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**Mar 19 2026**

**SC Court of Appeals**

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

The Honorable Deadra L. Jefferson, Circuit Court Judge

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Appellate Case No.: 2025-002466

Case No.: 2024-CP-10-03700

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Joseph W. Rohe,

Respondent,

v.

SHM Charleston City Marina, LLC d/b/a  
Safe Harbor Charleston City; and SHM  
Charleston Boatyard, LLC d/b/a Safe  
Harbor City Boatyard,

Appellants.

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FINAL BRIEF OF RESPONDENT

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March 19, 2026

TABLE OF CONTENTS

TABLE OF AUTHORITIES ..... iii

STATEMENT OF THE CASE ..... 1

ARGUMENT ..... 1

    I.    The Service Agreement does not constitute a “maritime transaction” as  
          defined under the Federal Arbitration Act ..... 1

    II.   Appellants fail to show the requisite effect on maritime commerce ..... 3

    III.  Appellants fail to show the requisite connection with interstate commerce ..... 4

    IV.  Under state law, arbitration of this dispute is strictly precluded under S.C.  
          CODE ANN. § 15-48-10(a) ..... 7

    V.   Enforcement of the arbitration provision would now be unconscionable ..... 8

CONCLUSION ..... 9

TABLE OF AUTHORITIES

9 U.S.C. § 1 ..... 1, 5

S.C. CODE ANN. § 15-48-10(a)..... 7,8

S.C. R. Civ. P. 220(c)..... 9

*Ex parte Messer*, 333 S.C. 391, 394 (Ct. App. 1998)..... 7

*Hicks Unlimited, Inc. v. Unifirst Corp.*, 439 S.C. 623, 632, 889 S.E.2d 564 (2023)..... 5, 6, 7

*Koechli v. BIP Int’l, Inc.*, 870 So.2d 940 (Fla. Dist. Ct. App. 2004)..... 4

*Lackey v. Green Tree Fin. Corp.*, 330 S.C. 388, 395, 498 S.E.2d 898 (Ct. App. 1998)..... 8

*Mathews v. Flour Corp.*, 312 S.C. 404, 407, 440 S.E.2d 880 (1994)..... 5, 6, 7

*Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 538, 542 S.E.2d 360 (2001)..... 5, 8

*Sea Vessel, Inc. v. Reyes*, 23 F.3d 345, 349-350 (11th Cir. 1994)..... 3, 4

*Sisson v. Ruby*, 497 U.S. 358 (1990)..... 2, 3

*Soil Remediation Co. v. Nu-Way Envt’l*, 323 S.C. 454, 460, 476 S.E.2d 149 (1996)..... 5, 7, 8

## STATEMENT OF THE CASE

On March 18, 2024 Respondent engaged Appellants by way of a “Haul and Service Authorization” (the “Service Agreement”) to perform certain services upon Respondent’s boat (the “Vessel”) in Charleston, South Carolina. Between March 18 and May 6, 2024, Appellants, their agents and/or employees performed certain maintenance services upon the Vessel while it was moored at a dock adjacent to Appellants’ property. Despite Appellants’ assertions, at no time did Appellants provide power, water, supplies, stores, dockage or storage to/of the Vessel.

Before work was completed, Appellants issued three (3) separate invoices for work allegedly performed. In addition to causing damage to the Vessel, Appellants invoiced and charged Respondent for work that was not performed, double charged for work, and otherwise overcharged Respondent in various particulars. After the dispute as to the amounts charged arose, Appellants then informed Respondent that they had not, in fact, completed the work. As a result, Respondent initiated legal action against Appellants as further set forth in Respondent’s Amended Complaint filed August 20, 2024.

## ARGUMENT

### I. THE SERVICE AGREEMENT DOES NOT CONSTITUTE A “MARITIME TRANSACTION” AS DEFINED UNDER THE FEDERAL ARBITRATION ACT.

Despite Appellant’s new characterization of the Service Agreement as a “maritime service agreement,” the Service Agreement does not, in and of itself, constitute a “maritime transaction” as defined under the Federal Arbitration Act (the “FAA”).

