RECEIVED
Apr 13 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM MARLBORO COUNTY
Court of Common Pleas
The Honorable Robert E. Hood, Circuit Court Judge

Appellate Case No. 2026-000076
Circuit Court Case No.: 2025CP3400154

Sharon Covington and Dorothy Douglas, Respondents,

v.

1st Better Living 2, LLC; Marlboro County Delinquent Tax Collector; Newrez, LLC d/b/a Shellpoint Mortgage Servicing, Defendants,

of which Newrez LLC d/b/a Shellpoint Mortgage Servicing is the Appellant.

INITIAL BRIEF OF APPELLANT

G. Benjamin Milam (SC Bar No. 80311)
Bradley Arant Boult Cummings LLP
214 N. Tryon Street, Suite 3700
Charlotte, NC 28202
Telephone: (704) 338-6000
Facsimile: (704) 332-8858
bmilam@bradley.com
Attorney for Appellant

TABLE OF CONTENTS

Page

Table of Authorities... iii

Statement of the Issues on Appeal... 1

Statement of the Case... 2

A. The Loan Agreement and its Arbitration Clause.. 2

B. The Tax Sale and the Underlying Ejectment.. 3

C. Procedural History.. 3

Summary of the Argument... 5

Standard of Review... 7

Argument... 7

I. The Federal Arbitration Act governs the loan agreement and mandates enforcement of the arbitration clause.. 7

A. The Loan Agreement plainly involves interstate commerce, triggering FAA preemption.. 8

B. The FAA's strong federal policy favoring arbitration requires enforcement of valid arbitration agreements.. 10

II. The arbitration clause is valid and enforceable; it is not unconscionable.. 11

A. The high bar for unconscionability is not met here.. 11

B. The Supreme Court in *Munoz* explicitly rejects Plaintiffs' argument that the carve-out for certain enforcement remedies of the lender renders the clause oppressively one-sided.. 12

III. Plaintiff Sharon Covington's claims are also subject to arbitration or, in the alternative, must be stayed.. 13

A. Covington's claims are subject to arbitration under equitable estoppel.. 13

B. In the alternative, Covington's claims must be stayed.. 16

Conclusion……………………………………………………………………………………16

TABLE OF AUTHORITIES

Page(s)

Cases

AT&T Mobility LLC v. Concepcion,
563 U.S. 333 (2011) 6, 12

Cape Romain Contractors, Inc. v. Wando E., LLC,
405 S.C. 115, 747 S.E.2d 461 (2013) 8

Citizens Bank v. Alafabco, Inc.,
539 U.S. 52 (2003) 9

Damico v. Lennar Carolinas, LLC,
437 S.C. 596, 879 S.E.2d 746 (2022) 5, 11

Dean Witter Reynolds Inc. v. Byrd,
470 U.S. 213 (1985) 10

Deloitte & Touche, LLP v. Unisys Corp.,
358 S.C. 179, 594 S.E.2d 523 (Ct. App. 2004) 7

Dixon v. Pattee,
442 S.C. 233, 898 S.E.2d 158 (Ct. App. 2023) 7, 15

Emps. Ins. Of Wausau v. Bright Metal Specialties, Inc.,
251 F.3d 1316 (11th Cir. 2001)....................15

Fanning v. Fritz's Pontiac-Cadillac-Buick, Inc.,
322 S.C. 399, 472 S.E.2d 242 (1996) 5

Flexon v. PHC-Jasper, Inc.,
399 S.C. 83, 731 S.E.2d 1 (Ct. App. 2012) 5, 10

Hicks Unlimited, Inc. v. UniFirst Corp.,
439 S.C. 623, 889 S.E.2d 564 (2023) 8, 9

Int'l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH,
206 F.3d 411 (4th Cir. 2000) 13

Lackey v. Green Tree Fin. Corp.,
330 S.C. 388, 498 S.E.2d 898 (Ct. App. 1998) 7, 10, 12, 13

