STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	
)	CASE NO: 2025-CP-10-02946
DELORES WALKER,)	
)	**ORDER DENYING DEFENDANTS' MOTION TO DISMISS AND/OR COMPEL ARBITRATION IN THE ALTERNATIVE**
Plaintiff,)	
)	
vs.)	
)	
RE CARROLL MANAGEMENT COMPANY, HARBORSTONE LLC, HARBORSTONE APARTMENTS)	
)	
Defendants.)	

This matter came before the Court on RE Carroll Management Company and Harborstone LLC's (hereinafter "Defendant Harborstone") Motion to Dismiss and/or Compel Arbitration, filed June 26, 2025. The Court heard arguments from counsel on September 11, 2025. Having reviewed the Motion, memoranda from the parties' counsel, and oral arguments, the Court hereby **DENIES** Defendant Harborstone's Motion to Dismiss and/or Compel Arbitration. This decision is based on the following:

This matter arises from a premises liability claim concerning an alleged incident that occurred on March 7, 2023, when Plaintiff Delores Walker (hereinafter "Plaintiff") was injured while disposing of her trash into a trash compactor allegedly owned and maintained by Defendant Harborstone in Ladson, South Carolina. A Complaint was initiated against Defendants in this Court on May 20, 2025. Defendant Harborstone filed a Motion to Dismiss and/or Compel Arbitration in the Alternative seeking to enforce the arbitration clause contained in Defendant Harborstone's Lease ("Lease") with Plaintiff, which is this Motion.

This Court denies the Defendant's Motion for two reasons.

I. THE ARBITRATION CLAUSE IS INVALID BECAUSE THE LEASE DOES NOT INVOLVE INTERSTATE COMMERCE AND DOES NOT MEET THE NOTICE REQUIREMENTS UNDER SOUTH CAROLINA STATE LAW.

This Court finds that the arbitration provision found in Defendant Harborstone's lease agreement does not involve interstate commerce, the Federal Arbitration Act ("FAA") does not control, and therefore the arbitration provision is invalid under South Carolina State law for the following reasons:

A. The FAA governs an arbitration provision only if the contract involves interstate commerce and it is the burden of the moving party to prove the contract involved commerce in fact.

The Lease between Defendant Harborstone and Plaintiff included an arbitration provision on page 13, Paragraph 42, stating "all claims, demands, disputes, actions for damages, or other causes of action, whether in contract, tort, statutory or other law, ('Disputes') that in any way (i) arise out of and relate to this Lease, or (ii) arise out of and relate to the relationship of the Landlord and Resident created by this lease...will be resolved by binding arbitration conducted pursuant to the Federal Arbitration Act and will enforceable pursuant to the Federal Arbitration Act." *See* Pla.'s Memo. In Opp. of Mot. To Dismiss & Compel Arbitration, Ex.1 at 13. "To the extent that the laws of any state, including the laws of the State of South Carolina, conflict with the enforcement of this arbitration provision, the Federal Arbitration Act will control." *See id.*

The Supreme Court of South Carolina in *Hicks Unlimited, Inc. v. Unifirst Corp.*, has made it clear that "a provision in an arbitration agreement declaring that the FAA applies is not 'fait accompli.'" 439 S.C. 623, 630, 889 S.E.2d 564, 567 (S.C. 2023). "Just as the parties may not prove the requisite connection by agreeing their transaction or relationship 'contemplates' interstate commerce, *they may not make the connection by declaring or contemplating the FAA will govern.*" *Hicks Unlimited*, 439 S.C. at 632, 889 S.E.2d at 568 (emphasis added). The *Hicks Unlimited* Court further clarified that the reliance on the Supreme Court's prior rulings in *Munoz v. Green Tree Fin.*

Corp. and *Damico v. Lennar Carolinas, LLC*, have "allow[ed] parties to agree the FAA preempts South Carolina law without an accompanying demonstration the contract involves interstate commerce," is misplaced and the analysis must start with finding the contract involve interstate commerce. *Id.* (referencing *Munoz v. Green Tree Financial Corp.,* 343 S.C. 531, 542, S.E.2d 360 (2001); *Damico v. Lennar Carolinas, LLC*, 430 S.C. 188, 844 S.E.2d 66 (Ct. App. 2020)). The party claiming the FAA preempts state law bears the burden of proving the contract involves interstate commerce. *Hicks Unlimited*, 439 S.C. at 633, 889 S.E.2d at 569 (citing *Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 458, 730 S.E.2d 312, 317-18 (S.C. 2012).

