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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas for the Ninth Judicial Circuit

The Honorable Marvin H. Dukes, III, Circuit Court Judge

Appellate Case No.: 2025-002327
Trial Court Case No.: 2025-CP-10-02139

Boris Van Dyck and Boris Van Dyck, LLC, Respondents,

v.

Woodlock Capital, LLC, Appellant.

FINAL BRIEF OF RESPONDENTS

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RESPONDENTS' STATEMENT OF ISSUES ON APPEAL

I. **DID THE CIRCUIT COURT PROPERLY REFUSE TO DISREGARD THE INTERSTATE COMMERCE REQUIREMENT FOR PREEMPTION BY THE FEDERAL ARBITRATION ACT ("FAA") WHEN THE UNDERLYING REAL ESTATE CONSULTING AGREEMENT CONTEMPLATED A PURELY INTRASTATE TRANSACTION?**

II. **DID THE CIRCUIT COURT PROPERLY EXERCISE SUBJECT MATTER JURISDICTION IN DENYING THE MOTION TO DISMISS WHERE THE ARBITRATION PROVISION INDISPUTABLY FAILS THE STATUTORY NOTICE REQUIREMENTS OF THE SOUTH CAROLINA UNIFORM ARBITRATION ACT ("SCUAA") AND DOES NOT ALLOW THE FAA TO PREEMPT THE NOTICE REQUIREMENTS OF THE SCUAA?**

STATEMENT OF THE CASE

Appellant Woodlock Capital, LLC ("Woodlock") initiated an arbitration proceeding against Respondents Boris Van Dyck ("Mr. Van Dyck") and Boris Van Dyck, LLC ("BVD") (collectively, "Respondents") based on an invalid arbitration clause. To confirm that the clause was invalid, Respondents filed a declaratory judgment action in the Charleston County Court of Common Pleas to confirm that no agreement to arbitrate was formed relating to a potential sale of two undeveloped land parcels, an intrastate transaction that does not satisfy the interstate commerce requirement of the Federal Arbitration Act ("FAA"). (R. pp. 5 – 25.) Respondents also asserted claims to confirm that the underlying agreement itself was invalid and that no monies are owed to Appellant. The underlying dispute relates to a one-page "Real Estate Consulting Fee Agreement" drafted by Woodlock and presented to Respondents in January 2022 in connection with real property located at the intersection of Windsor Mill Road and N. Goose Creek Boulevard, Goose Creek, South Carolina 29445 (TMS Nos. 234-00-00-044 and 234-00-00-021) (the "Property"). (R. p. 19.)

The Real Estate Consulting Fee Agreement identifies Woodlock Capital as the "Broker," though this entity is not a licensed or registered broker in South Carolina. (R. p. 19.) Although Woodlock was not legally authorized to act as a real estate broker, the Real Estate Consulting Fee Agreement states that a "real estate consulting fee" in the amount of $200,000.00 would be due to Woodlock "at the time of closing." (R. p. 19.) The Real Estate Consulting Fee Agreement states that the consulting fee will be paid to Woodlock, a company not authorized or licensed to provide real estate consulting services, for the provision of a "real estate consulting service," which is not defined or explained in the document. (R. p. 19.) The Real Estate Consulting Fee Agreement does not include a description or explanation of what services or duties Woodlock would perform to

earn the "consulting fee," which is ultimately a potential commission that cannot be recovered by an unlicensed person. (R. p. 19.) There is no stated duration, term, expiration date or time limitation on Woodlock's provision of a "consulting service" or on the Real Estate Consulting Fee Agreement itself. (R. p. 19.) In these respects, the entire agreement is invalid because it fails to conform to the statutory requirements for real estate contracts.

The Real Estate Consulting Fee Agreement contains the following arbitration provision, which is in the same font, color, size, and type as the other provisions:

> Unless otherwise agreed upon by both parties, any controversy or claim arising out of, or relating to this Agreement, or the breach thereof, shall be settled by binding arbitration, and judgment upon the award rendered by the arbitrator(s) may be entered in a court having jurisdiction thereof and both parties agree to be bound by any such decision rendered.

