THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED
Dec 23 2025
S.C. SUPREME COURT

APPEAL FROM DARLINGTON COUNTY
Court of Commons Pleas

Michael S. Holt, Presiding Judge

Appellate Case No. 2025-002227

Joshua Phillips, ... Petitioner,

v.

Renu Energy Solutions, LLC, ...Respondent.

RESPONDENT'S RETURN TO PETITIONER'S WRIT OF CERTIORARI

James Edward Bradley, SC Bar #66130
Moore Bradley Myers Law Firm, PA
1700 Sunset Blvd. (29169)
PO Box 5709
West Columbia, SC 29171
803-796-9160
Ward@mbmlawsc.com
Attorney for Respondent

TABLE OF CONTENTS

Table of Authorities ii

Statement of Issues on Appeal 1

Statement of the Case 2

Argument 4

I. The Court of Appeals correctly determined that the arbitration clause was not unconscionable. 4

A. The Court of Appeals correctly determined that the petitioner did not lack a meaningful choice when signing the agreement. 5

B. The Court of Appeals correctly determined that the arbitration clause did not contain terms that are oppressive or one sided. 7

i. The Court of Appeals correctly found that the alleged costs of arbitration were unduly speculative and based on the incorrect assumption that the arbitration would be governed by AAA Construction Rules instead of AAA Consumer Rules. 7

ii. The Court of Appeals correctly found that the provision did not limit the type of remedy Philips could receive. 10

II. The Court of Appeals correctly applied S.C. Code § 15-7-120(b) in determining it was not unconscionable to allow the arbitration to be held in Charlotte 10

III. The Court of Appeals correctly determined respondent did not waive arbitration by filing a request to admit damages concurrently with its motion to dismiss. 11

Conclusion 13

TABLE OF AUTHORITIES

CASES

Carolina Care Plan, Inc. v. United HealthCare Servs., Inc., 361 S.C. 544, 606 S.E.2d 752, (2004) 4, 5

Dean v. Heritage Healthcare of Ridgeway, 408 S.C. 371, 759 S.E.2d 727 (2014)....................11

Doe v. TCSC, LLC, 430 S.C. 602, 846 S.E.2d 874 (Ct. App. 2020)....................7

Gen. Equip. & Supply Co., 344 S.C. 553, 544 S.E.2d 643 (Ct. App. 2001)....................11

Gladden v. Boykin, 402 S.C. 140, 739 S.E.2d 882 (2013)....................5, 6

Green Tree Fin. Corp.-Ala. v. Randolph, 531 U.S. 79, 89 (2000) 7. 9

Hooters of Am., Inc. v. Phillips, 173 F.3d 933 (4th Cir. 1999)....................4

Johnson v. Heritage Healthcare of Estill, LLC, 416 S.C. 508, 788 S.E.2d 216 (2016). 11

Lavender v. Kurn¸ 327 U.S. 645, 653 (1946). 9

Liberty Builders Inc. v. Horton, 336 S.C. 658, 665, 521 S.E.2d 749, 753 (Ct. App. 1999). ...11, 12

Munoz v. Green Tree Financing Corp., 343 S.C. 531, 524 S.E.2d 360 (2001)....................9

Rich v. Walsh, 357 S.C. 64, 590 S.E.2d 506 (Ct. App. 2003). 12

Simpson v. MSA of Myrtle Beach, 373 S.C.14, 644 S.E.2d 663 (2007). 4, 5, 6

Strategic Res. Co. v. BCS Life Ins. Co., 367 S.C. 540, 627 S.E.2d 687 (2006)....................8

Toler's Cove Homeowners Ass'n Inc. v. Trident Constr. Co., 355 S.C. 605, 586 S.E.2d 581 (2003) 11, 12

OTHER

American Arbitration Association Rules....................12

Federal Arbitration Act....................10, 11

S.C. Code Ann. § 15-7-120(A) 10, 11, 13

S.C. Code Ann. § 15-7-120(B) 10, 11, 13

SCRCP Rule 56 8

SCRE, Rule 802....................9

STATEMENT OF ISSUES ON APPEAL

I. Did the Court of Appeals correctly determine that the petitioner did not lack a meaningful choice when signing the agreement?

II. Did the Court of Appeals correctly determine that the arbitration clause did not contain terms that are oppressive or one sided?

III. Did the Court of Appeals correctly apply S.C. Code § 15-7-120(B) in determining it was not unconscionable to allow the arbitration to be held in Charlotte, N.C.?

