayed and compel arbitration, because:

- The Federal Arbitration Act preempts the South Carolina Arbitration Act;
- South Carolina law has long found that construction involves interstate commerce, creating a rebuttable presumption; and
- Even without a rebuttable presumption, Appellant's demonstrated the existence of Interstate Commerce.

### I. BECAUSE THE FEDERAL ARBITRATION ACT PREEMPTS THE SOUTH CAROLINA ARBITRATION ACT THE CIRCUIT COURT ERRED IN DENYING THE MOTION TO STAY AND COMPEL ARBITRATION

The trial court erred in the matter before this Court by finding that the application of the arbitration law of South Carolina law required it to apply the South Carolina Arbitration Act (S.C. Code Ann. § 15-48-10(A) and precluded it from applying the Federal Arbitration Act in part due to the fact that the contract *specifies* the arbitration law of South Carolina law applies. Notwithstanding, that the contract states that South Carolina law applies, it doesn't preclude

applying South Carolina to find that the matter involves interstate commerce and therefore is subject to the FAA.

Since 2001, South Carolina law has long recognized that "[t]he FAA preempts state laws that invalidate the parties' agreement to arbitrate '[b]ut it does not follow that the FAA prevents the enforcement of agreements to arbitrate under **different rules** than those set forth in the [FAA] itself.'" *Munoz v. Green Tree Fin. Corp.,* 343 S.C. 531, 538, 542 S.E.2d 360, 363 (2001) (quoting *Volt Info. Sciences, Inc. v. Board of Trustees of the Leland Stanford Junior Univ.,* 489 U.S. 468, 109 S.Ct. 1248, 103 L.Ed.2d 488 (1989)) (**emphasis added**). *See also Zabinski v. Bright Acres Assocs.,* 346 S.C. 580, 553 S.E.2d 110 (2001). "To ascertain whether a transaction involves commerce within the meaning of the FAA, the court must examine the agreement, the complaint, and the surrounding facts." *Zabinski,* 346 S.C. at 594, 553 S.E.2d at 117. "Unless the parties have contracted to the contrary, the FAA applies in federal or state court to any arbitration agreement regarding a transaction that in fact involves interstate commerce, **regardless of whether or not the parties contemplated an interstate transaction**." *Munoz,* 343 S.C. at 538, 542 S.E.2d at 363 (2001) (emphasis added).

The purpose of the FAA is "to make arbitration agreements as enforceable as other contracts, but not more so." *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 404 n.12, 87 S.Ct. 1801, 18 L.Ed.2d 1270 (1967). A party seeking to compel arbitration under the FAA must establish that (1) there is a valid agreement, and (2) the claims fall within the scope of the agreement. *Carr v. Main Carr Dev., LLC*, 337 S.W.3d 489, 494 (Tex. App. 2011). The validity agreement to arbitrate in this matter is not contested, but rather which Act should apply.

It is clear from case law that whether a contract provides that state law applies is irrelevant in determining whether the FAA applies. The FAA applies regardless of what the contract states if the contract involves interstate commerce, unless the parties contract otherwise. *Munoz* at 538, 542 S.E.2d at 363 (2001). A state law that places arbitration clauses on an unequal footing with contracts generally, however, is preempted if the FAA applies. *Allied–Bruce Terminix Companies, Inc. v. Dobson,* 513 U.S. 265, 281 (1995). As the South Carolina Supreme Court held in *Munoz*, "our state [South Carolina] Arbitration Act, which applies specifically and exclusively to arbitration agreements, is preempted in this case." *Munoz* at 539, 542 S.E.2d at 364, *citing Soil Remediation Co. v. Nu–Way Envtl., Inc.*, 323 S.C. 454, 476 S.E.2d 149 (1996). *Soil Remediation Co.* like *Munoz* involved interstate commerce. Despite that the contract in *Soil Remediation* stated it was governed by the SCUAA, the Supreme Court found that the SCUAA was preempted. *Soil Remediation* 323 S.C. at 459, S.E.2d at 152.

