RECEIVED
Jul 03 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM BERKLEY COUNTY

Court of Common Pleas

The Honorable Dale E. Van Slambrook, Circuit Court Judge

Case No. 2024-CP-08-02013

Appeal No. 2025-000500

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

v.

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

REPLY BRIEF OF APPELLANT

Matthew E. Cox, SC Bar No. 16603
mecox@smithcurrie.com
Eugene F. Rash, SC Bar No. 8887
gfrash@smithcurrie.com
Smith Currie Oles LLP
5727 Westpark Drive, Suite 200
Charlotte, North Carolina 28217
PH: (704) 334-3459
FX: (704) 334-7850

Attorneys for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

ARGUMENTS

I. A CONTRACT DOES NOT HAVE TO EXPRESS INTENT TO BE GOVERNED BY THE FAA OR REFERENCE THE FAA TO BE SUBJECT TO THE FEDERAL ARBITRATION ACT

As previously argued, the South Carolia Supreme Court has held that "[u]nless 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 v. Green Tree Fin. Corp.,* 343 S.C. 531, 538, 542 S.E.2d 360, 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). Respondent does not claim that the agreement to arbitrate is invalid or that the claims fall outside the scope of the clause. The only question is whether the South Carolina Uniform Arbitration Act (SCUAA) applies, because the contract states that the parties should arbitrate pursuant to the laws of South Carolina and provides for venue in Aiken or Columbia. Choice of law and venue do not equate to election of the SCUAA over the FAA.

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 in state or federal court to any arbitration agreement involving interstate commerce, unless the parties contract otherwise. *Munoz at* 538, 542 S.E.2d at 363 (2001).

Respondent argues that because the contract does not mention the FAA or contemplate interstate commerce, the contract is not subject to the FAA. Respondent's interpretation of the law is simply wrong. While the contract should be reviewed in connection to other documents, to determine if it involves interstate commerce, the case law has long held that "intent of the parties" is not a necessary element for the FAA to apply.

Unabashedly Respondent argues: "First, the language of the Subcontract evidences not only a lack of intent for the FAA to apply, but a lack of interstate commerce. The Subcontract makes no mention of the FAA whatsoever,…" [Reply, p. 5]. Intent is not a requirement. The mention of the FAA is also not a requirement. What the contract does evidence is that it involves construction, which has been repeatedly held by the South Carolina Supreme Court to involve interstate commerce. 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.").

The Respondent incorrectly cites *Hicks Unlimited, Inc. v. UniFirst Corp.*, claiming that the case "ended any such presumption of the FAA's applicability for construction contracts." This is not what the case provides. In fact, the *Hicks* case provides that "[u]nder the FAA, Congress' Commerce Clause power may be exercised in individual cases without showing any specific effect upon interstate commerce if in the aggregate the economic activity in question would represent a general practice ... subject to federal control." *Hicks Unlimited, Inc. v. UniFirst Corp*., 439 S.C. 623, 634, 889 S.E.2d 564, 569 (2023). *The Hicks* case clearly leaves the door open for certain cases, such as cases involving construction contracts, to be presumed to be subject to federal

control given the nature of the contract. The *Hicks* case never mentions a construction contract and certainly does not support the Respondent's position that construction contracts are not presumed to implicate interstate commerce.

II. THE CIRCUIT COURT ABUSED ITS DISCRETION IN IGNORING THE AFFIDAVIT OF ERIC FLOYD

Respondent also incorrectly argues that the Circuit Court properly ignored the Affidavit of Eric Floyd. Such was an abuse of discretion. The reading of the contract clearly provides that construction was involved. Construction involves interstate commerce. Mr. Floyd's affidavit provides sufficient additional evidence that materials were supplied from either Georgia or North Carolina. Ignoring such facts was an abuse of discretion. The court mistakenly found Mr. Floyd's lack of knowledge as to which non-South Carolina state materials were manufactured as a lack of knowledge that materials were manufactured outside South Carolina. Mr. Floyd's testimony clearly shows that materials used on the project were manufactured outside South Carolina. To read Mr. Floyd's affidavit any other way would be error.

III. REFERENCING SOUTH CAROLINA LAW OR SCUAA DOES NOT PRECLUDE THE APPLICATION OF THE FAA

Respondent's assertion that reference to South Carolina law evidences the parties' intent to the SCUAA is unfounded and flies in the face of *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. As previously stated, notwithstanding that the contract in *Soil Remediation* expressly stated **it was governed by the SCUAA**, the Supreme Court found that the SCUAA was preempted because it is a State law that places arbitration clauses on an unequal footing with contracts generally, *Id.* at 459-61, *citing Allied–Bruce Terminix Companies, Inc. v. Dobson,* 513 U.S. 265, 281 (1995).

The SCUAA does not place the contract on equal footing as to other commercial construction contracts because it requires so many other requirements in order to be enforceable. The SCUAA was designed to protect consumers from contracts of adhesion and parties with unequal bargaining power, who would unsuspectedly be waiving a right to a jury trial, in place of two sophisticated commercial companies of equal bargaining power as are before the court in this matter. These requirements are required by state statute, which South Carolina courts have stated is clear and unambiguous. *Soil Remediation Co.* at 457, 476 S.E.2d 149, 151 (1996). *See also Zabinski v. Bright Acres Assocs.,* 346 S.C. 580, 588-89, 553 S.E.2d 110, 114 (2001).

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 Federal Arbitration Act, and the parties directed to arbitration in accordance with the FAA, as this matter involves interstate commerce.

July 3, 2025

Respectfully Submitted,

SMITH CURRIE OLES LLP

s/ Matthew E. Cox
Matthew E. Cox, SC Bar No. 16603
mecox@smithcurrie.com
Eugene F. Rash, SC Bar No. 8887
gfrash@smithcurrie.com
5727 Westpark Drive, Suite 200
Charlotte, NC 28217
PH: (704) 334-3459
FX: (704) 334-7850

Attorneys for Defendant/Appellant Gillam & Associates, Inc.

RECEIVED
Jul 03 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM BERKLEY COUNTY

Court of Common Pleas

The Honorable Dale E. Van Slambrook, Circuit Court Judge

Case No. 2024-CP-08-02013

Appeal No. 2025-000500

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

v.

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

PROOF OF SERVICE

I certify that I have served the Reply Brief of Appellant on Pampa Bay Landscape Construction, LLC by depositing a copy of it in the United States Mail, postage prepaid, on July 23, 2025, addressed to its attorney of record, Dylan R. Glick, Post Office Box 7368, Columbia, South Carolina 29202.

July 3, 2025

Respectfully Submitted,

SMITH CURRIE OLES LLP

s/ Matthew E. Cox
Matthew E. Cox, SC Bar No. 16603
mecox@smithcurrie.com
Eugene F. Rash, SC Bar No. 8887
gfrash@smithcurrie.com
5727 Westpark Drive, Suite 200
Charlotte, NC 28217
PH: (704) 334-3459
FX: (704) 334-7850

Attorneys for Defendant/Appellant Gillam & Associates, Inc.