STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
JOSEPH W. ROHE	)	CASE NO.: 2024-CP-10-03700
	)	
PLAINTIFF,	)	
	)	
vs.	)	ORDER DENYING DEFENDANTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO STAY AND COMPEL ARBITRATION
	)	
SHM CHARLESTON CITY MARINA, LLC d/b/a Safe Harbor Charleston City; and SHM CHARLESTON BOATYARD, LLC d/b/a Safe Harbor City Boatyard,	)	
	)	
DEFENDANTS.	)	
	)	

Presiding Judge:	Hon. Deadra L. Jefferson
Plaintiff's Attorney:	Joseph W. Rohe, Esq.
Defendant's Attorney:	Rhett D. Ricard, Esq.
Date of Hearing:	January 10, 2025
Court Reporter:	WebEx

THIS MATTER comes before the Court on January 10, 2025, upon motion of Defendants SHM CHARLESTON CITY MARINA, LLC d/b/a Safe Harbor Charleston City and SHM CHARLESTON BOATYARD, LLC d/b/a Safe Harbor City Boatyard (collectively "Defendants") to Dismiss Plaintiff's Complaint or, in the Alternative, to Stay this Matter and Compel Arbitration, filed September 19, 2024. A Memorandum in Support was filed January 8, 2025. No response in opposition was filed by the Plaintiff. Present before the Court was Plaintiff, Joseph W. Rohe, Esq. appearing pro se. Representing the Defendants was Rhett D. Ricard, Esq.

FINDINGS OF FACT

Plaintiff filed his Summons and Complaint on July 22, 2024, alleging that Plaintiff engaged Defendants to perform certain services on Plaintiff's boat (Property) located at Safe

Harbor Charleston City, 7 Lockwood Drive, Charleston, South Carolina 29401. Between March 18, 2024, and May 6, 2024, Defendants, their agents and/or employees performed certain services upon the Property and issued three (3) separate invoices for work allegedly performed. Plaintiff alleges that in addition to causing damage to the Property, Defendants invoiced and charged Plaintiff for work that was not performed, double charged for work, and otherwise overcharged Plaintiff in various particulars.

An Amended Summons and Complaint was filed on August 20, 2024. In lieu of an Answer, Defendants filed a Motion to Dismiss or, in the Alternative, to Stay and Compel Arbitration on September 19, 2024.

CONCLUSIONS OF LAW

The Court, after reviewing the record, and submissions and arguments of the parties, hereby makes the following findings of fact and conclusions of law:

I. THE SOUTH CAROLINA UNIFORM ARBITRATION ACT, NOT THE FEDERAL ARBITRATION ACT, APPLIES TO THIS DISPUTE.

Although Defendants cite both the South Carolina Uniform Arbitration Act ("SCUAA") and the Federal Arbitration Act ("FAA") in their motion, the FAA has no application to this dispute as the transaction between the parties and which is the subject of this litigation did not involve interstate or foreign commerce. See Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 538, 542 S.E.2d 360 (2001)("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…" [emphasis added]); Soil Remediation Co. v. Nu-Way Envt'l, 323 S.C. 454, 460, 476 S.E.2d 149 (1996)("For the [FAA] to apply, the commerce involved in the contract must be interstate or foreign."); Mathews v. Flour Corp., 312 S.C. 404, 407, 440 S.E.2d 880 (1994)("Interstate commerce is a necessary basis for application of the [FAA], and a contract or

agreement not so predicated must be governed by state law.").[1] Additionally, the burden falls upon Defendants to prove a nexus between the contract and interstate commerce. See Hicks Unlimited, Inc. v. Unifirst Corp., 439 S.C. 623, 632, 889 S.E.2d 564 (2023)("a party seeking to compel arbitration under the FAA must demonstrate that the contract implicates interstate commerce."). "The Court must examine the agreement, the complaint, and the facts to ascertain whether the transaction is one involving commerce within the meaning of the [FAA]." Soil Remediation, 323 S.C. at 460.