IV. Did the Court of Appeals correctly determine respondent did not waive arbitration by filing a request to admit damages concurrently with its motion to dismiss?

STATEMENT OF THE CASE

Respondent, Renu Energy Solutions, LLC ("Renu") sells and installs solar panel systems for homes. (R. p. 27, ¶ 2). Petitioner, Joshua Phillips ("Phillips"), lives in Darlington County, South Carolina. (R. p. 27, ¶ 1). Phillips bought a solar panel system from Renu for his home. In November 2019, Renu sent the contract to Phillips for an electronic signature to review at his home. (R. pp. 301-307). He executed the sales agreement on November 13, 2019. (R. p. 28, ¶¶ 6-7). The contract is six pages long. (R. pp. 301-307). The arbitration clause is on the second page directly above Phillips' initials. It is titled "ARBITRATION" in all capital letters and reads as follows:

> 6. ARBITRATION
> With the exception of 1) suits or claims for money owed by Purchaser under this Agreement, 2) those suits or claims which deal with repossession of equipment and parts subject to this Agreement, 3) and those disputes which, by law, may not be submitted to Arbitration but must be determined by a judicial tribunal, any and all disputes arising out of or in connection with the Agreement shall, at the option of either party, be submitted to a panel of three arbitrators in the City of Charlotte, North Carolina, one to be appointed by each party, and the third by the two so chosen. If the parties agree, the dispute may be submitted to one arbitrator mutually agreeable to both parties. If there is a failure to select arbitrator(s) in this manner, then the arbitrator(s) shall be selected in accordance with the Rules of the American Arbitration Association. The decision of the arbitrator, or in the case of three arbitrators, of any two of them, shall be binding and final. The arbitration shall be held in accordance with the Rules of the American Arbitration Association. Judgment upon the award rendered may be entered in any court having jurisdiction or application may be made to such court for a judicial acceptance of the award and an order for enforcement as the case may be.

(R. p. 306). The agreement requires Renu to sell and install the solar system, with the solar panels being covered under both Renu's Limited Warranty and the Manufacturer's Warranty. (R. pp. 302, 306).

More than three years after signing the agreement, on November 15, 2022, Phillips sued Renu. (R. pp. 26-44). Phillips never requested arbitration with Renu and did not file to arbitrate with the American Arbitration Association ("AAA"). On January 1, 2023, Renu filed a motion to

compel arbitration. (R. p. 58). On February 17, 2023, Phillips filed a personal affidavit along with a brief in opposition to the motion. His affidavit admits he signed the contract and that the purchase was for personal and household use. (R. p. 81, ¶¶ 3, 4, and 5). It goes on to recite that he has "been informed and believes that the American Arbitration Association construction industry rules that would be applicable to my case would require me to pay a minimum advance filing fee of $4,400 just to initiate the arbitration." (R. p. 82, ¶ 12). He goes on to recite that he has been informed "a single arbitrator's fee can routinely exceed $35,000 through a final hearing." (*Id.* at ¶ 12). He does not give a source for these hearsay allegations. Phillips' attorney asserts these same hearsay statements in his affidavit to the court. (R. p. 94, ¶¶ 30-34). He too does not give a source for these hearsay allegations. Counsel for Renu objected to this factual basis at the hearing.

According to an email from Judge Holt's law clerk, Judge Holt decided in favor of Phillips on February 23, 2023. (R. pp. 109-111). This email did not reach the parties until July 24, 2023. In the interim, Plaintiff's counsel filed two additional affidavits on July 11, 2023, approximately five months after the motion was argued. The Court did not respond or invite counsel for Renu to respond to the untimely filed affidavits. The Court then incorporated statements from these affidavits into its order of August 11, 2023, though it had not requested the affidavits or extended counsel for Renu an opportunity to respond to the affidavits.

The trial judge held that the arbitration clause was unconscionable and against public policy. In holding this, Judge Holt determined Phillips lacked meaningful choice in the agreement to arbitrate. (R. p. 3). He also held the arbitration clause contained oppressive and one-sided terms, thus making it substantively unconscionable, due to excessive fees, non-mutuality in the arbitration clause, and an out-of-state venue provision. (R. pp. 4-14). Finally, he held that the unconscionable arbitration clause should not be severed. (R. pp. 14-16). Renu moved for reconsideration on August

17, 2023. (R. p. 96). Judge Holt denied Renu's motion on February 28, 2024. Renu appealed Judge Holt's refusal to enforce the arbitration clause on March 7, 2024. (R. p. 25).