Landers v. Fed. Deposit Ins. Corp.,
402 S.C. 100, 739 S.E.2d 209 (2013) 7, 10

Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.,
460 U.S. 1 (1983) 10

Munoz v. Green Tree Fin. Corp.,
343 S.C. 531, 542 S.E.2d 360 (2001) 6, 8, 9, 12, 13

New Hope Missionary Baptist Church v. Paragon Builders,
379 S.C. 620, 667 S.E.2d 1 (Ct. App. 2008) 7

Pearson v. Hilton Head Hosp.,
400 S.C. 281, 733 S.E.2d 597 (Ct. App. 2012) 15

Simpson v. MSA of Myrtle Beach, Inc.,
373 S.C. 14, 644 S.E.2d 663 (2007) 11

Stokes v. Metro. Life Ins. Co.,
351 S.C. 606, 571 S.E.2d 711 (Ct. App. 2002) 7

Walden v. Harrelson Nissan, Inc.,
399 S.C. 205, 731 S.E.2d 324 (Ct. App. 2012) 9

Weaver v. Brookdale Senior Living, Inc.,
431 S.C. 223, 847 S.E.2d 268 (Ct. App. 2020) 16

Wilson v. Willis,
426 S.C. 326, 827 S.E.2d 167 (2019) 13

Zabinski v. Bright Acres Assocs.,
346 S.C. 580, 553 S.E.2d 110 (2001) 9

<u>Statutes, Regulations, and Rules</u>

9 U.S.C. § 1..8

9 U.S.C. § 2...5, 7

9 U.S.C. § 3..10

12 C.F.R. 1026.41……………………………………………………………………...15

STATEMENT OF THE ISSUES ON APPEAL

1. Whether the circuit court erred as a matter of law to the extent it found that the Federal Arbitration Act ("FAA") does not govern the arbitration clause in the 1998 Manufactured Home Retail Installment Contract and Security Agreement (the "Loan Agreement"), where the original lender was a Delaware corporation headquartered in Minnesota and the Loan Agreement itself expressly recites that it is made pursuant to a transaction in interstate commerce and is governed by the FAA.

2. Whether the circuit court erred as a matter of law in finding the arbitration clause unenforceable on grounds of unconscionability, where the clause provides bilateral access to remedies, the Plaintiff's "mutuality" argument has been expressly rejected by the South Carolina Supreme Court, and the FAA preempts state-law rules that would single out arbitration agreements for disfavored treatment.

3. Whether the circuit court erred in declining to compel arbitration of the claims of Plaintiff Sharon Covington—a non-signatory who asserts rights pursuant to payments she has made on the loan and whose claims arise directly from and are intertwined with the Loan Agreement.

STATEMENT OF THE CASE

A. The Loan Agreement and its Arbitration Clause

On August 14, 1998, Plaintiff Dorothy Q. Douglas executed a Manufactured Home Retail Installment Contract and Security Agreement (the "Loan Agreement") providing a loan ("Loan") to finance the purchase of a manufactured home at 122 Pearce Lane, Bennettsville, South Carolina, for $53,327.78. (Arbitration Order ¶ 1.) The seller was S&G Enterprises of Darlington, South Carolina. (Summary Judgment Order at 1.) The original lender and security interest holder was Green Tree Financial Servicing Corporation—a Delaware corporation with its principal place of business in Saint Paul, Minnesota. (Arbitration Order ¶ 3.) Green Tree obtained a Certificate of Authority to transact business in South Carolina from the Secretary of State on May 9, 1995. (*Id.*)

The Loan Agreement contains Section 14, captioned "ARBITRATION," which provides in pertinent part:

> **ARBITRATION:** All disputes, claims or controversies arising from or relating to this Contract or the parties thereto shall be resolved by binding arbitration by one arbitrator selected by Assignee with consent of Buyer(s). This agreement is made pursuant to a transaction in interstate commerce and shall be governed by the Federal Arbitration Act at 9 U.S.C. Section 1. Judgment upon the award rendered may be entered in any court having jurisdiction. . . Notwithstanding anything hereunto the contrary, Assignee retains an option to use judicial (filing a lawsuit) or non-judicial relief to enforce a security agreement relating to the Manufactured Home . . . or to foreclose on the Manufactured Home. The Institution and maintenance of a lawsuit to foreclose upon any collateral, to obtain a monetary judgment or to enforce the security agreement shall not constitute a waiver of the right of any party to compel arbitration regarding any other dispute or remedy subject to arbitration in this Contract, including the filing of a counterclaim in a suit brought by Assignee pursuant to this provision.

