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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Dale E. Van Slambrook, Circuit Court Judge

Case No. 2020-CP-42-03818
Appellate Case No. 2025-001589

John G. Falcon, Respondent,

v.

ScribeAmerica, LLC, Spartanburg Regional Health Services District, Inc., and Thomas M. Boyd, both personally, and in his official capacity as an employee of Spartanburg Regional Health Services District, Inc., Defendants,

of which Spartanburg Regional Health Services District, Inc., and Thomas M. Boyd, both personally, and in his official capacity as an employee of Spartanburg Regional Health Services District, Inc., are the Appellants.

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STATEMENT OF ISSUES ON APPEAL

- I. THE TRIAL COURT ERRED IN RESERVING DECISION-MAKING AUTHORITY OVER THE DETERMINATION OF ARBITRABILITY BECAUSE THE PARTIES LAWFULLY DELEGATED THAT TASK TO THE MEDIATOR AND ARBITRATOR PURSUANT TO THE FEDERAL ARBITRATION ACT.
- II. THE TRIAL COURT ERRED IN CONCLUDING THAT DR. BOYD COULD NOT RELY ON THE ADR PROVISION OF THE PEA AS A NON-SIGNATORY BECAUSE DR. FALCON’S CLAIM AGAINST SRHS AND DR. BOYD RELIES UPON THE PEA AND ALLEGES INTERDEPENDENT MISCONDUCT ON THE PARTS OF SRHS AND DR. BOYD.
- III. ALTERNATIVELY, ASSUMING *ARGUENDO* THAT THE TRIAL COURT DID HAVE JURISDICTION TO DECIDE THE SCOPE OF ARBITRABILITY IN THIS MATTER, IT STILL ERRED IN REFUSING TO FIND THAT DR. FALCON’S CIVIL CONSPIRACY CLAIM AGAINST SRHS AND DR. BOYD DOES NOT FALL WITHIN THE SCOPE OF THE ADR PROVISION.
- IV. THE TRIAL COURT MISAPPLIED GREAT WESTERN COAL BECAUSE THE TRIAL COURT FAILED TO RECOGNIZE AND DISTINGUISH THAT THE DETERMINATION OF ARBITRABILITY IS GOVERNED BY A DELEGATION CLAUSE IN THE PRESENT CASE.

STATEMENT OF THE CASE

On December 19, 2024, John G. Falcon (“Respondent” or “Dr. Falcon”) brought this action against Spartanburg Regional Health Services District, Inc. (“SRHS”) and Thomas M. Boyd, both personally, and in his official capacity as an employee of SRHS (“Dr. Boyd”) (collectively “Appellants”) as well as ScribeAmerica, LLC (“ScribeAmerica”). Dr. Falcon alleges tortious interference with contractual relations against ScribeAmerica and civil conspiracy against ScribeAmerica and Appellants. SRHS and Dr. Boyd timely answered Dr. Falcon’s Complaint alleging among other substantive defenses that Dr. Falcon’s claims against SRHS and Dr. Boyd must be stayed or dismissed because they are subject to mandatory alternative dispute resolution (“ADR”). (Answer, 7, March 12, 2025). SRHS and Dr. Boyd contemporaneously filed a Motion to Stay and Compel ADR with their Answer. (Defs.’ Mot. to Stay and Compel ADR).

On April 3, 2025, Dr. Falcon filed his Memorandum in Opposition to Motion to Stay and

Compel ADR (Pl.’s Mem. in Opp’n to Defs.’ Mot. to Stay and Compel ADR), and SRHS and Dr. Boyd filed their Memorandum in Support of Motion to Stay and Compel ADR. (Defs.’ Mem. in Supp. of Mot. to Stay and Compel ADR). The Circuit Court heard oral arguments on the Motion to Stay and Compel ADR on April 10, 2025. On June 5, 2025, the Circuit Court issued its Order wherein it determined that SRHS and Dr. Boyd’s motion “must be stayed, held in abeyance, pending discovery to be conducted by the parties.” (Order, 1, June 5, 2025).

SRHS and Dr. Boyd filed a Motion to Alter or Amend on June 16, 2025, (Defs.’ Mot. to Alter or Amend), and Dr. Falcon filed his Memorandum in Opposition to Motion to Alter or Amend Filed by SRHS and Dr. Boyd on June 25, 2025. (Pl.’s Mem. in Opp’n to Mot. to Alter or Amend). On July 11, 2025, the Circuit Court issued its Order denying SRHS and Dr. Boyd’s Motion to Alter or Amend (Order, July 11, 2025), and this appeal followed.

STANDARD OF REVIEW

Arbitrability determinations are subject to *de novo* review. Sanders v. Savannah Highway Automotive Company, 440 S.C. 377, 382, 892 S.E.2d 112, 114 (2023). Although a circuit court’s factual findings will not be reversed if any evidence reasonably supports those factual findings, “the party resisting arbitration bears the burden of proving that the claims at issue are unsuitable for arbitration.” Dean v. Heritage Healthcare of Ridgeway, LLC, 408 S.C. 371, 379, 759 S.E.2d 727, 731 (2014).

