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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
The Honorable Marvin H. Dukes, III, Circuit Court Judge

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Appellate Case No. 202-002327
Case No. 2025-CP-10-02139

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Boris Van Dyck and Boris Van Dyck, LLC, ..... Respondents,

v.

Woodlock Capital, LLC, .....Appellant.

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**APPELLANT'S MEMORANDUM**
**ADDRESSING THE ISSUE OF APPEALABILITY**

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Please allow this Memorandum to serve as Appellant's response to the letter from the Court of Appeals, dated November 25, 2025, requesting it address the issue of appealability of the underlying Order. The Order, dated November 12, 2025, issued by Judge Marvin H. Dukes, III, denied Woodlock Capital, LLC's Motion to Dismiss. The Motion to Dismiss was based on the fact that the Contract at issue, giving rise to the dispute, contained an arbitration clause.

The basis for the appeal is that the Contract impacts interstate commerce; therefore, it is governed by the Federal Arbitration Act ("FAA"). In the underlying matter, Woodlock Capital, LLC filed a Motion to Dismiss the State Court action based on the arbitration provision and sought to move the dispute to arbitration. As part of the Motion, Woodlock Capital, LLC filed the Affidavit of Andrew Batkins (a partner in Woodlock Capital, LLC), together with multiple, separate exhibits showing the numerous ways the Contract at issue impacted interstate commerce.

Despite this evidence showing the Contract should be controlled by the FAA mandating the dismissal of the State Court action, the Motion to Dismiss was denied. This appeal followed.

Appellant asserts that the arbitration provision is enforceable under the FAA, 9 U.S.C.S. § 1 et seq., because the contract involves interstate commerce. Therefore, in this instance, the federal substantive law supplants state law regarding arbitration. *Osteen v. T.E. Cuttino Constr. Co.*, 315 S.C. 422, 434 S.E.2d 281, 1993 S.C. LEXIS 146 (S.C. 1993).

The FAA supplants state arbitration laws when the contract at issue involves interstate commerce. In *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580 (2001), the South Carolina Supreme Court stated that, "[w]hile the parties may agree to enforce arbitration agreements under state rules rather than FAA rules, the FAA will preempt any state law that completely invalidates the parties' agreement to arbitrate."

Although the arbitration provision contained in the Contract does not meet the notice requirements contained in S.C. Code Ann. §15-48-10, the arbitration provision is enforceable under the FAA because the contract involves interstate commerce.

The phrase "involving commerce" is the same as "affecting commerce," which has been broadly interpreted to mean Congress intended to utilize its powers to regulate interstate commerce to its full extent. *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 115 S. Ct. 834, 130 L. Ed. 2d 753 (1995). In *Blanton v. Stathos*, 351 S.C. 534, 570 S.E.2d 565, 2002 S.C. App. LEXIS 148 (S.C. Ct. App. 2002), the FAA applied to mandate arbitration of a dispute over a contract between an architect and a client, which violated the notice provision of S.C. Code Ann. § 15-48-10(a), where the architect submitted an undisputed affidavit demonstrating that the transaction involved interstate commerce in the nature of the project. That is exactly what was done in this case in the underlying Court.

"Our courts consistently look to the essential character of the contract when applying the FAA." *Thornton v. Trident Med. Ctr., LLC*, 357 S.C. 91, 96, 592 S.E.2d 50, 52 (Ct. App. 2003) (finding it was proper to "focus upon what the terms of the contract specifically require for performance in determining whether interstate commerce [was] involved"). "There is a strong presumption in favor of the validity of arbitration agreements because of the strong policy favoring arbitration." *Towles v. United HealthCare Corp.*, 338 S.C. 29, 37, 524 S.E.2d 839, 844 (Ct. App. 1999). 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. *Towles v. United Healthcare Corp.*, 338 S.C. 29, 524 S.E.2d 839 (Ct. App. 1999).

