

were transferred to Defendant Barnes Law Firm and have settled, but that Defendants have failed to render attorney fees owed to Plaintiff.¹ Plaintiff further alleges Defendants withheld information on the existence and the amount of the settlements.² Further, Plaintiff alleges Defendant Barnes failed to reimburse Plaintiff for legal fees paid on behalf of Defendant Barnes.³ Plaintiff also alleged Defendant Barnes Law Firm was unjustly enriched by the retention of the attorney fees and tortiously interfered with agreements regarding the sharing of attorney fees and reimbursement of legal fees.⁴

Plaintiff asserts the PMPED Employment Agreement governing Defendant Barnes' employment requires arbitration of all disputes between the parties. A copy of the Employment Agreement was provided to the Court. As set forth in Paragraph 27 of the Employment Agreement:

- (a) Except to the extent referenced in paragraph (b), the Employer and the Employee agree that, to the extent permitted by law, **any dispute or controversy arising out of, relating to, or in connection with this Agreement, or the interpretation, validity, construction, performance, breach, or termination thereof, or the Employee's employment by the Employer or any termination thereof, shall be settled by arbitration.** Arbitration will be held at a location in Hampton County, South Carolina. If the parties proceed to arbitration, it will be conducted in accordance with the South Carolina Uniform Arbitration Act. The parties agree to employ a licensed attorney as their arbitrator and will agree upon one arbitrator. In the event that the parties cannot agree, they will proceed pursuant to S.C. Code Ann. § 15-48-30, again relying on licensed attorneys for the position of arbitrator. The decision of the arbitrator(s) will be final, conclusive and binding on the parties to the arbitration. Judgment may be entered on the arbitrator's decision in any court having jurisdiction. Each party shall bear the costs equally of arbitration.
- (b) The parties agree to resolve certain payment calculations (as provided in Paragraphs 14, 15 and 16) and fee decisions for

¹ Complaint ¶¶8-23.

² Complaint ¶19.

³ Complaint ¶26.

⁴ Complaint ¶¶24-27.

transferred cases (as provided in Paragraph 18) by a separate arbitration procedure as set out in those Paragraphs.

The Complaint specifically asks the Court to determine whether the disputes are subject to arbitration and order Defendants to participate in the arbitration of all claims deemed arbitrable.⁵

Defendants assert counterclaims related to the same disputed legal fees and the division of attorney fees, as well as additional fees collected by PMPED allegedly owed to Defendant Barnes.⁶ Further, Defendants assert third party claims against PLG relating to the same disputed legal and attorney fees based on PLG's alleged status as the "successor in interest" of PMPED.⁷

Plaintiff initially requested a determination regarding arbitrability in the Complaint and again moved to compel arbitration when filing the Motion to Stay Case and Compel Arbitration. Plaintiff also moved for a protective order preventing discovery until the Court reached a determination regarding arbitration. PLG moved to dismiss under Rule 12(b)(6), and, alternatively, asserted the disputes involving PLG are sufficiently related to the PMPED Employment Agreement to fall under the arbitration provision.⁸ Defendants moved to compel Plaintiff to respond to discovery.

The threshold issue as to all motions presently before the Court is whether the claims are subject to arbitration, in which case the additional issues must be decided by the arbitrator.

ARGUMENTS PRESENTED

Plaintiff PMPED asserts all claims between the parties arise from or relate to the Employment Agreement, which contains an arbitration provision requiring the arbitration of all disputes relating to the Agreement or Defendant Barnes' employment.

⁵ Complaint ¶54(g).

⁶ Defendants' Answer, Counterclaims and Third Party Complaint ¶¶132-174.

⁷ Defendants' Answer, Counterclaims and Third Party Complaint ¶¶132-174.

⁸ Third Party Defendant Parker Law Group's Memorandum in Support of Motion to Dismiss at p. 8.