FACTS

Dr. Falcon is a physician who specializes in emergency medicine. On October 31, 2011, SRHS employed Dr. Falcon to provide emergency medicine services in its emergency departments at its hospitals pursuant to a written Physician Employment Agreement (“PEA”). (Compl. ¶¶ 3, 7). In the PEA, Dr. Falcon agreed that he was subject to the rules governing SRHS physicians (PEA § 1.1) and to the standards which governed his provision of medical services to patients at SRHS

(PEA § 1.5). The PEA also sets forth the causes for and methods by which the PEA, and consequently Dr. Falcon’s employment with SRHS, could be terminated. (PEA § 6). Significantly, the PEA contains a mandatory ADR provision to resolve “any controversy or claim arising out of or relating in any manner to any provision of this Agreement or the subject matter thereof, or the breach, termination or validity thereof, including any dispute regarding the scope of this clause... exclusively through mediation and, if necessary, binding arbitration...” (PEA § 9.1). Dr. Boyd is, and was at all times relevant to this matter, employed by SRHS as an emergency medicine physician and as the Medical Director of the Emergency Department. As Medical Director, Dr. Boyd acted as Dr. Falcon’s supervisor and was responsible for ensuring Dr. Falcon provided safe and adequate care to patients of SRHS as an emergency medicine physician working in the SRHS Emergency Department. (Compl. ¶ 4).

ScribeAmerica is an organization that SRHS contracts with to provide qualified individuals to serve as medical record scribes for physicians at SRHS including emergency medicine physicians. (Compl. ¶ 2).

Dr. Falcon alleges that agents and employees of ScribeAmerica were instructed make Dr. Boyd aware anytime ScribeAmerica employees witnessed Dr. Falcon “advising a patient against getting the COVID-19 vaccine or telling them they should not have gotten the vaccine...” (Compl. ¶ 11). Dr. Falcon further alleges that this reporting to Dr. Boyd, as Medical Director of the Emergency Department, was a breach of confidentiality and ethics as well as an “unlawful invasion of the sacrosanct physician/patient privilege” when Dr. Boyd was not acting as a member of that particular patient’s medical treatment team. (Compl. ¶ 12). Dr. Falcon’s PEA, and thereby his employment, with SRHS was terminated effective May 27, 2023. (Compl. ¶ 35).

Dr. Falcon filed the present action alleging tortious interference with contractual relations against ScribeAmerica and civil conspiracy against all Defendants. As to the civil conspiracy

claim, Dr. Falcon claims that his termination was a direct result of a conspiracy where Dr. Boyd “unlawfully” received reports about the provision of Dr. Falcon’s medical services – specifically reports about him advising patients against getting the Covid-19 vaccine – from ScribeAmerica employees. (Compl. ¶ 35).

Dr. Falcon has also filed a related federal court discrimination case against SRHS pursuant to Title VII of the United States Civil Rights Act of 1964 related to the termination of his employment. John G. Falcon v. Spartanburg Regional Health Services District, Inc., C.A. No.: 7:24-cv-07568-JDA-KFM (D.S.C. filed Dec. 23, 2024). In the federal action, Dr. Falcon and SRHS have agreed that the ADR provision of the PEA governs that dispute. (Consent Mot. to Stay Case, 1, John G. Falcon v. Spartanburg Regional Health Services District, Inc., C.A. No.: 7:24-cv-07568-JDA-KFM (D.S.C. filed Mar. 31, 2025)). As a result, the federal action has been stayed under the Federal Arbitration Act (the “FAA”), by consent, while the parties participate in the ADR process required by the PEA.

ARGUMENTS

- I. The trial court erred in reserving decision-making authority over the determination of arbitrability because the parties lawfully delegated that task to the mediator and arbitrator pursuant to the FAA.**
 - A. The FAA governs the ADR provision contained in the PEA as acknowledged by Dr. Falcon in his pending federal action.**

The FAA applies when a written agreement to arbitrate exists and that written agreement is contained within a contract involving interstate commerce. 9 U.S.C. § 2. Dr. Falcon admits he was employed by SRHS pursuant to a written PEA containing an ADR provision (Pl.’s Mem. in Opp’n to Mot. to Stay and Compel, 3), so there is no dispute that a written agreement to arbitrate exists in this case. It is also clear that the PEA involves interstate commerce. The PEA discusses the compensation of Dr. Falcon; billing payers for Dr. Falcon’s professional services; compliance with federal laws and regulations in performing the services for which payers would be billed; and

fees collected by Dr. Falcon for speaking, witnessing and consulting. See PEA §§ 1.5, 3. These services necessarily involve treating patients with addresses outside of South Carolina, coordination with banks outside of South Carolina, and obtaining medical supplies and equipment outside of South Carolina. See Dean, 408 S.C. at 380-81, 759 S.E.2d at 732-33 (finding interstate commerce implicated where the agreement required facility to provide meals and medical supplies, which the facility shipped across state lines from out-of-state vendors).