(R. p. 19.) The Real Estate Consulting Fee Agreement is silent as to the law governing any such claim or controversy between the parties, but the property and the parties are all located here in South Carolina. Woodlock acknowledges, both in the proceeding pending before the circuit court and its appeal to this Court, that the arbitration provision does not satisfy the notice requirements of the SCUAA. (R. pp. 2, 27.) Furthermore, the Real Estate Consulting Fee Agreement was entered between BVD and Woodlock, two South Carolina limited liability companies each having a principal place of business located in Charleston County, relating to the potential sale of two parcels of real property that are permanently and physically planted in Goose Creek, South Carolina. (R. pp. 6 – 7, 12 – 13.)

Although Woodlock presented the one-page agreement for a consulting fee, Woodlock never obtained a valid listing agreement with Respondents. (R. pp. 7, 15 – 16.) Woodlock presented a potential buyer of the Property to Respondents in 2022. However, the potential buyer fell through. (R. p. 9.) An entirely separate buyer arose later. On or about June 12, 2023, Southern

Waters Capital sent a Letter of Intent (the "LOI") to purchase the Property on behalf of SWC Management, LLC. (R. p. 9.) The LOI was addressed to Respondents but was delivered to Woodlock via email only. (R. pp. 9, 21 – 25.) The LOI containing the terms of the proposal stated that the offer would no longer be valid after June 19, 2023, at 5:00 p.m. (R. pp. 9, 23.) On June 19, 2023, at 5:00 p.m., the LOI expired without any response from Woodlock. (R. p. 9.) Woodlock engaged in no follow up or follow through on the LOI. (R. p. 9.) Following the expiration of the LOI, the managing partner of Southern Waters Capital contacted Mr. Van Dyck directly to pursue the purchase of the Property. (R. p. 9.) Over the course of several months, Respondents and Southern Waters Capital engaged in discussions and negotiations in connection with the acquisition and sale of the Property, and the proposed Windsor Mill project. (R. p. 9.) After months of negotiating the terms of their deal, Respondents and Southern Waters Capital ultimately agreed to the terms of sale. The parties executed a purchase and sale agreement on October 12, 2023, and closed on the Property in 2024. (R. p. 10.)

Woodlock did not participate in any way in the negotiations, due diligence, or closing of the Property. (R. p. 10.) Woodlock did not act or participate as the "broker" in the sale of the Property to Southern Waters Capital. (R. pp. 15 – 16.) Nevertheless, on or about September 9, 2024, Woodlock sent an invoice to Respondents for a "consulting fee" purportedly due to Woodlock in the amount of $200,000.00 after learning that the Property had been sold to another buyer. (R. p. 10.) Mr. Van Dyck acknowledged receipt of the invoice, but informed Woodlock that a $200,000.00 consulting fee was not due to Woodlock under the circumstances. (R. p. 10.) The parties agreed to mediation taking place on March 20, 2025, but were unable to reach a settlement. (R. p. 10.) On March 21, 2025, Woodlock initiated an arbitration proceeding against Respondents pursuant to the arbitration provision of the Real Estate Consulting Fee Agreement. (R. p. 10.)

Thereafter, on April 17, 2025, Respondents filed the declaratory judgment action below for an order declaring that Woodlock: (i) is not entitled to enforce the arbitration provision in the "Real Estate Consulting Fee Agreement;" (ii) engaged in unauthorized and illegal practices in violation of South Carolina law; (iii) did not act or participate as the broker of the subject transaction; and (iv) is not entitled to any payment of any kind. (R. pp. 5 – 25.)

Woodlock filed a motion to dismiss pursuant to Rule 12(b)(1), SCRCP, for lack of subject matter jurisdiction, or in the alternative, to stay the case and compel arbitration. (R. pp. 26 – 29.) After a hearing and briefing by the parties, the lower court issued the Order Denying [Woodlock's] Motion to Dismiss entered on November 12, 2025, by the Honorable Marvin H. Dukes, III (hereinafter, the "Order"). (R. pp. 1 – 4.) The circuit court found that the arbitration provision fails to satisfy the requirements of the SCUAA, which neither party disputes, such that it is invalid under the SCUAA. (R. p. 2.) The circuit court rejected Woodlock's argument that the arbitration provision is nonetheless valid under the FAA. (R. p. 3.) The circuit court found that the transaction contemplated in the Real Estate Consulting Fee Agreement is a "local transaction of undeveloped acreage" that "does not involve interstate commerce, such that the FAA is inapplicable." (R. p. 3.) Having found that the arbitration provision is ineffective and unenforceable as a matter of law, the circuit court denied Woodlock's motion to dismiss. (R. p. 3.) Rather than proceeding with the underlying case, Appellant filed this appeal.