The language in the arbitration provision in Defendant Harborstone's Lease states that the FAA controls and preempts the laws of South Carolina. The provision merely declares the FAA governs and does not extend to offer any other description of the implication of the FAA's control. Defense counsel argues that the language of the provision declaring the FAA applies and pre-empts state law was contemplated between the parties. This Court is not inclined to rule that the FAA governs the arbitration provision without furthering the analysis to consider whether interstate commerce is involved in the contract.

B. The lease agreement does not involve interstate commerce and is therefore invalid under the FAA and the South Carolina Code §15-48-10 arbitration notice requirement.

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. *See Hicks Unlimited*, 439 S.C. at 633, 889 S.E.2d at 569 (citing *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 380, 759 S.E.2d 727, 732 (2014)). The United States Supreme Court and the South Carolina Supreme Court have relied on affidavits when determining whether a transaction involves

interstate commerce. *Zabinski v. Bright Acres Associates*, 346 S.C. 580, 592, 553 S.E.2d 110, 117 (S.C. 2001).

In this case, Plaintiff entered into a Lease Agreement with Defendant Harborstone in Charleston County, South Carolina, on November 25, 2022, and is titled "Apartment Lease Agreement – South Carolina." *See* Pla.'s Memo. In Opp. of Mot. to Dismiss & Compel Arbitration, Ex.1 at 1. By the Lease Agreement, Plaintiff was to lease and rent from Landlord Defendant Harborstone an apartment located at address 3825 Ladson Road, Apartment 1202, Ladson, South Carolina 29456. *See Id.* Defendant RE Carroll Management Company is a North Carolina corporation authorized to conduct business in the County of Charleston, State of South Carolina. Defendant RE Carroll Management Company manages and maintains Harborstone Apartments in Charleston County, South Carolina. The obligations between the Defendant Landlord and Plaintiff arose out of the contractual relationship, solely regarding the Harborstone premises, located in Charleston County, South Carolina. Plaintiff alleges that Defendant Harborstone is liable for the injuries Plaintiff sustained while disposing of her trash into a trash compactor owned and maintained by Harborstone Apartments in Charleston County, South Carolina. Complaint at ¶ 8; 16.

This Court finds that contract is devoid of any basis of fact for holding that the Lease Agreement between the parties involved or contemplated interstate commerce. Without a finding that the contract involves interstate commerce, there is no basis to hold that the FAA governs the arbitration provision and therefore does not preempt the South Carolina Arbitration Act notice requirement in S.C. Code Ann. §15-48-10(a) (2005). The initial page of the contract is silent regarding the Lease being subject to arbitration and fails to meet the notice requirement in S.C. Code Ann. §15-48-10(a) (2005). Therefore, the arbitration provision is invalid and unenforceable.

II. THE ARBITRATION CLAUSE IS UNCONSCIONABLE AND THEREFORE UNENFORCEABLE.

Even if the arbitration provision was found to be valid under the FAA, which this Court finds it is not, the arbitration clause found in Paragraph 42 of the Lease Agreement would be unenforceable under South Carolina law. "In conducting an unconscionability inquiry, courts may only consider the provisions of the arbitration agreement itself, and not those of the whole contract." *Smith v. D.R. Horton*, 417 S.C. 42, 48, 790 S.E.2d 1, 4, (2016). Unconscionability, as it pertains to a contractual arbitration clause, is defined as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them, and no fair and honest person would accept them. *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 25, 644 S.E.2d 663, 669 (2007). Whether one party lacks meaningful choice in entering the arbitration agreement at issue typically speaks to the fundamental fairness of the bargaining process." *Gladden v. Boykin*, 402 S.C. 140, 148, 739 S.E.2d 882, 886 (2013). In determining whether an arbitration clause is unconscionable, South Carolina courts consider both the absence of meaningful choice and whether the clause contains oppressive, one-sided terms. *Simpson*, 373 S.C. at 25, 644 S.E.2d at 669 (2007).