Further, there is no dispute in this matter that the FAA applies to the ADR provision of the PEA. When Dr. Falcon and SRHS filed their Consent Motion to Stay Case in Dr. Falcon’s federal court Title VII case, they did so “pursuant to applicable contract law and Section 3 of the Federal Arbitration Act, 9 U.S.C. 1, et. seq., staying this case while the parties submit to alternative dispute resolution as set forth in the Plaintiff’s April 1, 2020 Physician Employment Agreement (the ‘PEA’).” (Consent Mot. to Stay Case, 1, John G. Falcon v. Spartanburg Regional Health Services District, Inc., C.A. No.: 7:24-cv-07568-JDA-KFM (D.S.C. filed Mar. 31. 2025)). If Dr. Falcon believed that the FAA did not apply to the ADR provisions of his PEA, he certainly would not have consented to stay his federal court case based upon the FAA.

Accordingly, because the FAA governs the ADR provision in this matter, this Court should apply the FAA and related state and federal case law to this matter on appeal.

B. The FAA favors arbitration of controversies, including the very threshold issue of whether controversies are subject to arbitration where the parties delegate that question to the arbitrator.

Having established that the FAA applies to the ADR provision at issue in this matter, it is important to contextualize why application of the FAA matters and how the trial court overstepped the dictates of the FAA reserving decision-making on the gateway issue of arbitrability.

The FAA mandates that written agreements to arbitrate controversies arising out of an existing contract “*shall* be valid, irrevocable, and enforceable, save upon such grounds as exist at

law or in equity for the revocation of any contract.” 9 U.S.C. § 2. It is well established that Congress’s intent in enacting the FAA was to reverse the longstanding judicial hostility to arbitration agreements. The Supreme Court of South Carolina recognized this policy in Zabinski v. Bright Acres Associates:

Beginning in the mid-1980s, the United States Supreme Court, interpreting the FAA, essentially “federalized” the law of arbitration by expanding the reach of the FAA to the full breadth of the Commerce Clause. The federal policy favoring arbitration, as expressed in the FAA, is now binding even in state courts and supersedes inconsistent state laws and statutes which invalidate arbitration agreements.

346 S.C. 580, 590-91, 553 S.E.2d 110, 115 (2001).

Courts are to afford a healthy regard for the state and federal policies favoring arbitration, and arbitration agreements are to be rigorously enforced. Thus, “[b]y its terms, the [FAA] leaves no place for the exercise of discretion by a district court but instead mandates that district courts *shall* direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed.” Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213, 218, 105 S.Ct. 1238, 1241 (1985) (emphasis in original); see also Adkins v. Labor Ready, Inc., 303 F.3d 496, 500 (4th Cir. 2002) (A court has no choice but to grant a motion to compel arbitration where a valid arbitration agreement exists and the issues in a case fall within its purview).

The FAA’s favorable view of arbitration extends to allowing parties to delegate to arbitrators the gateway question of arbitrability or, stated another way, the scope of issues subject to the arbitration agreement. Arbitration is a matter of contract, and courts must enforce arbitration agreements according to their terms and apply the general rules of contract interpretation. Berkeley County School Dist. v. HUB International Ltd., 130 F.4th 396, 401 (4th Cir. 2025). Parties to an arbitration agreement can agree to arbitrate gateway questions of arbitrability “such as whether the parties have agreed to arbitrate or whether their agreement covers a particular controversy” by means of a delegation clause. Id. (quoting Rent-A-Center West, Inc. v. Jackson, 561 U.S. 63, 68-

69, 130 S.Ct. 2772, 2777 (2010)). A delegation clause is “simply an additional, antecedent agreement” that parties seeking arbitration may ask courts to enforce, and “the FAA operates on this additional arbitration agreement just as it does on any other.” Rent-A-Center, 561 U.S. at 70, 130 S.Ct. at 2777-78. Further, any doubts concerning the scope of arbitration should be resolved in favor of arbitration. Moses H. Cone Memorial Hosp. v. Mercury Const. Corp., 460 U.S. 1, 24-25, 103 S.Ct. 927, 941 (1983).

To determine whether an arbitration agreement delegates arbitrability questions to an arbitrator, courts look for “clear and unmistakable” evidence of the parties’ intent. Berkeley County, 130 F.4th at 402. In making this determination, courts look for specific language giving arbitrators authority to determine the applicability of the arbitration provision. Modern Perfection, LLC v. Bank of America, N.A., 126 F.4th 235, 242 (4th Cir. 2025).

In Modern Perfection, the Fourth Circuit held that a district court properly declined to decide whether claims were arbitrable and sent the dispute to arbitration where the arbitration clause stated “the arbitrator... will decide questions of law and fact and will resolve the Claim. This includes the applicability of this *Resolving Claims* section....” Modern Perfection, 126 F.4th at 241-42. In the present matter, the ADR provision has a very clear and unambiguous delegation clause mandating that “any controversy or claim arising out of or relating in any manner to any provision of this Agreement, the subject matter thereof, or the breach, termination, or validity thereof, **including any dispute regarding the scope of this clause**” shall be resolved “exclusively through mediation and, if necessary, binding arbitration.” PEA § 9.1, (emphasis added). Therefore, questions regarding gateway issues of arbitrability—including whether the ADR provision contained in the PEA covers Dr. Falcon’s civil conspiracy claim against SRHS and Dr. Boyd—have been delegated to the mediator and, if necessary, the arbitrator by the express terms of the ADR provision at issue. Under governing law, the delegation clause must be enforced as set forth

by these express terms.

