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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

George M. McFadden, Jr., Circuit Court Judge

Appellate Case No.: 2025-000634

Tina Ferrier, ... Respondent,

v.

Harborstone, LLC d/b/a
Harborstone Apartments, ... Appellant.

FINAL REPLY BRIEF OF APPELLANT

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ARGUMENT

I. Respondent Mischaracterizes Appellant's Argument Concerning Invocation of the Federal Arbitration Act

Respondent's contention that Appellant failed to preserve its invocation of the Federal Arbitration Act ("FAA") reflects a fundamental mischaracterization of the record and governing law. Appellant consistently maintained that the arbitration clause in the parties' Lease Agreement is enforceable under the FAA, which necessarily entails a determination that the underlying transaction involves interstate commerce. Contrary to Respondent's assertion, this argument was raised before the Circuit Court and not introduced for the first time on appeal. (R. pp. 21-24; pp. 25-47.)

South Carolina courts recognize a strong public policy in favor of arbitration. *See Parsons v. John Wieland Homes & Neighborhoods of the Carolinas, Inc.*, 418 S.C. 1, 6, 791 S.E.2d 128, 131 (2016) (citing *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 553 S.E.2d 110 (2001)). Under the FAA, arbitration agreements in contracts "evidencing a transaction involving commerce" are valid and enforceable. 9 U.S.C. § 2; *see also Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 538, 542 S.E.2d 360, 363 (2001). The FAA governs even in state courts when the underlying transaction affects interstate commerce. *See Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 277–81 (1995); *Soil Remediation Co. v. Nu-Way Envtl., Inc.*, 323 S.C. 454, 458–59, 476 S.E.2d 149, 151–52 (1996).

It is axiomatic that a claim invoking the FAA necessarily includes the argument that the underlying transaction involves interstate commerce. Appellant did not, and need not, separately articulate "interstate commerce" as an independent argument for it to be preserved. Appellant's Motion to Dismiss and/or Compel Arbitration and accompanying Memorandum specifically cited

and relied upon the FAA, arguing that its provisions required enforcement of the arbitration clause. Appellant's Rule 59(e) Motion reiterated this position and emphasized that the FAA's applicability turns not on the parties' subjective expectations, but on whether the transaction, in fact, affects interstate commerce. The reference to R.E. Carroll Management Company's multistate operations does not constitute a new legal theory but provides additional factual context supporting the already-preserved FAA argument. Even if the Circuit Court did not explicitly address the FAA's applicability, this Court may consider properly preserved legal arguments absent a ruling below. *See S. Bell Tel. & Tel. Co. v. Hamm*, 306 S.C. 70, 75, 409 S.E.2d 775, 778 (1991).

Appellant's invocation of the FAA was expressly raised, thoroughly briefed, and affirmatively relied upon before the Circuit Court. Respondent's suggestion to the contrary is both inaccurate and reflects a fundamental misunderstanding of the principles governing issue preservation.

II. The Lease Agreement Submitted with Appellant's Rule 59(e) Motion Was Properly Before the Circuit Court and Supports Arbitration

Respondent contends that the executed Lease Agreement submitted with Appellant's Rule 59(e) Motion should not have been considered due to a purported lack of foundation or authentication. This argument is both legally unfounded and factually unsupported.

Under Rule 901(b)(4) of the South Carolina Rules of Evidence, a document may be authenticated by its "[a]ppearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances." S.C. R. Evid. 901(b)(4); *see also Berry v. Spang*, 433 S.C. 1, 10–11, 855 S.E.2d 309, 314–15 (Ct. App. 2021). The threshold for authentication is not high; circumstantial evidence suffices if it provides a reasonable basis for concluding the document is what the proponent claims. *See Kershaw Cnty. Bd. of Educ. v. U.S. Gypsum Co.*, 302 S.C. 390, 398, 396 S.E.2d 369, 373–74 (1990).

The executed Lease Agreement submitted with Appellant's Rule 59(e) Motion was properly authenticated under Rule 901(b)(4). (R. pp. 34-37.) It bears several distinctive features: Respondent's name, unit number, lease start date, rent amount, initials, and signature, which align with allegations in Respondent's Complaint, including her admission that she resided at Appellant's apartment complex at the time of her alleged injury. (R. p. 45; p. 8, para. 6.) Appellant also explained that the lease is the standard form used for all tenants at the property. (R. p. 62, lines 5-17; p. 63, lines 10-14; p. 64, lines 1-9.) When considered alongside the undisputed factual context, this provides compelling circumstantial evidence of the lease's authenticity. *See Deep Keel, LLC v. Atl. Priv. Equity Grp., LLC*, 413 S.C. 58, 66, 773 S.E.2d 607, 611 (Ct. App. 2015).

Notably, Respondent never disputed the lease's authenticity, either in briefing or otherwise. She did not assert that the lease was inaccurate, altered, or inapplicable. When the circuit court invited rebuttal materials in response to Appellant's Rule 59(e) Motion, Respondent declined to submit any. Her silence, when afforded an express opportunity to contest the document, reinforces its authenticity. *See Gypsum*, 302 S.C. at 398, 396 S.E.2d at 373–74; *Deep Keel*, 413 S.C. at 66, 773 S.E.2d at 611.

Rather than challenge the Lease Agreement on its merits, Respondent invoked a technical evidentiary objection to avoid enforcement of the arbitration clause. However, courts are not required to disregard credible and uncontroverted evidence based on rigid formalities, particularly where the document is a routine lease agreement submitted by a party to the contract. The executed Lease Agreement was offered for a limited and justifiable purpose, to clarify the record following the denial of Appellant's Motion to Dismiss and/or Compel Arbitration. *See generally Berry*, 433 S.C. at 10, 855 S.E.2d at 314–15.

Because the executed Lease Agreement authenticated, unrebutted, and submitted in support of a timely Rule 59(e) Motion, the Circuit Court erred in refusing to consider it. This Court should reverse and enforce the arbitration provision contained in the Lease Agreement.

CONCLUSION

For the foregoing reasons, and those set forth in Appellant's Initial Brief, the Circuit Court erred in denying Appellant's Motion to Dismiss and/or Compel Arbitration. The arbitration clause contained in the Lease Agreement is governed by the Federal Arbitration Act, and the executed Lease Agreement was properly submitted and authenticated through compelling circumstantial evidence. Accordingly, Appellant respectfully requests that this Court reverse the Circuit Court's order and remand the matter with instructions to compel arbitration in accordance with the parties' agreement and the provisions of the FAA.

Respectfully submitted,

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PROOF OF SERVICE

I, the undersigned employee of Clawson and Staubes, LLC, Attorneys for Harborstone, LLC, do hereby certify that I have served all counsel of record in this action with a true and correct copy of the Final Reply Brief of Appellant, pursuant to Rule 211, and a copy of that electronic mail is attached to this certificate.

Pleading(s): Final Reply Brief of Appellant

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August 5, 2025