On July 7, 2023, a Panel of the South Carolina Court of Appeals reversed Judge Holt's order. The Panel held Philips did not lack meaningful choice because "solar panels are not a necessity" and the provision at issue was not inconspicuous. 2025-UP-225, 2 (S.C. Ct. App. 2025). Additionally, the Panel held Renu's agreement did not contain oppressive, one-sided terms because the trial court relied on "unduly speculative" costs, adopted the incorrect rules under the AAA's rules, and improperly found the arbitration clause lacks mutuality. Next, it held that the choice of location clause did not render the arbitration clause unenforceable. Finally, the Panel held that Renu filed its motion to compel arbitration concurrently with its answer and thus it did not "wait an extensive amount of time prior to filing its motion to compel" to constitute waiver.

On August 14, 2025, Phillips filed a Petition for Rehearing with the Court of Appeals, and this petition was denied on October 22, 2025. Phillips now files a Writ for Certiorari with the South Carolina Supreme Court.

ARGUMENT

I. THE COURT OF APPEALS CORRECTLY DETERMINED THAT THE ARBITRATION CLAUSE WAS NOT UNCONSCIONABLE.

Unconscionability is 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*, 373 S.C. 14, 25, 644 S.E.2d 663, 668 (2007) (citing *Carolina Care Plan, Inc. v. United HealthCare Servs., Inc.*, 361 S.C. 544, 554, 606 S.E.2d 752, 757 (2004)). In *Simpson*, our Supreme Court adopted the Fourth Circuit's analysis for evaluating unconscionability in arbitration agreements by focusing generally on whether the arbitration clause is geared towards achieving an

"unbiased decision by a neutral decision-maker." *Id.* (citing *Hooters of Am., Inc. v. Phillips*, 173 F.3d 933, 938 (4th Cir. 1999)). Courts evaluate this by examining whether the party seeking to invalidate the arbitration agreement had both an absence of meaningful choice and the contract contained oppressive, one-sided terms. *Id.* at 25, 644 S.E.2d at 669.

The Simpson court examined both prongs of the unconscionability analysis when a customer sued a car dealership after entering into an arbitration agreement for the trade-in of her car purchase of a new van. *Simpson*, at 22, 644 S.E.2d at 666. The contract limited Simpson's statutory remedies under the Regulation of Manufacturing, Distributors and Dealers Act. As a result, the Court held that the totality of the circumstances indicated a lack of meaningful choice and oppressive, one-sided terms such that the agreement was unconscionable and unenforceable. *Id.* at 37, 644 S.E.2d at 675.

A. The Court of Appeals Correctly Determined that the Petitioner Did Not Lack a Meaningful Choice When Signing the Agreement.

The Panel correctly determined that Phillips did not lack a meaningful choice in agreeing to the arbitration clause because the contracted item was not a necessity and the provision at issue was not inconspicuous in nature.

In *Gladden*, our Supreme Court cautioned against finding unconscionability in contracts of adhesion, "[e]ven when the substance of the terms appear grossly unreasonable, unless the circumstances surrounding its formation present such an extreme inequality of bargaining power, together with factors such as lack of basic reading ability and the drafter's evident intent to obscure the term, that the party against whom enforcement is sought cannot be said to have consented to the contract." *Gladden v. Boykin*, 402 S.C. 140, 145, 739 S.E.2d 882, 884–85 (2013). The *Gladden* court further clarified that contractual terms written in the same font as the other terms with no

indication that the drafter intended to obscure the term do not support a finding that a party lacked meaningful choice. *Id.* at 146, 739 S.E.2d at 885.

In holding that the customer in *Simpson* lacked meaningful choice, the court relied on cars being considered a necessity for everyday life. *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 27, 644 S.E.2d 663, 669–70 (2007). Further, the court identified that the contract was "hastily presented for signature" and "embedded in paragraph ten of sixteen including on the page." *Id.* The court explicitly noted that the agreement "required Simpson to forego certain remedies otherwise required by statute" and limited their holding "in the context of an adhesion contract for a vehicle trade-in." *Id.* at 28, 644 S.E.2d 663, 670.

Here, the trial court relied heavily on *Simpson* labeling the arbitration clause in this case as "under nearly identical [in] circumstances" to the arbitration clause in that case. The Panel corrects this mistake because there is no evidence in the record to support the finding that the contract was hastily presented to Phillips in a face-to-face sales interaction. Instead, the contract was sent to Phillips for electronic signature to review at his own home. The contract was for the purchase of solar panels, not for a "necessity" such as a home or automobile.