Predictably, arbitration clauses are often found in contracts of adhesion. An adhesion contract is a standard form contract offered on a "take-it-or-leave-it" basis with terms that are not negotiable. *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 541, 542 S.E.2d 260, 365 (2001). And while an arbitration clause in an adhesion contract is not *per se* unconscionable, it is a strong indication that there is lack of meaningful choice in negotiating the terms of the contract and is met with "considerable skepticism" by courts. *Simpson*, 373 S.C. at 25, 644 S.E. 2d at 669 (2007). The South Carolina Supreme Court in *Simpson* held this position especially in analyzing adhesion

contracts involving consumer or weaker party and a retailer, due to the disparity in bargaining positions of the parties. *Id.* at 26.

The South Carolina Supreme Court in *Smith v. D.R. Horton*, adopted the *Simpson* analysis to determine if a meaningful choice to arbitrate was made by considering (1) the relative disparity in the parties' bargaining power, (2) the parties' relative sophistication, (3) whether the parties were represented by counsel, and (4) whether the plaintiff is a substantial business concern. 417 S.C. at 49, 790 S.E.2d at 4 (2016) (quoting *Simpson*, 373 S.C. at 25, 644 S.E.2d at 669). Courts will also consider the inconspicuous nature of the arbitration provision in light of its consequences. *Simpson*, 373 S.C. at 27, 644 S.E.2d at 663. In determining whether an arbitration clause is unconscionable and therefore unenforceable, South Carolina courts will also consider whether the contract contains oppressive and one-sided terms. *See Simpson*, 373 S.C. at 27, 644 S.E.2d at 670. The court in *Damico v. Lennar Carolinas, LLC* stated "*adhesive contracts are not unconscionable in and of themselves* ***so long as the terms are even-handed.***" 437 S.C. 596, 614, 879 S.E.2d 746, 756 (2022) (emphasis in the original).

Here, the Lease agreement between the Plaintiff and Defendant is clearly an adhesion contract. The arbitration provision was not negotiable on the Plaintiff's behalf and was presented to her on a "take-it-or-leave-it" basis. There is no bargaining power to the terms of the Lease agreement on the Plaintiff's behalf. There is a clear distinction in the sophistication of the parties. Defendants manage multiple apartment complexes across South Carolina and regularly conduct property lease transactions and other real property transactions. Plaintiff is a 55-year-old woman, with a high school level education, and had no other formal knowledge of business transactions or contracts. Even if Plaintiff held any form of bargaining power to the provisions of the Lease agreement, she would lack the business judgment to understand the effect of the arbitration

provision. Plaintiff lacked assistance from counsel when signing and entering into the Lease agreement. The Lease agreement was delivered via electronic mail and was electronically signed by Plaintiff. Plaintiff is a party to a singular Lease agreement with Defendants and rented a single unit in the Harborstone Apartment complex. Defendant RE Carroll Management Company is a multi-million-dollar corporation, doing business across the State of South Carolina, and is a party to numerous leasing agreements. Plaintiff would hardly be considered a substantial business concern to a multi-state corporation such as RE Carroll Management Company.

The arbitration provision contains several oppressive and one-sided terms including the inability to participate in a class action or any proceeding where someone acts in a representative capacity, limitations on the award of attorneys' fees, and language limiting the Defendants' liabilities. Lastly, the arbitration provision is found in Paragraph 42 of the 13-page Lease Agreement and is written in the same font and format as all other paragraphs. *See* Pla.'s Memo. In Opp. of Mot. To Dismiss & Compel Arbitration, Ex.1 at 13. Other than the parties' initials below the paragraph, there are no other conspicuous aspects that would alert Plaintiff to the significance of the arbitration provision. *See Id.*

As the subject Lease is a contract of adhesion, this Court determines the Plaintiff lacked meaningful choice and could not negotiate its terms, and that the arbitration clause contains several oppressive and one-sided terms. For these reasons, the arbitration clause of the Lease agreement is unconscionable, and thus unenforceable.

Based on the foregoing evidence, this Court determines Defendant Harborstone's Motion to Dismiss and/or Compel Arbitration is **DENIED.**

AND IT IS SO ORDERED.

The Honorable Carmen T. Mullen

Charleston, South Carolina
October ___, 2025

Charleston Common Pleas

Case Caption:	Delores Walker VS Re Carroll Management Company , defendant, et al
Case Number:	2025CP1002946
Type:	Order/Compel

So Ordered

s/Carmen T Mullen 2142