Plaintiff's Motion to Stay Case and Compel Arbitration filed May 9, 2025 asks the Court to determine what claims are arbitrable and compel arbitration of all claims, a request also included in the Complaint. Plaintiff's briefing also states that Plaintiff filed the Complaint to protect its claims faced with an imminent statute of limitations deadline and Defendants' refusal to cooperate in resolving the dispute. During the July 10, 2025 hearing on the Motion, and in Plaintiff's supplemental briefing filed in support of the Motion, Plaintiff stated there have been repeated requests to Defendants to select an arbitrator, but that Defendants refused to cooperate.

Defendants filed no response in opposition to Plaintiff's Motion to Stay Case and Compel Arbitration, Plaintiff's Motion for Protective Order, or Third Party Defendant PLG's Motion to Dismiss. Similarly, Defendants filed no brief in support of their own Motion to Compel Discovery.

During the motions hearing, Defendants agreed the arbitration provision in the Employment Agreement is valid. However, Defendants asserted Plaintiff waived the right to enforce the arbitration provision by filing the Complaint in this case and serving discovery requests. Defendants had not asserted that Plaintiff waived the right to enforce the arbitration provision prior to the July 10, 2025 hearing. Defendants acknowledged the Complaint specifically requested a determination of whether the claims are arbitrable and included a request to compel arbitration, but argued the filing of the Complaint should be deemed a waiver of the right to arbitrate because it also sought other relief for any claims not deemed arbitrable.

Defendant Barnes Law Firm argued it is not subject to the arbitration provision because it is not a party to the Employment Agreement.

LAW AND ANALYSIS

"The question of the arbitrability of a claim is an issue for judicial determination, unless the parties provide otherwise." *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596, 553 S.E.2d

110, 118 (2001) (Emphasis added). “The policy of the United States and South Carolina is to favor arbitration of disputes.” *Id.*

“To decide whether an arbitration agreement encompasses a dispute, a court must determine whether the factual allegations underlying the claim are within the scope of the broad arbitration clause, regardless of the label assigned to the claim.” *Id.* “[U]nless the court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered.” *Id.* “A motion to compel arbitration made pursuant to an arbitration clause in a written contract should only be denied where the clause is not susceptible to any interpretation which would cover the asserted dispute.” *Id.*

A waiver is a voluntary and intentional abandonment or relinquishment of a known right. *Sanford v. South Carolina State Ethics Comm'n*, 385 S.C. 483, 496, 685 S.E.2d 600, 607 (2009). The three factors generally considered to determine if a party has waived its right to enforce arbitration include: (1) the time between commencement of the action and moving for arbitration; (2) whether the party seeking arbitration engaged in extensive discovery; and (3) prejudice to the non-moving party which must be more than mere inconvenience. *Rhodes v. Benson Chrysler-Plymouth, Inc.*, 374 S.C. 122, 126, 647 S.E.2d 249, 251 (Ct. App. 2007). “The party seeking to establish waiver has the burden of showing prejudice through an undue burden caused by a delay in the demand for arbitration.” *Gen. Equip. & Supply Co. v. Keller Rigging & Const., SC, Inc.*, 344 S.C. 553, 556, 544 S.E.2d 643, 645 (Ct. App. 2001). “There is no set rule as to what constitutes a waiver of the right to arbitrate; the question depends on the facts of each case.” *Id.*

In this case, Plaintiff has not acted in a manner contrary to its contractual right to arbitrate as necessary to waive the right. Plaintiff’s filing of an action in Circuit Court asking the Court to find that the claims are arbitrable and compel Defendants to arbitrate does not constitute a

voluntary and intentional abandonment of the right to arbitrate. The Complaint alleges the existence of an arbitration provision and asks the Court to order arbitration.⁹ In addition to the Complaint, Plaintiff asserted that the disputes are subject to arbitration in the Motion for Protective Order, Motion to Stay Case and Compel Arbitration, and Plaintiff's Memorandum in Opposition to Defendants' Motion to Compel. There are also email communications between counsel attached to Plaintiff's Motion to Quash where Plaintiff reminds Defendants that it does not intend to engage in discovery pending resolution of whether the claims must be arbitrated. In sum, Plaintiff has not demonstrated a knowing and voluntary relinquishment of the right to enforce the arbitration provision. To the contrary, Plaintiff consistently demonstrated an intent to enforce the arbitration provision.