There are numerous cases in which South Carolina courts have held that the FAA preempts state law. See *Hicks Unlimited, Inc. v. UniFirst Corporation,* 439 S.C. 623, 633, 889 S.E.2d 564, 569 (2023). See also *Bennett v. ACS Primary Care Physicians-Southeast P.C.,* 444 S.C. 458, 476, 908 S.E.2d 110, 119 (Ct. App. 2024). See also *Blanton v. Stathos,* 351 S.C. 534, 539, 570 S.E.2d 565, 568 (Ct. App. 2002). See also *Wilson v. Willis,* 426 S.C. 326, 337, 827 S.E.2d 167, 173 (2019). Additionally, the application of rules, may be AAA rules, or any other **rules** that exist, which apply to the administration of the arbitration. However, a contract stating that it will apply South Carolina arbitration law is not sufficient to preempt the FAA. Application of a State Act is entirely different than the application of different rules. Notwithstanding, the circuit court, after citing to *Munoz*, which states that parties do not even have to contemplate an interstate transaction, erroneously disavows the application of the FAA because the subcontract "does not reference the FAA."

(Order; R. ___). The contract also does not state that the SCUAA applies or that the contract was subject to the SCUAA. It simply states that the agreement will be enforced by the arbitration laws of South Carolina. The arbitration laws of South Carolina are all encompassing and are not merely statutory, but also common law derived from years of cases decided by our appellate courts, which favor arbitration and which recognize that the FAA preempts the SCUAA where interstate commerce is involved.

## II. BECAUSE SOUTH CAROLINA LAW HAS LONG FOUND THAT CONSTRUCTION INVOLVES INTERSTATE COMMERCE, CREATING A REBUTTABLE PRESUMPTION THE CIRCUIT COURT ERRED IN NOT FINDING THAT INTERSTATE COMMERCE WAS INVOLVED

South Carolina courts have long held the presumption that construction projects do in fact involve interstate commerce. The Supreme Court of South Carolina recently found that a case involving the construction of a new building would logically involve interstate commerce because supplies for a new building would be "virtually impossible" to have all originated from South Carolina. *Damico v. Lennar Carolinas, LLC,* 437 S.C. 596, 608, 879 S.E.2d 746, 753 (2022). The court further noted that "[o]ur appellate courts have consistently recognized that contracts for construction are governed by the FAA" explaining that contracts requiring the construction of a new building implicate interstate commerce because it would only be logical that the materials and supplies originate from out of state. *Id.* In *Damico v. Lennar Carolinas,* **without evaluating where construction materials originated**, the Supreme Court found that the construction project implicated interstate commerce as a finding of fact due to the nature of procuring materials and supplies for the construction of a new building. *Id.* (Emphasis added). It is vitally important to note that the Supreme Court did not consider any testimony or facts when determining the existence of interstate commerce. The court simply found that a contract for construction would presumably

implicate interstate commerce, thus there was no evaluation of the facts presented. In fact, the Supreme Court of South Carolina has gone as far to state that "one need only to consider the nature of the project and the actual work performed" when determining if a contract involves interstate commerce. *Episcopal Housing Corp. v. Federal Ins. Co*., 269 S.C. 631, 640, 239 S.E.2d 647, 652 (1977).

The trial court in this matter, relied upon Plaintiff's arguments surrounding *Hicks Unlimited, Inc. v. UniFirst Corp*. to disavow the presumption of the applicability of the FAA. The facts in *Hicks Unlimited, Inc.*, are however distinguishable. The case did not involve construction, but rather involved the rental of uniforms. The court in *Hicks* specifically found that "the uniform supply business is not an activity that is, in general, subject to federal control." *Hicks Unlimited, Inc.,* 439 S.C. at 634, 889 S.E.2d at 569 (2023). The facts in this case are wholly unrelated to the facts in *Hicks Unlimited, Inc.*

The matter before this Court involves a construction project and courts have long held that construction contracts logically involve interstate commerce. Plaintiff did not provide a single construction case that challenges this long-held standing by South Carolina's courts.