C. By failing to heed clear precedent of courts applying the FAA and respect the delegation clause of the ADR clause of the PEA, the trial court erroneously reserved jurisdiction over gateway issues of arbitrability which the parties delegated to the mediator and, if necessary, the arbitrator.

Because the ADR provision contains a valid enforceable delegation clause, the trial court erred when it asserted jurisdiction over this issue by ordering discovery to proceed so it could, at some future date, determine the scope of the ADR provision and whether it governs the dispute in this matter as to Dr. Boyd and SRHS. Whether an arbitration agreement applies to a particular dispute is “*the* [gateway] arbitrability question.” Berkeley County, 130 F.4th at 404 (quoting Henry Schein, Inc. v. Archer & White Sales, Inc., 586 U.S. 63, 65, 139 S.Ct. 524, 527 (2019)) (emphasis added). Further, when parties to a contract delegate gateway issues of arbitrability to an arbitrator, a court possesses *no power* to decide the arbitrability issue and may not override the terms of the contract, even if the court thinks that the argument that the arbitration agreement applies is wholly groundless. Berkeley County, 130 F.4th at 403 (quoting Henry Schein, 139 S.Ct. at 527) (emphasis added).

In its June 5, 2025 Order, the trial court stated that “[t]o grant the motion to compel ADR now before this Court, a determination must be made that a significant relationship exists between the parties’ dispute and the underlying contract, thereby triggering the ADR provision in the PEA between Dr. Falcon and SRHS.” (Order, 5, June 5, 2025). Although SRHS and Dr. Boyd stressed that the claims and controversies in this case were subject to a delegation clause at the hearing (Hearing Tr. 9:10-14), the trial court failed to make any mention of the delegation clause in its order and effectively overrode the parties’ contract without any power to do so. This was clear error of law. The trial court’s decision should be reversed to reflect the contractual intent of the parties to have a mediator and, if necessary, an arbitrator determine whether Dr. Falcon’s civil conspiracy claim against SRHS and Dr. Boyd falls within the scope of the ADR provision, i.e.

“the” gateway arbitrability question.

Dr. Falcon tries to subvert the ADR provision’s delegation clause by arguing that the civil conspiracy claim against SRHS and Dr. Boyd falls under the “outrageous and unforeseen torts” exception to the enforcement of arbitration agreements. This is incorrect and does not overcome the enforceability of the delegation clause in this case. It is well-established in South Carolina that courts must honor delegation clauses even if a plaintiff, as in this case, argues their claims are not subject to arbitration because they fall under this exception. See Doe v. TCSC, LLC, 430 S.C. 602, 616, 846 S.E.2d 874, 881 (2020) (“[b]ecause the outrageous and unforeseen torts exception relates to the interpretation and scope of the arbitration contract and the arbitrability of the dispute... precedent requires that we honor the parties’ choice to leave the issue of the exception to the arbitrator.”); see also Chassereau v. Global Sun Pools, Inc., 373 S.C. 168, 171, 644 S.E.2d 718, 720 (2007) (treating outrageous and unforeseen torts exception as a question of arbitrability of claim and noting, “unless the parties provide otherwise, the question of the arbitrability of a claim is an issue for judicial determination.”).

Dr. Falcon has agreed that the FAA applies to the ADR provision of his employment contract. Pursuant to the above-recited, well-established FAA precedent, the trial court *possessed no power* to reserve jurisdiction over the gateway issue of whether Dr. Falcon’s civil conspiracy claim against SRHS and Dr. Boyd falls within the scope of the ADR provision. The parties clearly and unambiguously delegated such a gateway issue of arbitrability to the mediator and, if necessary, the arbitrator. This error of law must be overturned on appeal.

II. The trial court erred in concluding that Dr. Boyd could not rely on the ADR provision of the PEA as a non-signatory because Dr. Falcon’s claim against SRHS and Dr. Falcon relies upon the PEA and allege interdependent misconduct on the parts of SRHS and Dr. Boyd.

Assuming *arguendo* that the trial court had any authority to reserve decision-making on the threshold question of arbitrability, it failed to properly apply the law of the intertwined claims

test in refusing to recognize that Dr. Boyd is entitled to the protection of the ADR provision.

“Equitable estoppel precludes a party from asserting rights he otherwise would have had against another when his own conduct renders assertion of those rights contrary to equity.” Wachovia Bank, Nat. Ass’n v. Schmidt, 445 F.3d 762, 769 (4th Cir. 2006) (quoting Int’l Paper Co. v. Schwabedissen Maschinen & Anlagen GBMH, 206 F.3d 411, 417-18 (4th Cir. 2000)). This legal principle rests upon the simple proposition that it is unfair for a party to rely on a contract when it works to his advantage and then repudiate it when it works to his disadvantage. Wachovia Bank, 445 F.3d at 769. This is precisely what Dr. Falcon attempts to do in this case.