Turning to the issue of immediate appealability of the Order, Appellant would point out the case Judge Dukes relied upon in his Order denying the Motion to Dismiss in this case, *Bradley v. Brentwood Homes, Inc*., 398 S.C.447, 730 S.E.2d 312 (2012), was a Supreme Court decision from a case that was directly appealed from the lower court's denial of a motion to stay the proceedings and compel arbitration – exactly the scenario in our case.

The Court of Appeals case titled *Towles v. United Healthcare Corp*., 338 S.C.29, 524 S.E.2d 839, (1999) also had the exact issue before it:

> "United filed a motion to dismiss, or in the alternative, a motion to compel arbitration. The circuit court denied United's motion to dismiss … United appeals, contending the circuit court erred in denying United's motion to compel arbitration under the Federal Arbitration Act (FAA). *See 9 U.S.C.A. Sec. 1 et seq (1999).*
>
> …
>
> We must first determine whether United may appeal from the circuit court's order. United contends the circuit court's order is appealable under federal and state law. We agree.
>
> Both federal and state policy favor arbitration disputes… The FAA states: "An appeal may be taken from … an order … denying an application under section 206 of this title to compel arbitration. *9 U.S.C.A. Sec. 16(a)(1)(C)(1999).* Enacting this

> provision revealed Congress's 'deliberate determination that appeal rules should reflect a strong policy favoring arbitration'" (internal citations omitted).

The *Towles* case has been cited numerous times in South Carolina, each time stating that the denial of a motion to compel arbitration is immediately appealable.

Since the FAA governs, federal interlocutory appeal rights reinforce the immediate appealability of the underlying Order. 9 U.S.C. § 16(a)(1)(A) provides for the immediate appeal of an order refusing to stay an action until an arbitration has been conducted. This rule has been confirmed by the United States Supreme Court repeatedly, including in *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023) (the U.S. Supreme Court confirmed that the FAA allows for such appeals and requires district courts to stay proceedings during the pendency of the appeal, emphasizing the FAA's purpose of expediting arbitration and avoiding unnecessary litigation).

Finally, despite the lower court's determination that interstate commerce was not implicated, appeals denying motions to compel arbitration are subject to a *de novo* review. South Carolina courts have consistently treated the determination of whether a contract involves interstate commerce as a legal question that can be reviewed *de novo* on appeal. *Hicks Unlimited, Inc. v. Unifirst Corp.*, 439 S.C. 623, 629, 889 S.E.2d 564, 567 (2023). In *Hicks*, the Supreme Court reviewed whether a contract involved interstate commerce as part of an appeal from the denial of a motion to compel arbitration.

Based on the forgoing, Appellant contends this matter is not interlocutory and is immediately appealable.

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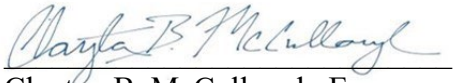
Respectfully Submitted,

McCULLOUGH KHAN, LLC



Clayton B. McCullough, Esq.
(SC Bar #13722)
2036 eWall Street
Mount Pleasant, SC 29464
(843) 937-0400
(843) 937-0706 (fax)
clay@mklawsc.com

**Counsel for Appellant**

December 4, 2025
Mount Pleasant, South Carolina

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**PROOF OF SERVICE**

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I, Alicia M. Terwilliger-Salley, paralegal at McCullough Khan, LLC, hereby certify that a true and correct copy of **Appellant's Memorandum Addressing the Issue of Appealability** was served upon counsel for Respondents in the above-captioned matter via email, this 4th day of December, 2025, addressed as follows:

Ellis R. Lesemann, Esq.
S. Grace Heaton Benko, Esq.
Lesemann & Associates, LLC
415 King Street, Suite 301
Charleston, SC 29403
erl@lalawsc.com
ghb@lalawsc.com

**Counsel for Respondents**

By: _____
Alicia M. Terwilliger-Salley, Paralegal