STANDARD OF REVIEW

Whether a contract involves interstate commerce and, therefore, whether the FAA preempts the SCAA, is a question of law subject to de novo review. *Hicks Unlimited, Inc. v. UniFirst Corp.,* 439 S.C. 623, 629, 889 S.E.2d 564, 567 (2023). The appellate court "will not, however, disturb the factual findings of the circuit court that have rational support in the record." *Id.*

ARGUMENT

As discussed below, the arbitration provision fails to comply with the SCUAA, and Woodlock failed to demonstrate that the Real Estate Consulting Fee Agreement involves interstate commerce in fact. Therefore, the FAA's preemption does not apply. As a result, the arbitration provision is ineffective and unenforceable, and the circuit court properly exercised jurisdiction.

I. THE CIRCUIT COURT CORRECTLY DENIED THE MOTION TO DISMISS BECAUSE THE ARBITRATION PROVISION IS INVALID UNDER THE SCUAA AND THE FAA DOES NOT APPLY TO PURELY INTRASTATE REAL ESTATE TRANSACTIONS

In seeking dismissal of the Complaint, Woodlock argued that the arbitration provision is mandatory and valid under the FAA notwithstanding its failure to satisfy the notice requirements under the SCUAA. (R. pp. 26 – 29.) The circuit court correctly refused to enforce the arbitration provision under the FAA's preemption of SCUAA where the commerce involved in the Real Estate Consulting Fee Agreement is inherently intrastate to which the FAA does not apply. (R. p. 3.) The circuit court made no error denying the motion to dismiss.

A. The Arbitration Provision Is Unenforceable as a Matter of Law Because It Undisputably Fails to Satisfy the Notice Requirements of SCUAA.

It is undisputed that the arbitration provision in the Real Estate Consulting Fee Agreement fails to satisfy the notice requirements of the SCUAA. *See* S.C. Code § 15-48-10(a) ("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"). (R. pp. 2, 27, 130.) In seeking dismissal of the Complaint, Woodlock conceded that the arbitration provision "does not meet the notice requirements" set forth in S.C. Code § 15-48-10(a). (R. p. 27.) The FAA is not available to preempt the notice requirements of the SCUAA in this case. (R. pp. 12 – 13, 132 – 133.) The

enforcement and preemption power of the FAA may only be called upon when the dispute arises against the backdrop of a written provision in a contract evidencing a transaction involving interstate commerce. *Hicks*, 439 S.C. at 632, 889 S.E.2d at 568 (holding that "parties may not avail themselves of FAA preemption without satisfying 9 U.S.C. § 2's commerce requirement"). As a result, the arbitration provision is unenforceable as a matter of law. The circuit court correctly found that "arbitration provision is invalid and, therefore, does not require the parties to arbitrate their claims (or counterclaims) relating to the Real Estate Consulting Fee Agreement," which "does not involve interstate commerce." (R. p. 3.)

B. The FAA Cannot Preempt the SCUAA Because the Real Estate Consulting Fee Agreement Does Not Evidence a Transaction Involving Interstate Commerce.

A party seeking to compel arbitration under the FAA must demonstrate that the contract implicates interstate commerce. *Hicks*, 439 S.C. at 632, 889 S.E.2d at 568. The heart of the FAA is 9 U.S.C. § 2, which states:

> A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract[.]

Hicks, 439 S.C. at 630, 889 S.E.2d at 567 (*quoting* 9 U.S.C. § 2).