In the arbitration context, a party may be estopped from avoiding arbitration with a non-signatory to the agreement through the intertwined claims test. U.S. ex rel. Coastal Roofing Co., Inc. v. P. Browne & Assoc. Inc., 585 F.Supp.2d 708, 718 (D.S.C. 2007); Brantley v. Republic Mortg. Ins. Co., 424 F.3d 392, 395 (4th Cir. 2005). The Fourth Circuit and the Supreme Court of South Carolina have adopted the intertwined claims test as articulated by the Eleventh Circuit:

Existing case law demonstrates that equitable estoppel allows a non-signatory to compel arbitration in two different circumstances. First, equitable estoppel applies when the signatory to a written agreement containing an arbitration clause must rely on the terms of the written agreement in asserting its claims against the non-signatory. When each of a signatory’s claims makes reference to or presumes the existence of the written agreement, the signatory’s claims arise out of and relate directly to the written agreement and arbitration is appropriate. Second, application of equitable estoppel is warranted when the signatory to the contract containing an arbitration clause raises allegations of substantially interdependent and concerted misconduct by both the non-signatory and one or more of the signatories to the contract. **Otherwise, the arbitration proceedings between the two signatories would be rendered meaningless and the federal policy in favor of arbitration effectively thwarted.**

Brantley, 424 F.3d at 395-96 (quoting MS Dealer Serv. Corp. v. Franklin, 177 F.3d 942, 947 (11th Cir. 1999)(emphasis added); see also Pearson v. Hilton Head Hosp., 400 S.C. 281, 295, 733 S.E.2d 597, 604 (2012) (The Supreme Court of South Carolina utilized the intertwined claims test to determine that a non-signatory could enforce an arbitration agreement within a contract executed

by other parties).

Dr. Falcon cleverly asserts claims against Dr. Boyd wherein Dr. Falcon asserts that Dr. Boyd acted outside the scope of his official duties as Medical Director of the SRHS Emergency Department and with intent to harm Dr. Falcon. This is precisely why the intertwined claims test exists. Otherwise, the simple allegation that an executive¹ employed by a signatory to the contract acted personally and outside his or her duties in their executive role would serve to undermine the purpose of otherwise enforceable arbitration agreements.

The present case falls squarely within the framework of the intertwined claims test under both standards. First, Dr. Falcon should be estopped from avoiding arbitration with Dr. Boyd because Dr. Falcon necessarily relies on the written terms of the PEA to make his civil conspiracy claim against Dr. Boyd. In his Complaint, Dr. Falcon alleges that the “[t]he civil conspiracy engaged in by the Defendants has proximately caused Dr. Falcon’s damages consisting of the lost wages and attendant fringe benefits that he would have earned, but for the termination of his employment with SRHSD on May 27, 2023, resulting from the unlawful actions of the Defendants.” (Compl. ¶ 35). Thus, Dr. Falcon seeks to recover employment benefits from Dr. Boyd that he argues he would have been entitled to but for the termination of the PEA. Dr. Falcon’s claim, therefore, necessarily involves his status as an emergency medicine physician employed by SRHS, which was established by and would not have existed without the PEA.

In addition, because Dr. Falcon’s status as an emergency medicine physician employed by SRHS would not exist without the PEA, neither would the patient/physician relationships he alleges were infringed upon. See Long v. Silver, 248 F.3d 309, 320 (4th Cir. 2001) (allowing non-signatory shareholders to estop plaintiff from avoiding arbitration with them where he sought to claim the benefit of his shareholder status and right to continued employment, which were both

¹ Dr. Falcon’s Complaint alleges that Dr. Boyd is an “executive” of SRHS. (Compl. ¶ 12.)

established by the agreement at issue, against the non-signatory shareholders). Accordingly, because Dr. Falcon’s civil conspiracy claim against Dr. Boyd must presume the existence of the PEA, the claim necessarily arises out of and directly relates to the PEA.

Assuming *arguendo* that this Court does not estop Dr. Falcon under the first intertwined claims standard, the facts of this case also fit precisely within the confines of the second standard. Dr. Falcon’s civil conspiracy claim against SRHS and Dr. Boyd very clearly raises allegations of substantially interdependent and concerted misconduct by SRHS and Dr. Boyd. To make out his civil conspiracy claim, Dr. Falcon’s Complaint alleges that “[t]he Defendants acted in combination together to harm the Dr. Falcon, resulting in the termination of Dr. Falcon’s employment on May 27, 2023.” (Compl. ¶ 28). Not only does Dr. Falcon’s Complaint establish that the Defendants acted together, i.e. in concert with one another, but it further alleges that the Defendants committed the same misconduct by reporting Dr. Falcon’s physician/patient communications to Dr. Boyd when Dr. Boyd was not acting as part of that patient’s medical treatment team. (Compl. ¶¶ 31, 33). Dr. Falcon has asserted one cause of action against both SRHS and Dr. Boyd that is premised upon the same facts. Therefore, there can be no doubt that Dr. Falcon’s civil conspiracy claim against Dr. Boyd is substantially interdependent with the same civil conspiracy claim against SRHS based on allegations that they acted in *combination* with one another.