"Commerce" is defined as "commerce among the several States or with foreign nations…" 9 U.S.C. § 1; see also Mathews, 312 S.C. at 407 ("Commerce, as defined in the [FAA], evidences transactions involving interstate or foreign commerce."). The Commerce Clause, and in turn the FAA, covers three categories: (1) "the use of the channels of interstate commerce," (2) the protection of "instrumentalities of interstate commerce," and (3) "activities having a *substantial relation* to interstate commerce." United States v. Lopez, 514 U.S. 549, 558-59, 115 S. Ct. 1624, 131 L. Ed. 2d 626 (1985) [emphasis added].

(1) Channels of Interstate Commerce

The Defendants argue that the transaction that is the subject of this dispute involved or utilized "channels of interstate commerce." In support of their position, Defendants argue that channels of interstate commerce were utilized because parts and/or materials used in servicing Plaintiff's vessel were purchased and shipped from outside the State of South Carolina. Defendants, however, fail to present any evidence in support of such claim. In Matthews, the Court

[1] Mathews was overruled in part "to the extent it considered whether the parties *contemplated* interstate commerce as a factor in determining if the FAA applied." See Munoz, 343 S.C. at 543 [emphasis added].

found the transaction was outside the scope of the FAA because it was "unable to discern from the evidence presented whether the contract *required* respondent to administer anything related to interstate commerce." Matthews, 312 S.C. at 407, 440 S.E.2d at 882. Here, the contract – a "service" agreement – fails to make any reference to parts, equipment and/or materials to be furnished from outside South Carolina.

Moreover, Plaintiff's allegations are confined to the following: that Defendants' performance of "services" was defective, that Defendants charged for work that was not in fact performed, and that Defendants overcharged and/or "double-charged" for work or services performed. See Pl.'s Compl. ¶ 9. Plaintiff's Complaint does not allege any facts regarding or relating to the supply of parts, equipment or materials by Defendants. Additionally, the service agreement that is the subject of this dispute provides no indication of procurements that might implicate or utilize channels of interstate commerce. Accordingly, Defendants' argument that parts and/or materials "may have been sourced" from outside of South Carolina is hypothetical, not supported by the agreement, the allegations of the Complaint, or the record evidence, and is ultimately insufficient to sustain Defendants' burden to prove a nexus between the contract and interstate commerce.

(2) Instrumentalities of Interstate Commerce

Defendants argue that Plaintiff's vessel is an "instrumentality of interstate commerce" because it is "capable" of traveling to other states or foreign nations. However, the dispute between the parties does not implicate Plaintiff's vessel in any way other than being the site of the services performed and which are now the subject of this dispute. Accordingly, the dispute between the parties does not implicate any instrumentality of interstate commerce and Defendants have failed to meet their burden to prove a nexus between the contract for services and interstate commerce.

(3) Substantial Relation to Interstate Commerce

The transaction that is the subject of this dispute is confined in all respects to the State of South Carolina and, thus, has no substantial connection or relation with interstate commerce. Plaintiff is a citizen and resident of South Carolina, and Defendants, although are Delaware limited liability companies,[2] are registered to transact business in South Carolina and maintain their principal places of business in South Carolina. (Pl.'s Am. Compl. ¶¶ 1, 4 & 5). Moreover, there is no nexus between the contract or the services performed and interstate commerce. See Mathews, 312 S.C. at 440 (holding that a contractual dispute involving the sale of real estate situated in South Carolina did not involve interstate commerce where, despite the fact that contracting parties were domiciled outside of South Carolina, there was no nexus between the contract and interstate commerce.); see also Hicks Unlimited, 439 S.C. at 623 (where the Supreme Court held that although a contract to rent uniforms involved a Massachusetts company and a South Carolina company, there was no other sign that it was to be performed using instrumentalities or channels of interstate commerce or that it involved anything beyond South Carolina's borders, so the FAA did not apply). Here, the contract in question was for the provision of maintenance services in South Carolina. (Pl.'s Am. Compl. at ¶ 9). Any services that were actually performed were in fact performed in South Carolina by Defendants' agents or employees located in South Carolina. In addition, the work performed was managed from South Carolina and overseen in South Carolina. (Pl.'s Am. Compl. ¶ 6).