The circuit court erred in its ruling finding that interstate commerce does not exist. Construction contracts are presumed to involve interstate commerce, which is evidenced by years of consistent holdings by South Carolina's Appellate Courts. See also *Dean v. Heritage Healthcare of Ridgeway, LLC,* 408 S.C. 371, 381, 759 S.E.2d 727, 732 (2014) (stating "construction contracts involve interstate commerce because they are based on transactions for the purchase and use of materials and supplies from out-of-state vendors."). Notwithstanding, the trial court abandoned this long-standing precedent and erred in finding that purchasing goods in South Carolina, without

regard to where those goods were manufactured, was sufficient to find that interstate commerce was not involved.

## III. EVEN WITHOUT A REBUTTABLE PRESUMPTION, THE CIRCUIT COURT ERRED BECAUSE APPELLANT'S DEMONSTRATED THE EXISTENCE OF INTERSTATE COMMERCE

The trial court in this case erred in finding that Gilliam did not prove the existence of interstate commerce. As argued above, the Supreme Court of South Carolina has found on numerous occasions that construction projects implicate interstate commerce where materials, equipment, and supplies are produced and manufactured out-of-state. *Zabinski,* 346 S.C. at 595, 553 S.E.2d at 117-18 (2001). The Court has held that the relationship **does not need to be substantial**, **it just needs to exist**. *Cape Romain Contractors, Inc. v. Wando E., LLC,* 405 S.C. 115, 122, 747 S.E.2d 461, 464 (2013) (**emphasis added**). The Court found in *Cape Romain Contractors, Inc.* that the mere fact that one of the materials used on the project was manufactured out of state was enough to establish that the project involved interstate commerce. *Id.*

In the present case, the Affidavit of Mr. Floyd establishes that multiple items used on the project originated out of state. For example, Mr. Floyd stated that irrigation heads and clock valves were supplied by Hunter Brand. These items could have only come from either Hunter Brand's North Carolina or Georgia distribution site. Although Mr. Floyd does not know which state the irrigation heads and clock valves originated from, he provided testimony that the valves did *not* come from South Carolina. The court ignored this. The court also ignored Mr. Floyd's sworn statement in which he provides that the PVA pipe used on the project originated out of state as well. Again, the court ignored this.

The court instead found that because the materials purchased for the project were purchased through a local South Carolina vendor, the materials originate from South Carolina. This is a

flawed analysis. The fact is, some materials that were purchased under the contract **were manufactured outside the state of South Carolina**. For example, Mr. Floyd provided in his affidavit that pipe purchased under the contract was manufactured by Crestline Pipe, also known as Crestline Plastic Pipe Co., Inc. Crestline only has four manufacturing plants in the United States. These plants are located in Kentucky, Pennsylvania, Iowa, and Texas. Logically, the material manufactured by Crestline and used on the project was in fact not manufactured in South Carolina.

The Supreme Court's finding in *Cape Romain Contractors, Inc.* is clear: the fact that one material used on a project is manufactured out of state is enough to establish that the project involves interstate commerce. The circuit court's Order challenges the Supreme Court's holding, setting a new precedent for cases involving construction. Under the circuit court's ruling, a contract for construction would neither be presumed to involve interstate commerce nor would a showing that some materials were manufactured outside the state be enough to establish the existence of interstate commerce. The circuit court's holding, if not reversed would establish a stricter requirement for demonstrating the existence of interstate commerce as it relates to construction contracts.

## CONCLUSION

As set forth above, the circuit court's failure to stay this action was an error of law. Therefore, this matter should have been stayed pursuant to South Carolina law, and the parties directed to arbitration in accordance with the FAA, as this matter involves interstate commerce.

May 23, 2025

Respectfully Submitted,

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