Further, although Dr. Falcon alleges that Dr. Boyd acted personally and outside the scope of his duties as Medical Director (Compl. ¶ 31), the underlying nexus of this theory is that Dr. Boyd abused his authority as Medical Director to improperly obtain information about Dr. Falcon’s interactions with SRHS patients which then led to the termination of Dr. Falcon’s employment. Necessarily, this alleged misconduct was interdependent with SRHS’s determination to terminate Dr. Falcon’s employment.

Under any analysis, Dr. Falcon’s theory of the case involves “intertwined” conduct by both

SRHS (a signatory to the PEA) and Dr. Boyd (a non-signatory to the PEA). Dr. Falcon is thus estopped from his attempt to deny application of the ADR provision to his dispute with Dr. Boyd.

In its Order, the trial court found that Dr. Boyd could not rely on the ADR provision of the PEA because “Dr. Falcon has expressly alleged all of the essential elements of a cause of action for civil conspiracy against Defendant Boyd, which if proven at trial, would justify a judgment against Defendant Boyd personally.” (Order, 5, June 5, 2025). As an initial point, courts are not to rule on the potential merits of the underlying claims in deciding whether parties have agreed to submit a particular dispute to arbitration. Zabinski, 346 S.C. at 596, 553 S.E.2d at 118. Moreover, the fact that Dr. Boyd could be held personally liable has nothing to do with whether he may rely on the ADR provision in the PEA. All the cases discussing the intertwined claims test involve non-signatories who could be held personally liable in their individual capacity. Therefore, the trial court’s reasoning on this issue is meritless.

Further, just as it did with SRHS and Dr. Boyd’s delegation clause argument, the trial court failed to explain why the facts of this case do not meet the intertwined claims test even after Dr. Falcon admitted that SRHS and Dr. Boyd correctly stated the law on this point. (Hearing Tr. 31:15-22). The trial court also failed to cite any statute, common law, or legal principle that applied in lieu of the intertwined claims test to support its ruling.

As set forth above, the facts here present the precise circumstances the intertwined claims test was designed to address, and the trial court’s decision that Dr. Boyd cannot rely on the ADR provision in the PEA should be overturned because it disregards the applicable law and was clear error.

III. Alternatively, assuming *arguendo* that the trial court did have jurisdiction to decide the scope of arbitrability in this matter, it still erred in refusing to find that Dr. Falcon’s civil conspiracy claim against SRHS and Dr. Boyd falls within the scope of the ADR provision.

As argued above, questions regarding the scope of the ADR provision have been delegated

to the mediator, and, if necessary, the arbitrator. SRHS and Dr. Boyd assert that even if the PEA did not have a delegation clause and the trial court had authority to determine arbitrability, its analysis was legally flawed and subject to reversal.

A. Dr. Falcon’s civil conspiracy claim falls within the scope of the ADR provision.

Whether a party has agreed to arbitration is an issue is a matter of contract interpretation. Landers v. Federal Deposit Ins. Corp., 402 S.C. 100, 108, 739 S.E.2d 209, 213 (2013). “Although the intention of the parties is relevant, as a matter of policy, arbitration agreements are liberally construed in favor of arbitrability.” Id. at 108-09, 739 S.E.2d at 213.

When an arbitration agreement commands the arbitration of “any claim or controversy arising out of” the agreement, courts have consistently held that the contract embraces “every dispute between the parties having a significant relationship to the contract regardless of the label attached to the dispute.” Wachovia Bank, 445 F.3d at 767 (quoting Am. Recovery Corp. v. Computerized Thermal Imaging, Inc., 96 F.3d 88, 93 (4th Cir. 1997)); see also Landers, 402 S.C. at 109, 739 S.E.2d at 214 (“Both the Fourth Circuit Court of Appeals and [the Supreme Court of South Carolina] have held that the sweeping language of broad arbitration clauses applies to disputes in which a significant relationship exists between the asserted claims and the contract in which the arbitration is contained.”). In applying this standard, courts “must determine whether the factual allegations underlying the claim are within the scope of the arbitration clause, regardless of the label assigned to the claim.” Landers, 402 S.C. at 110, 739 S.E.2d at 214 (quoting Zabinski, 346 S.C. at 597, 553 S.E.2d at 118).

Moreover, “the heavy presumption of arbitrability requires that when the scope of the arbitration clause is open to question, a court must decide the question in favor of arbitration.” Peoples Sec. Life Ins. Co. v. Monumental Life Ins. Co., 867 F.2d 809, 812 (4th Cir. 1989). Thus, a court may not deny a party’s request to arbitrate an issue “unless it may be said with positive

assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute.” Id.