Under the FAA, “Maritime transactions’...means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or repairs to vessels, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction.” 9 U.S.C. § 1. “Commerce” is paramount to triggering

the FAA. Appellants were hired to provide routine maintenance to a privately owned non-commercial Vessel. Appellants did not provide any wharfage or supplies such as power, provisions or water to the Vessel. In fact, Respondent even supplied the filters, oil and coolant for the engine maintenance. While “maritime transactions” is statutorily defined to include “supplies furnished vessels or repairs to vessels,” nowhere does it specifically state that it includes general, routine maintenance or service.

Though Appellants cite a number of cases in support of their position, none of them stand for the propositions Appellants suggest. Firstly, none of the cited cases addressed the issue of application of the FAA but rather considered questions of federal admiralty jurisdiction under 28 U.S.C. § 1333. Appellants cite *Sisson v. Ruby*, 497 U.S. 358 (1990) as authority that “storage and maintenance of a vessel at a marina on navigable waters” confers admiralty jurisdiction. Therein, a private pleasure yacht caught fire while docked on Lake Michigan, causing extensive damage to the vessel, the marina and several adjacent vessels. *See id.* at 360. Like Appellants’ other citations of authority, *Sisson* did not deal with the question of application of the FAA; however, *Sisson* did note that “protecting *commercial* shipping is at the heart of admiralty jurisdiction.” *See id.* at 362 [emphasis added]. As such, and while recognizing that admiralty jurisdiction is not “restricted to those individuals actually *engaged* in commercial maritime activity,” *non-commercial maritime activity must have an effect on maritime commerce.* *See id.* (emphasis added). “[A] court must assess the general features of the type of incident involved to determine whether such an incident is likely to disrupt commercial activity. Here, the general features—a fire on a vessel docked at a marina on navigable waters—plainly satisfy the requirement of potential disruption to commercial maritime activity.” *Id.* at 363. Unlike *Sisson*, the wrongs alleged of Appellants in the present matter have no likelihood of disrupting commercial maritime activity. *See Sisson*, 497 U.S. at 362 (“a fire

that began on a noncommercial vessel...has a potentially disruptive impact on maritime *commerce*, as it can spread to nearby *commercial* vessels or make the marina inaccessible to such [*commercial*] vessels.”) (emphasis added).

Appellants additionally argue that “at minimum, storage of a vessel constitutes a maritime contract, and the maintenance and servicing of the Vessel here indisputably required storage.” (App.s’ Init. Brief, Pg. 9.) However and as noted above, the Vessel was moored at an adjacent property and was not “stored” by Appellants. Accordingly, Appellants’ argument that a contract for the storage of a vessel constitutes a maritime transaction is irrelevant as there was no contract between the parties involving storage of a vessel upon a navigable waterway.

## II. APPELLANTS FAIL TO SHOW THE REQUISITE EFFECT ON MARITIME COMMERCE.

Even if Appellants are correct that the dispute involves a “maritime transaction,” Appellants still must satisfy the nexus test. “The nexus test involves two queries: (1) Did the incident have a ‘potentially disruptive impact on maritime commerce’ and (2) Does a ‘substantial relationship’ exist ‘between the activity giving rise to the incident and traditional maritime activity’?” *Sea Vessel, Inc. v. Reyes*, 23 F.3d 345, 349-350 (11th Cir. 1994)(citing *Sisson*, 497 U.S. at 363-64). Respondent asserts that Appellants satisfy neither of the two queries.

As to the first query of the nexus test, “a court must assess the general features of the type of incident involved to determine whether such an incident is likely to disrupt *commercial* activity.” *Reyes*, 23 F.3d at 350 [emphasis added]. *Reyes*, like *Sisson*, dealt with a fire aboard a vessel on navigable waters. Because the fire “*could* have spread to other vessels and *could* have resulted in the obstruction of a navigable waterway,” the Court held that the fire “constituted a potential disruption to maritime commerce” and thus satisfied the first query of the nexus test. *See Reyes*, 23 F.3d at 350. Unlike *Sisson* and *Reyes*, the wrongs alleged of Appellants in the present matter

have no likelihood of disrupting commercial maritime activity and thus fail to satisfy the first query.