The arbitration provision Defendants seek to apply makes no reference to the FAA or interstate commerce, and in fact appears to intimate that the SCUAA, and not the FAA, was

[2] Although the parties are not diverse, it is noted that diversity of citizenship alone is insufficient to invoke the FAA, See Maxum Foundations, Inc. v. Salus Corp., 779 F.2d 974, 978 n.4 (4th Cir. 1985).

intended under the contract. For example, arbitration is to be conducted in Charleston, South Carolina with an arbitrator/attorney from the "Charleston metropolitan area," and even incorporates the discovery provisions of the South Carolina Rules of Civil Procedure. Of note, the South Carolina Supreme Court has made clear the Courts cannot apply the FAA, even where the parties have expressly agreed to such, without first determining that interstate commerce is in fact involved. See Hicks Unlimited, 439 S.C. at 632 ("Just as the parties may not prove the requisite connection to interstate commerce by agreeing their transaction or relationship 'contemplates' interstate commerce, they may not make the connection by declaring or contemplating the FAA will govern.").

As there is no nexus between the dispute and interstate commerce, and the arbitration provision Defendants rely upon appears to implicate the SCUAA, analysis of the arbitration provision must be governed by state law. See Mathews, 312 S.C. at 407 ("Interstate commerce is a necessary basis for application of the [FAA], and a contract or agreement not so predicated *must be governed by state law*." [emphasis added]).

Based on the foregoing, the Court concludes that Defendants have failed to meet their burden and offer sufficient evidence that the services agreement involved interstate commerce as necessary to subject the dispute to the FAA.

II. APPLYING THE SCUAA, ARBITRATION OF THIS DISPUTE IS PRECLUDED UNDER S.C. CODE ANN. 15-48-10(a).

Under well-established South Carolina law, in order for a non-FAA arbitration provision contained within a contract to be valid and enforceable, it must satisfy the statutory notice requirements of S.C. CODE ANN. § 15-48-10(a), which provides:

> "Notice that a contract is subject to arbitration pursuant to this chapter shall be typed in underlined capital letters, or rubber-stamped prominently, on the first page

> of the contract and *unless such notice is displayed thereon the contract shall not be subject to arbitration*." [emphasis added].

Thus, a contract or agreement containing an arbitration clause subject to the SCUAA and which fails to comply with the statutory notice requirements shall not be subject to arbitration. Ex parte Messer, 333 S.C. 391, 394 (Ct. App. 1998)("In Soil Remediation Co. v. Nu-Way Env., Inc., 323 S.C. 454, 476 S.E.2d 149 (1996), the South Carolina Supreme Court held that section 15-48-10 must be strictly construed by the courts. 'The terms of the statute are clear; therefore, the court must apply those terms according to their literal meaning.' Id. at 457, 476 S.E.2d at 151.").

Neither the subject dispute nor the parties' relationship implicates interstate commerce and, as such, the purported arbitration provision must be viewed in light of the provisions of the SCUAA. Because the arbitration provision fails to satisfy the statutory notice requirements of S.C. Code Ann. § 15-48-10(a), the contract is not subject to arbitration.[3]

THEREFORE, IT IS ADJUDGED that Defendants' Motion to Dismiss or, in the Alternative, to Stay and Compel Arbitration is hereby DENIED.

AND IT IS SO ORDERED!

Hon. Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

July 16, 2025
Charleston, South Carolina

[3] The Defendants concede that the parties' 2024 service agreement(s) do not comply with the SCUAA and that the sole basis of their argument in support of arbitration is the applicability of the FAA.

Charleston Common Pleas

Case Caption: Joseph W Rohe VS Safe Harbor Marinas Llc , defendant, et al

Case Number: 2024CP1003700

Type: Order/Other

IT IS SO ORDERED.

s/D.L. Jefferson Ninth Judicial Circuit Judge 2128