In Landers, the Supreme Court of South Carolina held that a plaintiff’s claims were subject to a broad arbitration agreement contained in an employment contract because the allegations were related to the performance of his job and, consequently, his employment contract. Landers, 412 S.C. at 112, 739 S.E.2d at 215. The plaintiff alleged the defendants engaged in tortious conduct, including defamatory statements, that were intended to create an impression that he was incapable of performing his job effectively, made it impossible for him to perform his job, and constructively terminated him. Id. at 111, 739 S.E.2d at 215. The court held that these allegations bore a significant relationship to his employment contract because the employment contract contained monetary rights and obligations, articulated the plaintiff’s duties and obligations, provided that he was subject to the direction of the employer thus requiring him to diligently follow and implement all policies and decisions of the employer, and contemplated what constituted cause for termination. Id. at 111-12, 739 S.E.2d at 215.

The Landers Court’s reasoning is applicable in this case because the facts are analogous. In Dr. Falcon’s Complaint, he alleges that he was employed by SRHS with a written full-time PEA. (Compl. ¶ 7). Dr. Falcon also alleges in his Complaint that the actions of the Defendants interfered with the “exercise of his independent medical judgment, which he was ethically and legally required to impart to his patients,” (Compl. ¶ 20), which led to the termination of his employment. (Compl. ¶ 35). Further, Dr. Falcon contractually agreed through the PEA to certain standards of practice while working for SRHS, which included conforming to standards, regulations, and requirements of the United States Department of Health and Human Services, DHEC, medical staff bylaws, policies, rules, and regulations, and the Medical Staff Code of Conduct. (PEA § 1.5). In addition, the PEA contemplates what constitutes termination of the agreement. (PEA § 6). Dr.

Falcon contends that the allegedly unlawful reporting of details about Dr. Falcon's interactions with patients to Dr. Boyd, as Medical Director, led to the termination of his employment. Dr. Falcon's allegations relate directly to the performance of his employment and the contractual relationship establishing his employment. Therefore, they involve a significant relationship to his employment with SRHS, and, consequently, the PEA governing that employment.

Given the significant relationship between Dr. Falcon's civil conspiracy claim against SRHS and Dr. Boyd and the PEA, the trial court should have granted SRHS and Dr. Boyd's Motion to Stay and Compel Arbitration.

B. The outrageous and unforeseeable tort exception, if still viable, is not applicable because Dr. Falcon's Complaint does not allege unforeseeable conduct.

Again, Appellants argue that the trial court committed errors of law in failing to rule that the FAA applied and ceding the threshold issues of arbitrability of the civil conspiracy claim to the mediator and/or arbitrator. Even if the FAA did not apply and there was no arbitration clause, the trial court should have applied the significant relationship test set forth in Argument A above to hold that the civil conspiracy claim was subject to arbitration. However, the trial court committed significant error of law in bypassing these well-entrenched legal doctrines and skipping straight to an analysis of the so-called outrageous torts exception first noted by the South Carolina Supreme Court in 2007 in Aiken v. World Finance Corp. of South Carolina, 373 S.C. 144, 644 S.E.2d 705 (2007). Still, the trial court misapplied Aiken to the facts of the present case, even if the outrageous torts exception still is a viable legal doctrine in this State.

In Aiken, the Supreme Court of South Carolina held that it would refuse to interpret any arbitration agreement as applying to outrageous torts that are unforeseeable to a reasonable consumer in the context of normal business dealings. Aiken, 373 S.C. at 151, 644 S.E.2d at 709. The Court emphasized that it did not seek to exclude all intentional torts from the scope of arbitration, but rather only sought to "distinguish those outrageous torts, which although factually

related to the performance of the contract, are legally distinct from the contractual relationship between the parties.” Id. at 152, 644 S.E.2d at 709. The Aiken opinion effectually provides a limitation to the “significant relationship” test where arbitration agreements cannot be enforced when the plaintiff’s claims could not have been foreseen at the time he entered into the contract containing the arbitration agreement. Id. at 151, 644 S.E.2d at 709.

The present case is clearly distinguishable from Aiken where the plaintiff, an ordinary consumer contracting with a loan company, arguably could not have foreseen that employees of the loan company he contracted with would use his personal information to obtain sham loans and embezzle proceeds for their personal benefit. Aiken, 373 S.C. at 147, 644 S.E.2d at 707. In Aiken, the alleged tortious conduct stemmed from information obtained from the contract containing the arbitration agreement and had no relationship with the parties’ dealings under the agreement. Id. at 149, 644 S.E.2d at 708.

Here, the alleged tortious conduct is that Dr. Boyd, as the Medical Director of the Emergency Department where Dr. Falcon worked, collected information concerning how Dr. Falcon counseled patients on the Covid-19 vaccine and that SRHS used this information to terminate Dr. Falcon’s PEA. Unlike the agreement in Aiken, the PEA did more than just provide SRHS and Dr. Boyd with Dr. Falcon’s information; it created the contractual relationship between the parties and established their duties and obligations thereunder that led to this dispute. The PEA memorialized that Dr. Boyd was subject to and required to perform all his contractual duties (i.e., the practice of emergency medicine) in compliance with SRHS’s bylaws, policies, rules and regulations, and Medical Staff Code of Code Policy. (PEA, § 1.5). The necessary and *foreseeable* implication of this contractual provision was that SRHS and Dr. Boyd would have rights to review Dr. Falcon’s patient care, interactions, and practices. As a physician who has “been practicing medicine for decades,” “well respected,” and familiar with medical staffs (Hearing Tr. 28:5-7), Dr.