As to the second query of the nexus test, Appellants must show a “substantial relationship” with a “traditional maritime activity.” As noted above, while “vessel repairs” have been held to constitute a “traditional maritime activity,” the cases cited by Appellants do not stand for the proposition that “routine maintenance” of a vessel constitutes a “traditional maritime activity.” While *Reyes* noted that “[i]n *Sisson*, the Supreme Court held that ‘maintenance of a vessel at a marina on navigable waters is substantially related to traditional maritime activity,’” a reading of *Sisson* clearly demonstrates that “maintenance of a vessel at a marina” refers not to work performed but to the *storage* of a vessel at a marina. See *Reyes*, 23 F.3d at 351; see also *Sisson*, 497 U.S. at 358 (“A fire erupted in the washer/dryer area of petitioner *Sisson*’s pleasure yacht while it was docked at a Lake Michigan marina, destroying the yacht and damaging several neighboring vessels and the marina.”).

Accordingly, even if this Court finds that Appellants have satisfied the second query of the nexus test, they still have failed in the first query and therefore have failed to demonstrate the requisite effect on maritime commerce.

### III. APPELLANTS FAIL TO SHOW THE REQUISITE CONNECTION WITH INTERSTATE COMMERCE.

In *Koehli v. BIP Int’l, Inc.*, 870 So.2d 940 (Fla. Dist. Ct. App. 2004), the Court found the FAA applicable “[b]ecause this case involves interstate commerce.” *Koehli*, 870 So.2d at 943. *Koehli* involved a disagreement arising from a contract to substantially renovate a vessel to operate as a luxury charter yacht. While the issue on appeal in *Koehli* did not involve application of the FAA, it is worth noting that the case seemingly rejects Appellants’ position that the Court “need not reach the interstate commerce issue.” See Defs. Mot. to Alter or Amend, p. 1.

As Respondent has previously argued, 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.”).<sup>1</sup> 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.”).

“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.”). Thus, “[t]he Court must examine the agreement, the compliant, 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.

Herein, the transaction that is the subject of this dispute is confined in all respects to the State of South Carolina and, thus, has no connection or relation with interstate commerce – let

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<sup>1</sup> 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].

alone a substantial one. Respondent is a citizen and resident of South Carolina, and Appellants, although they are Delaware limited liability companies, 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 that the FAA did not apply). 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 Appellants seek to apply makes no reference to the FAA or interstate commerce, and in fact appears to intimate that the South Carolina Uniform Arbitration Act (“SCUAA”), and not the FAA, was 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 references the discovery provisions of the *South Carolina Rules of Civil Procedure*. Regardless, 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 with interstate commerce and the arbitration provision Appellants 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]).

IV. UNDER STATE LAW, ARBITRATION OF THIS DISPUTE IS STRICTLY 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 expressly 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.”).

Based upon the foregoing, 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 shall not be subject to arbitration.*” (emphasis added).

#### V. ENFORCEMENT OF THE ARBITRATION PROVISION WOULD BE UNCONSCIONABLE.

Pursuant to the arbitration provision Appellants seek to enforce, “[a]ll arbitration proceedings against Boatyard must be commenced within one year after work has ceased for whatever reason, or has been completed, or the Boat has been redelivered, whichever first occurs.” Work was performed on Respondent’s vessel between March 18, 2024 and May 6, 2024. Accordingly, if Appellants were successful in their attempt to compel arbitration, Respondent would be barred from asserting an arbitration claim and effectively would be denied any recourse for Appellants’ alleged wrongdoing.

The contract in question constitutes an adhesion contract. *See Munoz*, 343 S.C. at 541 (“Generally, an adhesion contract is a standard form contract offered on a take-it or leave-it basis with terms that are not negotiable.”). Though an adhesion contract is not in and of itself unconscionable, an adhesion contract becomes unconscionable when its terms “are so oppressive that no reasonable person would make them and no fair and honest person would accept them.” *See Lackey v. Green Tree Fin. Corp.*, 330 S.C. 388, 395, 498 S.E.2d 898 (Ct. App. 1998). Though Respondent does not present an argument as to the arbitration provision’s conscionability or lack thereof when the form was signed, due to the delay that Appellants have managed to effect in this

relatively minor dispute, the arbitration provision has become unconscionable to the extent that its limitation provisions could now operate to bar Respondent from bringing a claim.

CONCLUSION

Accordingly and based upon the foregoing, Respondent requests that the Court of Common Pleas' ruling be AFFIRMED. Respondent further requests the Court to affirm for any ground appearing on the record as provided by *S.C. R. Civ. P. 220(c)*.

Respectfully submitted this 19th day of March 2026.

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