Given the localized nature of a proposed real estate transaction involving a potential sale of raw, undeveloped acreage, Woodlock failed to demonstrate a connection to interstate commerce. South Carolina courts have recognized that where a proposed transaction is focused entirely on the sale of real property, which is firmly planted in one particular state, the transaction does not involve interstate commerce. *See Bradley v. Brentwood Homes, Inc*., 398 S.C. 447, 457, 730 S.E.2d 312,

317 (2012) (finding that a home purchase agreement was not subject to the FAA and that the intrastate nature of the sale and purchase of residential real estate was not negated by the inclusion of the national warranty nor the purchaser's use of out-of-state financing). The *Bradley* court clarified that "had the [Home Purchase Agreement] actually encompassed the construction of the residence, it would have been subject to the FAA as our appellate courts have consistently recognized that contracts for construction are governed by the FAA." *Id.,* 398 S.C. at 458 n. 8, 730 S.E.2d at 318 n. 8. The proposed transaction in the Real Estate Consulting Fee Agreement contemplated a "consulting fee" relating to a potential sale of two parcels of land, not the construction of residences. (R. pp. 13, 133.) The proposed transaction, *i.e.,* a "consulting fee," involves intrastate commerce, not interstate commerce or out-of-state supply chains. Therefore, the FAA cannot and does not apply.

C. Woodlock's Reliance on Cases Involving Contracts for Construction and Interstate Supply Chains is Misplaced.

South Carolina appellate courts have consistently recognized that contracts for construction are governed by the FAA because it would be "virtually impossible" to construct a new building "with materials, equipment and supplies all produced and manufactured solely within the State of South Carolina." *See Episcopal Hous. Corp. v. Fed. Ins. Co.,* 269 S.C. 631, 640, 239 S.E.2d 647, 652 (1977). The FAA does not apply to contracts involving the sale of real property and, because the connection to interstate commerce that is implicated in contracts for construction is absent, these types of transactions have historically been deemed to involve intrastate commerce. *See, e.g.*, *Dixon v. Pattee*, 442 S.C. 233, 253, 898 S.E.2d 158, 168 (Ct. App. 2023); *Bradley,* 398 S.C. at 459, 730 S.E.2d at 318. South Carolina courts have explicitly distinguished contracts for construction from those involving the sale of real estate or a completed residential dwelling.

Notwithstanding the well-settled precedent, Woodlock relies on cases involving contracts for construction where out-of-state materials, suppliers, and subcontractors were used for the construction. *Appellant's Br.*, pp. 3 – 5. *See, e.g., Blanton v. Stathos*, 351 S.C. 534, 570 S.E.2d 565 (Ct. App. 2002) (finding that arbitration provision in contract to provide design, drawing, and architectural services in construction of a restaurant evidenced a transaction involving interstate commerce); *Osteen v. T.E. Cuttino Const. Co.*, 315 S.C. 422, 425, 434 S.E.2d 281, 283 (1993) (finding that arbitration clause contained in a standard form construction contract involved interstate commerce such that FAA preempted SCUAA). The Real Estate Consulting Fee Agreement is not a contract for construction and does not involve services relating to the construction of a new building. The Real Estate Consulting Fee Agreement, which was entered between two South Carolina limited liability companies each having a principal place of business located in Charleston County, contemplated a "consulting service" relating to the potential sale of two parcels of undeveloped land, which are firmly and permanently planted in one state. (R. pp. 6 – 7, 40.) On this basis, the circuit court correctly found that "[a] local transaction of undeveloped acreage" contemplated in the Real Estate Consulting Fee Agreement "has no substantial or direct connection to interstate commerce, such that the FAA is inapplicable." (R. p. 3.)

D. The Affidavit to the Motion to Dismiss Fails to Prove Commerce "In Fact."

The South Carolina Supreme Court recognizes that the FAA's reach depends on whether the underlying contract involves interstate "commerce in fact," not merely speculative or tangential interstate connections. *See, e.g., Hicks*, 439 S.C. at 632, 889 S.E.2d at 568 (holding "that a party seeking to compel arbitration under the FAA ***must demonstrate*** that the contract implicates interstate commerce") (emphasis added). "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." *Hicks*, 439 S.C. at 632, 889 S.E.2d at 568. "Instead, the party pushing arbitration must prove the contract involves 'commerce in fact.'" *Id.* (quoting *Allied-Bruce Terminix Companies, Inc. v. Dobson*, 513 U.S. 265, 281 (1995) (interpreting the "commerce in fact" language of the FAA as insisting that the "transaction" in fact involve interstate commerce)).