(Loan Agreement § 14; Arbitration Order ¶ 2.)

B. The Tax Sale and the Underlying Ejectment

On November 6, 2023, the Marlboro County Delinquent Tax Collector conducted a tax sale of the manufactured home for delinquent property taxes; the property was purchased by 1st Better Living 2, LLC. (Summary Judgment Order at 1.) On October 4, 2024, 1st Better Living 2 received a Bill of Sale. (*Id.*) On May 6, 2025, the Marlboro County Magistrate Court issued a writ of ejectment against Plaintiff Sharon Covington in favor of 1st Better Living 2. (Summary Judgment Order at 1; Second Am. Compl. ¶ 12.) Newrez, the current servicer of the Loan, was not a party to the Magistrate Court proceedings.

C. Procedural History

Respondents appealed the ejectment to the Marlboro County Court of Common Pleas, Fourth Judicial Circuit; and on May 22, 2025, Respondents filed an Amended Complaint adding Newrez as a defendant and asserting claims for (1) negligence and (2) violation of the South Carolina Unfair Trade Practices Act ("SCUTPA"), both predicated on Newrez's servicing of the Loan Agreement. (First Am. Compl. ¶¶ 25-37.)

Newrez moved to dismiss the First Amended Complaint or, in the alternative, to stay the claims and compel arbitration pursuant to the Loan Agreement's arbitration clause. (Mot. to Dismiss Am. Compl.) The circuit court heard oral argument on December 4, 2025. (Dec. 4, 2025, Tr. of Proceedings.) On December 9, 2025, the Honorable Robert E. Hood entered a Form 4 Order denying the motion, including the request to compel arbitration. (Dec. 9, 2025, Form 4 Order.) On January 2, 2026, the circuit court granted Respondents leave to file a Second Amended Complaint. (Summary Judgment Order at 4.) On February 10, 2026, the circuit court entered its formal written Order Denying Enforcement of Arbitration (the "Arbitration Order"), incorporating by reference

Respondents' opposition brief to Newrez's motion and finding that the arbitration clause was unenforceable. (Arbitration Order ¶ 4.)

Newrez timely noticed appeal on January 12, 2026 (Notice of Appeal), and filed an Amended Notice of Appeal on February 19, 2026, encompassing the Arbitration Order. (Amended Notice of Appeal.) This Court initially held the appeal in abeyance pending a determination of appealability but, by order dated March 12, 2026, found that it "appears the orders are subject to immediate appeal" and that the appeal may proceed. Newrez now submits this initial brief.

SUMMARY OF THE ARGUMENT

The circuit court erred on three independent grounds, each of which requires reversal. First, the Federal Arbitration Act governs the Loan Agreement, and its preemptive force compels enforcement of the arbitration clause. The FAA applies to any written arbitration agreement in a contract evidencing a transaction involving interstate commerce. 9 U.S.C. § 2. To the extent the circuit court accepted Respondents' argument that this is a purely intrastate contract, that was legal error. Three independent bases establish interstate commerce: (1) the Loan Agreement itself expressly recites that it "is made pursuant to a transaction in interstate commerce and shall be governed by the Federal Arbitration Act"; (2) the original lender, Green Tree Financial Servicing Corporation, was a Delaware corporation headquartered in Minnesota—an out-of-state entity financing a South Carolina manufactured home purchase; and (3) Newrez is a national loan servicer operating across state lines. Plaintiffs' reliance on *Flexon* is misplaced.[1] *Flexon's* intrastate holding is factually inapposite: unlike the purely local hospital-insurance pool contract in *Flexon*, the Loan Agreement involves a Delaware corporation headquartered in Minnesota and expressly designates the transaction as interstate.