Falcon certainly understood, or should have foreseen, that the Medical Director of his department would access medical information regarding the provision of his medical services to evaluate Dr. Falcon's performance and adherence to the rules, policies, and bylaws enumerated in his PEA. In other words, the Appellants' alleged misconduct in this case was quite foreseeable and expected. This is a far cry from a situation where an ordinary consumer's personal information was stolen by an employee of a loan company the consumer contracted with. Therefore, Dr. Falcon's claims were foreseeable at the time he entered into the PEA with SRHS, and the trial court's decision on this issue cannot stand.

Moving beyond the trial court's misapplication of Aiken, Justice Pleicones' reasoning in Parsons v. John Wieland Homes & Neighborhoods of the Carolinas, Inc. leaves open the question of whether the outrageous torts exception is still viable in South Carolina. 418 S.C. 1, 791 S.E.2d 128 (2016). Justice Pleicones argued that "the application of the outrageous torts exception in South Carolina is 'unique,' and 'restricted' to the field of arbitration." Parsons, 418 S.C. at 11, 791 S.E.2d at 133. Justice Pleicones reasoned that this violated U.S. Supreme Court precedent and the FAA which requires that contracts for arbitration be placed on equal footing with all other contracts. Id.; see also AT&T Mobility, L.L.C. v. Concepcion, 563 U.S. 333, 339, 131 S.Ct. 1740, 1745 (2011). Justice Pleicones' reasoning, joined in by Justice Kittredge, is sound and must squarely be considered as Aiken's precedential value is weighed.

IV. The trial court misapplied Great Western Coal because the trial court failed to recognize and distinguish that the determination of arbitrability is governed by a delegation clause in the present case.

The trial court's decision to order the parties to conduct and complete the discovery required to create a factual record was "guided by the procedures employed by various South Carolina courts in Great Western Coal." (Order, 6, June 5, 2025). This was clear error because the trial court failed to consider an essential distinguishing factor between Great Western Coal and the

present case – the delegation clause which exists in the ADR clause of the PEA in this case. See S.C. Pub. Serv. Authority v. Great Western Coal, 312 S.C. 559, 437 S.E.2d 22 (1993).

As set forth in Argument I, there is no dispute that the ADR provisions of the PEA are governed by the FAA. The delegation clause within Dr. Falcon’s PEA clearly expresses the parties’ intention to have the mediator and arbitrator if mediation fails resolve “any dispute regarding the scope of this clause.” (PEA § 9.1). Application of the FAA mandates that courts of this state recognize and respect a delegation clause which defers threshold issues of arbitrability to the mediator or arbitrator. The Great Western Coal court made no mention of a delegation clause. In the face of no delegation clause and contractual uncertainty about the parties’ intent on the scope of arbitrability, it theoretically makes sense why the Great Western Coal Court ordered discovery. However, applying that logic to this case is an error of law because determination of the scope of arbitrability in this matter has been delegated to the mediator and, if necessary, the arbitrator.

Additionally, the trial court ruled that this case was distinguishable because the Great Western Coal Court expressly stated, “Here, we find only the actions for which Santee seeks damages based upon the coal contracts are arbitrable and not the remaining causes of action.” (Order, 4-5, June 5, 2025). The Great Western Coal Court did not consider the merits or the label of the plaintiff’s claims, which notably included one for civil conspiracy. Rather, that court looked to the contract to determine which causes of action stemmed from the relationship between the plaintiff’s claims and the terms of the contract. Great Western Coal, 312 S.C. at 564, 437 S.E.2d at 25. This does not distinguish the present facts from Great Western Coal because *all* of Dr. Falcon’s claims and alleged damages from SRHS and Dr. Boyd arise from the relationship created by the PEA and his alleged damages when the PEA was terminated. Accordingly, no factual record was needed for the trial court to make a determination. The trial court conclusively determined it could rely on the procedural history of Great Western Coal without engaging in any meaningful

analysis of the facts in the case.

Simply, the trial court's ruling is error because its analysis of Great Western Coal was merely perfunctory.

CONCLUSION

Respondent Dr. Falcon and Appellant SRHS entered into a Physician Employment Agreement which contains an ADR provision governed by the Federal Arbitration Act. In line with the FAA, the ADR provision delegates the threshold determination of the scope of issues subject to ADR to the mediator and, if necessary, the arbitrator. Dr. Falcon now raises a civil conspiracy claim against SRHS and its employed emergency medicine medical director which arises out of the PEA and alleges claims in which allegations against SRHS and Dr. Boyd are intertwined. The trial court committed reversal error of law by overlooking the delegation clause and failing to heed the initial determination of arbitrability to the mediator and/or arbitrator. The trial court's Orders should be reversed, and the Dr. Falcon should be ordered to comply with the ADR provision in his PEA if he wishes to pursue his claims against SRHS and Dr. Boyd.