The Panel found that the headings appearing in all capital letters and in the same font as all other terms in the contract, thus the arbitration clause was not inconspicuous. In addition, the arbitration clause appears directly over Phillips' initials on the second page of the contract. There is no evidence suggesting the arbitration term was inconspicuous as required by *Gladden*. Phillips, at all times, retained the ability to decline the agreement and opt not to purchase the solar panels from Renu. The arbitration provision limits no remedies or legal rights of Phillips. Phillips retained a meaningful choice in the decision to arbitrate because the product offered was not a necessity

and there is no evidence in the record to support that the contract was hastily presented to him with an inconspicuous arbitration agreement.

B. The Court of Appeals Correctly Determined that the Arbitration Clause Did Not Contain Terms that Are Oppressive or One Sided.

The Panel correctly determined that the arbitration clause was not oppressive or one sided because the alleged costs of arbitration put forth by Phillips were unduly speculative based on Phillips' incorrect assumption that the arbitration would be governed by the AAA Construction Rules instead of the AAA Consumer Rules. Additionally, the provision does not lack mutuality in regards to remedy because the provision does not limit the remedy Phillips can receive, only the forum by which he can receive it.

i. The Court of Appeals correctly found that the alleged costs of arbitration were unduly speculative and based on the incorrect assumption that the arbitration would be governed by AAA Construction Rules instead of AAA Consumer Rules.

"Unconscionability is gauged at the time the contract was made." *Doe v. TCSC, LLC*, 430 S.C. 602, 612, 846 S.E.2d 874, 879 (Ct. App. 2020). In *Green Tree*, the Supreme Court evaluated whether an "agreement to arbitrate is unenforceable because it says nothing about the costs of arbitration, and thus fails to provide [the consumer] protection from potentially substantial costs of pursuing her . . . claims in the arbitral forum." *Green Tree Fin. Corp.-Ala. v. Randolph*, 531 U.S. 79, 89 (2000). The consumer argued that the agreement's silence on the costs created a risk that she would be required to bear prohibitive costs. *Id.* at 90. The Court held that the agreement's silence on the subject of costs is "insufficient to render it unenforceable" and the risk of prohibitive costs are "too speculative to justify the invalidation of the arbitration agreement." *Id.* A party challenging arbitration on the basis of prohibitive costs bears the burden of showing the likelihood of incurring such costs. *Id.* at 92. The "risk" that a party resisting arbitration will face prohibitive costs is "too speculative to justify the invalidation of an arbitration agreement." *Id.*

Our Supreme Court has considered whether injunctive relief is proper when two parties cannot agree which set of AAA Rules should govern. *Strategic Res. Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 545, 627 S.E.2d 687, 689 (2006). In that case, BCS argued that because the parties could not agree as to which set of AAA rules to apply to their dispute, arbitration was futile. *Id.* at 546, 627 S.E.2d 689. The court expressly rejected this argument finding that injunctive relief was not proper because an adequate remedy of law existed under arbitration. *Id.* The court reasoned that any disagreement over the rules was properly heard at arbitration. *Id.* at 545, 627 S.E.2d at 690.

In this case, the dispute over whether Consumer or Construction Rules should be applied during arbitration should be heard before an arbitrator instead of a court. The AAA rules assume that the Consumer Rules apply to this dispute because Phillips is a consumer and Renu is a commercial entity. Renu has consented to the AAA Consumer Rules. Phillips has produced no evidence that the Consumer Rules do not apply. And he has not even attempted to invoke arbitration as required by the contract he signed. As a result, there is no evidence that the AAA would apply any rules other than the Consumer Rules.

Phillips submitted affidavits regarding his personal ability to pay and his lawyer's experience in another case based on the incorrect belief that the arbitration would be governed by Construction Rules.[1] These statements should not be relied on because they are inadmissible hearsay and not based on first-party knowledge. Supporting and opposing affidavits must be made on "personal knowledge." SCRCP Rule 56(e). The affiant must set forth the facts as would be admissible in evidence and "show affirmatively that the affiant is competent to testify to the

[1] The trial court's reliance on Phillips' affidavit is in error. The most recent publication of the AAA Consumer Arbitration report contains 148 instances of a company with "Solar" included in its name where the dispute type is not "financing" and involves disputes similar to this one. (https://www.adr.org/consumer)

matters stated therein." *Id.* Speculation and conjecture are not a substitute for probative facts. *Lavender v. Kurn*¸ 327 U.S. 645, 653 (1946). "Hearsay is not admissible except as provided by the [South Carolina Rules of Evidence] or by other rules prescribed by the Supreme Court of this State or by statute." Rule 802, SCRE.