Second, the arbitration clause is not unconscionable. South Carolina defines unconscionability as "the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms which are so oppressive that no reasonable person would make them and no fair and honest person would accept them." *Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 611, 879 S.E.2d 746, 754 (2022) (quoting *Fanning v. Fritz's Pontiac-Cadillac-Buick, Inc.*, 322 S.C. 399, 403, 472 S.E.2d 242, 245 (1996)). The arbitration clause here is a standard provision found in manufactured home retail installment contracts, providing bilateral

---

[1] *See Flexon v. PHC-Jasper, Inc.*, 399 S.C. 83, 731 S.E.2d 1 (Ct. App. 2012).

access to dispute resolution, preserving all legal and equitable remedies, and permitting judgment on any award in any court of competent jurisdiction. The South Carolina Supreme Court has explicitly rejected the mutuality argument advanced by Plaintiffs: a carve-out which allows Newrez to pursue judicial remedies to enforce certain rights, while routing all other disputes to arbitration, does not deprive Plaintiffs of any remedy and does not invalidate an arbitration clause. *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 541, 542 S.E.2d 360, 365 (2001). Furthermore, the FAA independently preempts any state-law unconscionability doctrine that would single out arbitration clauses for disfavored treatment. *See AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 341 (2011).

Third**,** the claims of Plaintiff Sharon Covington are also subject to arbitration under equitable estoppel because she has for years made payments on Douglas's loan and her claims are directly dependent upon and intertwined with the Loan Agreement. A non-signatory who claims the benefits of a contract cannot simultaneously disclaim its arbitration clause. Alternatively, if Covington cannot be compelled to arbitrate, her claims must be stayed pending arbitration of Douglas's claims to avoid duplicative proceedings and inconsistent results.

STANDARD OF REVIEW

Unless parties agree otherwise, "the question of the arbitrability of a claim is an issue for judicial determination." *Dixon v. Pattee*, 442 S.C. 233, 251, 898 S.E.2d 158, 167 (Ct. App. 2023). "Determinations of arbitrability are subject to de novo review." *Stokes v. Metro. Life Ins. Co.*, 351 S.C. 606, 609, 571 S.E.2d 711, 713 (Ct. App. 2002); *see also New Hope Missionary Baptist Church v. Paragon Builders*, 379 S.C. 620, 625, 667 S.E.2d 1, 3 (Ct. App. 2008) ("Appeal from the denial of a motion to compel arbitration is subject to de novo review."). Where there is evidence to support them, factual findings "will not be overruled." *Stokes*, 351 S.C. at 610, 571 S.E.2d at 713. However, where there is "no evidence to reasonably support" a factual finding made by a trial court, the appellate court on review need not be bound by it. *Deloitte & Touche, LLP v. Unisys Corp.*, 358 S.C. 179, 182, 594 S.E.2d 523, 525 (Ct. App. 2004). "[I]n deciding whether the parties have agreed to submit a particular grievance to arbitration, a court is not to rule on the potential merits of the underlying claims." *Landers v. Fed. Deposit Ins. Corp.*, 402 S.C. 100, 108, 739 S.E.2d 209, 213 (2013).

ARGUMENT

I. The Federal Arbitration Act governs the loan agreement and mandates enforcement of the arbitration clause.

Under Section 2 of the FAA, a contract evidencing a transaction involving commerce that contains an agreement to settle disputes by arbitration "shall be valid, irrevocable, and enforceable." 9 U.S.C. § 2. South Carolina courts consistently recognize that the FAA "represents a liberal federal policy favoring arbitration agreements." *See Lackey v. Green Tree Fin. Corp.*, 330 S.C. 388, 396, 498 S.E.2d 898, 902 (Ct. App. 1998) (internal citations omitted). "[A]ny doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." *Id.* at 903.

The circuit court erred in accepting Respondents' argument that the Loan Agreement is a purely intrastate contract outside the FAA's reach.