The affidavit attached to Woodlock's motion to dismiss purporting to declare the ways in which Woodlock's services could impact interstate commerce does not convert a local transaction into one involving interstate commerce. (R. pp. 41 – 43.) On appeal, Woodlock argues that Respondents' "failure to provide any factual counter to the Affidavit" shows that the circuit court erred as a matter of law. *Appellant's Br*., p. 6. Woodlock cites no legal authority for this argument. The burden to prove commerce in fact rests with Woodlock. Under South Carolina law, "the party pushing arbitration, must prove the contract involves 'commerce in fact.'" *Hicks*, 439 S.C. at 632, 889 S.E.2d at 568; *see also Bradley*, 398 S.C. at 458, 730 S.E.2d at 317–18 (recognizing that the party claiming the FAA's preemption bears the burden of proving the contract involves interstate commerce). Woodlock's attempt to prove the requisite connection to interstate commerce through an affidavit claiming that the FAA governs the Real Estate Consulting Fee Agreement is insufficient to trigger application of the FAA in this case. *Hicks*, 439 S.C. at 633, 889 S.E.2d at 569 ("The inquiry is fact dependent and focuses on what the specific contract terms require for performance.").

As indicated in the Order, the circuit court reviewed the pleadings, the terms of the Real Estate Consulting Fee Agreement, applicable law, and the arguments presented during the hearing and determined that the transaction does not involve interstate commerce. (R. pp. 1, 3.) Because the circuit court committed no error, there is no basis for reversing the Order.

II. THE CIRCUIT COURT PROPERLY EXERCISED SUBJECT MATTER JURISDICTION BECAUSE THE QUESTION OF ARBITRABILITY IS FOR JUDICIAL DETERMINATION

The circuit court properly determined the question of arbitrability in denying Woodlock's motion to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1), SCRCP.

A. Arbitrability is Decided by Courts, Not Arbitrators.

The United States Supreme Court and the South Carolina Supreme Court precedents make clear that "[t]he question of the arbitrability of a claim is an issue for judicial determination, unless the parties provide otherwise." *See Zabinski v. Bright Acres Assocs*., 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001) (*citing AT & T Techs., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 649 (1986) (recognizing that the question of arbitrability "is undeniably an issue for judicial determination")). This principle has been reaffirmed by South Carolina courts. *See, e.g., Chassereau v. Glob. Sun Pools, Inc.,* 373 S.C. 168, 171, 644 S.E.2d 718, 720 (2007) ("Unless the parties provide otherwise, the question of the arbitrability of a claim is an issue for judicial determination."); *see also Est. of Solesbee by Bayne v. Fundamental Clinical & Operational Servs., LLC,* 438 S.C. 638, 645, 885 S.E.2d 144, 147 (Ct. App. 2023) ("The question of the arbitrability of a claim is an issue for judicial determination, unless the parties provide otherwise."). South Carolina law recognizes that determinations regarding the validity of an arbitration clause are "a matter for the courts." *See Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 609, 879 S.E.2d 746, 753 (2022) ("The validity of the arbitration clause is a matter for the courts, whereas the validity of the contract as a whole is a matter for the arbitrator.").

In this case, Respondents did not agree to confer subject matter jurisdiction upon an arbitrator to decide issues that are reserved for judicial determination. (R. pp. 130, 135.) Given the absence of an agreement to delegate the question of arbitrability to an arbitrator, the circuit court

committed no error in ruling on the arbitrability of the claims. (R. pp. 11, 130 – 131, 135.) The circuit court committed no error in finding that Respondents cannot be compelled to submit their claims for declaratory judgment to arbitration pursuant to an ineffective and unenforceable arbitration clause. *Hicks*, 439 S.C. at 634–35, 889 S.E.2d at 570 (holding that arbitration could not be compelled pursuant to arbitration provision that did not comply with notice requirements of SCUAA and was not enforceable under FAA). (R. p. 3.) If a constructed home does not reach the threshold of interstate commerce, neither does dirt.