Phillips stated in his affidavit that the "projected average cost of $25,826.41 to pursue my claims in arbitration according to the terms of the arbitration clause would be nearly half of my annual salary." (R. p. 89, ¶ 7). The purported projected average cost came directly from the affidavit of Phillips' counsel, where he relies on "several cases" he has filed. (R. p. 91, ¶¶ 12-13). Phillips then relies on data from the AAA filtered to only include construction disputes, without published data on the amount in controversy and other crucial variables to arrive at a projected average cost of $25,826.41. (R. pp. 93-94, ¶¶ 25-34). This exact projected average cost, based on information outside the personal knowledge of both Phillips and his lawyer, to support its finding of unconscionability was improper. (R. p. 6). In fact, Phillips' lawyer knows of a dispute with Renu in Sumter County which went to arbitration under the AAA Consumer Rules. Therefore, the trial court erred in relying on hearsay evidence because the information contained in Phillips' affidavits exceeded the scope of the affiants' personal knowledge and incorporated out-of-court statements to speculate as to costs.

Here, as in *Green Tree*, Phillips has merely presented evidence that he believes a dispute proceeding to arbitration *could* apply the Construction Rules. The language of the Consumer Rules applies to this dispute and the rules require only a $200 filing fee. Phillips' speculation as to the risk of over-burdensome fees is insufficient to carry the burden of showing prohibitive costs for the purposes of unconscionability. If Phillips is concerned with his speculation as to excessive

fees, the proper remedy is judicial appointment of arbitrators in accordance with the Consumer Rules - not a finding of substantive unconscionability.

ii. The Court of Appeals correctly found that the provision did not limit the type of remedy Philips could receive.

The arbitration agreement exempts collection actions, repossession, and any actions which must be decided by a court. Lack of mutuality does not make an arbitration agreement unenforceable. *Munoz v. Green Tree Financing Corp*., 343 S.C. 531, 524 S.E.2d 360 (2001). In *Munoz*, the plaintiff argued an arbitration agreement that allowed a lender to judicially foreclose a mortgage but required the borrower to arbitrate claims was unconscionable. It noted that the arbitration agreement did not determine the remedy for the borrower's claims. Instead, the arbitration agreement only provided for the forum in which to bring the claims. Just like Phillips, the Munozes were not deprived of a remedy. They merely had to seek their remedy through arbitration to which they agreed. As a result, the arbitration clause is not void for lack of mutuality.

II. THE COURT OF APPEALS CORRECTLY APPLIED S.C. CODE § 15-7-120(B) IN DETERMINING IT WAS NOT UNCONSCIONABLE TO ALLOW THE ARBITRATION TO BE HELD IN CHARLOTTE.

The Panel correctly held that § 15-7-120(B) applies and is preempted by federal law and thus the Federal Arbitration Act ("FAA") rules should apply. South Carolina Code Section 15-7-120(B) states that a provision within an arbitration agreement requiring proceedings to be held outside the state of South Carolina is not enforceable. The remaining provisions of the arbitration agreement remain enforceable consistent with the FAA and "applicable rules of arbitration." S.C. Code Ann. § 15-7-120(B).

Here, § 15-7-120(B) applies over § 15-7-120(A) because subsection (B) specifically addresses venue provisions in arbitration agreements as opposed to civil claims filed with the circuit court. Additionally, the provision of the arbitration agreement requiring arbitration to take

place in Charlotte, North Carolina, contradicts the South Carolina Code. Therefore, that provision may be unenforceable, but according to the statute does not affect the enforceability of the remaining arbitration provisions. The statute allows the remaining provisions of this agreement to stay intact, and the agreement remains enforceable. Renu stipulated it would consent to arbitration in the state of South Carolina. (R. p. 198). The venue provision does not render the entire arbitration agreement unenforceable and does not contribute to the analysis of oppressive, one-sided terms for the purpose of unconscionability. Therefore, the Court of Appeals correctly determined that § 15-7-120(B) is preempted by the FAA and the venue provision is not unconscionable.

III. THE COURT OF APPEALS CORRECTLY DETERMINED RESPONDENT DID NOT WAIVE ARBITRATION BY FILING A REQUEST TO ADMIT DAMAGES CONCURRENTLY WITH ITS MOTION TO DISMISS.