Further, Defendants have the burden of establishing waiver. *Gen. Equip. & Supply Co.*, 344 S.C. at 556, 544 S.E.2d at 645. Accordingly, Defendants must show they have been prejudiced "through an undue burden caused by a delay in the demand for arbitration." *Id.* Defendants offered no evidence of any such prejudice. Defendants provided no brief setting forth the waiver argument or identifying or explaining any such prejudice. Defendants offered no exhibits evidencing such prejudice. Defendants stated, during oral argument, that they had suffered a nonspecific prejudice by virtue of responding to Plaintiff's discovery requests, which were not provided to the Court. This is insufficient to demonstrate prejudice suffered through an undue burden "**caused by a delay in the demand for arbitration.**" *Id.*; *Toler 's Cove Homeowners Ass'n, Inc. v. Trident Constr. Co.*, 355 S.C. 605, 612, 586 S.E.2d 581, 585 (2003) (thirteen-month delay in demanding arbitration during which limited discovery was conducted did not demonstrate waiver). In light of Plaintiff's

⁹ Complaint ¶¶12, 23, 54(g).

request for arbitration appearing in the Complaint and other motions and briefs, Defendants' argument regarding Plaintiff's purported delay in demanding arbitration appears misplaced.

The claims brought by and against Defendant Barnes Law Firm are sufficiently related to Defendant Barnes' employment at PMPED and the Employment Agreement to fall within the broad scope of the arbitration provision. *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001)(an arbitration provision applies to claims outside the contract "when a 'significant relationship' exists between the asserted claims and the contract in which the arbitration clause is contained"). A party that is not a signatory to an agreement may nonetheless be bound by an arbitration provision contained in the agreement where there is a strong connection between the claims asserted by the nonsignatory and the agreement containing the arbitration provision. *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 288–89, 733 S.E.2d 597, 600–01 (Ct. App. 2012). Defendant Barnes Law Firm's claims against Plaintiff for unjust enrichment and accounting relate to the Employment Agreement as they relate to the disputes between Defendant Barnes and Plaintiff regarding legal fees paid by PMPED for Barnes and attorney fees collected on PMPED cases, both of which are governed by the Employment Agreement and fall within the arbitration provision. Similarly, Defendant Barnes Law Firm's claims against PLG arise from PLG's alleged status as the "successor in interest" to Plaintiff and responsibility for Plaintiff's alleged duties under the Employment Agreement. Further, Plaintiff's claims against Defendant Barnes Law Firm for unjust enrichment and conversion are directly related to the disputes between Plaintiff and Defendant Barnes regarding legal and attorney fees, which are governed by the Employment Agreement. Plaintiff's claim against Defendant Barnes Law Firm for tortious interference relates to the alleged breach of the Employment Agreement. There are many significant connections

between all claims asserted in this matter and the Employment Agreement, and thus all claims must be arbitrated.

CONCLUSION

The arbitration provision in the PMPED Employment Agreement is valid and applies to the claims between the parties. Defendants failed to show Plaintiff waived the right to enforce the arbitration provision. Plaintiff has consistently maintained the disputes are subject to arbitration and demanded arbitration, including in the Complaint. The claims asserted by and/or against Barnes Law Firm and Parker Law Group are sufficiently related to the Employment Agreement and fall under the broad arbitration provision contained in the Employment Agreement. All claims between the parties are subject to arbitration.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Stay Case and Compel Arbitration is GRANTED. The parties are instructed to provide the names of proposed arbitrators within **ten days** from the issuance of this Order. All other motions are continued and are referred to the arbitrator.

The Honorable R. Lawton McIntosh
Fourteenth Judicial Circuit

_____, 2025



Hampton Common Pleas

Case Caption: Peters Murdaugh Parker Eltzroth & Detrick, Pa VS William Barnes ,
defendant, et al
Case Number: 2024CP2500409
Type: Order/Stay

S/R. LAWTON McINTOSH

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