B. The Invalid Arbitration Provision Is Ineffective to Divest the Circuit Court of Jurisdiction to Decide the Justiciable Controversy Pending Below.

Because the arbitration provision is invalid and unenforceable, the circuit court retained subject matter jurisdiction to adjudicate the merits of the dispute. *See Mid-State Distributors, Inc. v. Century Importers, Inc*., 310 S.C. 330, 335, 426 S.E.2d 777, 780 (1993) ("If a judgment determines the applicable law while leaving open questions of fact, it is not a final judgment."). Respondents seek a declaratory judgment pursuant to South Carolina's Uniform Declaratory Judgments Act, S.C. Code §§ 15-53-10, *et seq*., relating to Woodlock's purported entitlement to compensation for a "consulting fee" that was not earned and violates South Carolina law. (R. pp. 14 – 16.) The Declaratory Judgments Act expressly authorizes the courts to determine questions of contract validity and rights arising thereunder. *See* S.C. Code § 15-53-20 (providing that "[c]ourts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed").

As alleged in the second cause of action of the Complaint, Respondents seek a judicial determination as to whether Woodlock is entitled to a real estate consulting fee purportedly "due to Broker" under the real estate consulting agreement. (R. pp. 14 – 16.) The Real Estate Consulting

Fee Agreement identifies Woodlock as the "Broker," even though this entity is not a licensed or registered broker, was not acting as one, and violated S.C. Code § 40-57-135 through the use of improper documents. (R. pp. 6 – 8, 15, 19.) There is no stated duration, term, expiration date or time limitation on the Real Estate Consulting Fee Agreement. (R. pp. 8, 19.) As a result, the duration is (unlawfully) indefinite and perpetual. (R. pp. 8, 19.) Under South Carolina law, "a listing agreement or buyer's representation agreement clearly must state that it terminates on the definite expiration date unless a written extension is signed." *See* S.C. Code § 40-57-135(I)(2)(h). (R. p. 8.) Furthermore, the Real Estate Consulting Fee Agreement does not include a description or explanation of what specific services or duties that Woodlock would perform to earn the "consulting fee." (R. pp. 9, 15, 19.) This also violates South Carolina law, which requires that "a description of the agent's duties or services to be performed for the client including, but not limited to, an explanation of the office policy regarding dual agency, designated agency, and transaction brokerage if offered by the real estate brokerage firm." *See* S.C. Code § 40-57-135(I)(2)(a). (R. p. 9.) Woodlock did not obtain a valid listing agreement with Respondents and did not act or participate as a broker in the sale of the underlying property when it was eventually sold to a third party. (R. pp. 10, 15 – 16.) As a result, no payment was tendered to Woodlock and no payment was due. (R. p. 10.)

The allegations in the Complaint are sufficient to show that an actual and justiciable controversy exists between the parties that is ripe for adjudication. *See* S.C. Code § 15-53-30 ("Any person interested under a deed, will, written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or

other legal relations thereunder.”). The circuit court properly addressed the question of arbitrability of the claims without reaching the merits of the legal issues relating to the “consulting fee.” (R. pp. 1 – 3.) These issues are now appropriate for adjudication by the circuit court in the pending action below. The circuit court committed no error in denying Woodlock’s motion to dismiss under Rule 12(b)(1), SCRCP. (R. pp. 1 – 4.)

Therefore, the Order should be affirmed.

CONCLUSION

The arbitration provision in the Real Estate Consulting Fee Agreement is ineffective and unenforceable as a matter of law. The circuit court committed no error in denying Woodlock Capital, LLC’s motion to dismiss. Accordingly, the Order should be affirmed.

Respectfully submitted,

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v.

Woodlock Capital, LLC, Appellant.

CERTIFICATE OF COUNSEL

The undersigned counsel certifies that this Final Brief of Respondents Boris Van Dyck and Boris Van Dyck, LLC complies with Rule 211(b), SCACR.

April 2, 2026

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