The Panel correctly determined that Renu did not waive its right to arbitration by filing a request to admit damages because the filing occurred contemporaneously with its answer thus there was no extensive amount of discovery.

"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." *Johnson v. Heritage Healthcare of Estill, LLC*, 416 S.C. 508, 513, 788 S.E.2d 216, 219 (2016) (citing *Gen. Equip. & Supply Co.*, 344 S.C. 553, 556, 544 S.E.2d 643, 645 (Ct. App. 2001)). "Mere inconvenience or delay is insufficient to establish prejudice on its own." *Id.* (citing *Toler's Cove Homeowners Ass'n Inc. v. Trident Constr. Co.*, 355 S.C. 605, 612, 586 S.E.2d 581, 585 (2003)). The FAA requires courts to resolve "any doubts concerning the scope of arbitrable issues . . . in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability." *Dean v. Heritage Healthcare of Ridgeway*, 408 S.C. 371, 388, 759 S.E.2d 727, 736 (2014). Thus, there is a presumption against finding a party has waived its

right to compel arbitration. *Id.* Specifically, the party seeking to avoid arbitration "must show prejudice through an undue burden caused by delay in demanding arbitration." *Id.* (citing *Liberty Builders Inc. v. Horton*, 336 S.C. 658, 665, 521 S.E.2d 749, 753 (Ct. App. 1999).

In *Rich v. Walsh*, this Court examined whether a bank had waived its right to arbitrate after filing its answer, counterclaims, taking a deposition, and waiting thirteen months to file a motion to compel arbitration. *Rich v. Walsh*, 357 S.C. 64, 66–67, 590 S.E.2d 506, 507 (Ct. App. 2003). This Court held that the bank had not waived its right through "minimal discovery efforts" such as submitting one set of interrogatories, one set of requests, filing a motion to compel discovery responses, and taking a brief deposition. *Id.* at 72–73, 590 S.E.2d at 510. Further, the Court held that a speculative assertion that the bank had accessed information in pretrial discovery unavailable in arbitration was insufficient to establish waiver. *Id.* at 73, 590 S.E.2d at 511.

The Panel determined that Renu filed its motion to compel arbitration concurrently with its answer. 2025-UP-225, 4 (S.C. Ct. App. 2025). The trial court incorrectly held that Renu "availed itself of litigation procedures in this Court which would be unavailable in arbitration." (R. p. 76). Renu concurrently filed a request to admit damages as less than $75,000 with its Answer and Motion to Dismiss and Compel Arbitration. (R. p. 186). Question three on both the Consumer and Construction Arbitration Demand Forms provided by the AAA requests the claimant provide the amount in dispute.[2] Therefore, Renu had not accessed litigation procedures unavailable in arbitration.

---

[2] *See* AAA Construction Arbitration Rules Demand for Arbitration (https://www.adr.org/sites/-default/files/Construction_Demand_Form.pdf); AAA Demand for Arbitration Consumer Arbitration Rules (https://adr.org/sites/default/files/Consumer_Demand_for_Arbitration_Form-_1.pdf).

Additionally, the Panel found that the trial court referenced a series of cases stating a party waives the right to compel arbitration after participating in discovery. 2025-UP-225, 4 (S.C. Ct. App. 2025). However, Phillips must show that Renu participated in "extensive discovery" and that Phillips suffered prejudice as a result of that delay. Here, Phillips demonstrated no prejudice as a result of Renu's filing because the Requests to Admit, Answer, and Motion for Dismissal and to Compel Arbitration were filed concurrently, only three months after Phillips' Complaint was filed. (R. p. 186, ¶ 1).

CONCLUSION

This Court should deny Petitioner Joshua Phillips' Petition for a Writ of Certiorari because the Court of Appeals correctly determined that the arbitration clause in Renu's contract was not procedurally or substantively unconscionable, that § 15-7-120(B) applied over § 15-7-120(A), and that Renu did not waive arbitration by filing a request to admit damages concurrently with its motion to dismiss.

Respectfully submitted,

/s/ James Edward Bradley _________
James Edward Bradley, SC Bar #66130
Moore Bradley Myers Law Firm, PA
1700 Sunset Blvd. (29169)
PO Box 5709
West Columbia, SC 29171
803-796-9160
Ward@mbmlawsc.com
Attorney for Respondent

December 23, 2025
West Columbia, SC