A. The Loan Agreement plainly involves interstate commerce, triggering FAA preemption.

The FAA's reach coincides with that of the Commerce Clause, meaning the FAA applies so long as a transaction affects interstate commerce. *See Cape Romain Contractors, Inc. v. Wando E., LLC*, 405 S.C. 115, 121, 747 S.E.2d 461, 464 (2013). Parties' intent to carry out an intrastate transaction does not control; the inquiry focuses on the objective nature of the commercial activity. *See Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 542 S.E.2d 360, 363 (2001). In determining whether a transaction involves interstate commerce, the court examines the agreement, the complaint, and the surrounding facts. *Hicks Unlimited, Inc. v. UniFirst Corp.*, 439 S.C. 623, 633, 889 S.E.2d 564, 569 (2023). The proper analysis involves consideration of all three broad categories of Congress's commerce power: (1) the use of the channels of interstate commerce, (2) regulation of persons or things in interstate commerce, and (3) activities having a substantial relation to interstate commerce. *Cape Romain*, 405 S.C. at 121, 747 S.E.2d at 464. Three independent grounds establish interstate commerce here.

First, the Loan Agreement itself expressly recites that it "is made pursuant to a transaction in interstate commerce and shall be governed by the Federal Arbitration Act at 9 U.S.C. Section 1." (Arbitration Order ¶ 2.) This is not boilerplate to be disregarded; it is the parties' own contractual characterization of their transaction.[2] Courts apply ordinary contract interpretation

[2] Respondents' invocation of *contra proferentem* to construe the interstate commerce recitation against Green Tree fares no better. The doctrine applies only to ambiguous contract terms, and the recitation that the Loan Agreement "is made pursuant to a transaction in interstate commerce" is unambiguous on its face—particularly when read alongside the objective fact that Green Tree was a Delaware corporation headquartered in Minnesota. In any event, even if the contractual recitation

principles to such recitations, and Respondents offered no basis to override the parties' written agreement on this point. While a contractual recitation standing alone cannot substitute for proof that a contract "involves commerce in fact," that is not the situation presented here. *See Hicks*, 439 S.C. at 632, 889 S.E.2d at 568. The objective facts before the trial court independently establish interstate commerce.

Specifically, the original lender, Green Tree Financial Servicing Corporation, was a Delaware corporation with its principal place of business in Saint Paul, Minnesota. (Arbitration Order ¶ 3.) The financing of a South Carolina manufactured home purchase by a Delaware corporation headquartered in Minnesota is a transaction involving interstate commerce under any standard. *See Walden v. Harrelson Nissan, Inc.*, 399 S.C. 205, 211, 731 S.E.2d 324, 327 n. 2 (Ct. App. 2012) ("There is no dispute the transaction here included a written agreement to arbitrate and involved interstate commerce as [plaintiff] is a South Carolina resident, [defendant] is a North Carolina corporation, the vehicle was manufactured in Tennessee, and financing was provided [from] California."). The fact that Douglas, S&G Enterprises, and the initial payment collector were all South Carolina residents is immaterial: the question is whether the *transaction* involves interstate commerce, not whether some of the parties are in-state. *See Citizens Bank v. Alafabco, Inc.*, 539 U.S. 52, 56-58 (2003).

The financing of the sale of the manufactured home by a foreign corporation by itself is sufficient to render the transaction one involving interstate commerce. *See Munoz*, 343 S.C. 531, 539, 542 S.E.2d 360, 364 (finding that transaction involving out-of-state creditor was in interstate commerce); *see also Zabinski v. Bright Acres Assoc.*, 346 S.C. 580, 596, 553 S.E.2d 110, 118

---

were disregarded entirely, the interstate commerce nexus is independently established by the objective facts.

(2001) (finding that a real estate development partnership engaged in interstate commerce—even though the partnership and property were located entirely in South Carolina—because it utilized out-of-state materials, contractors, and investors).

Plaintiffs' reliance on *Flexon* was misplaced. *Flexon* held the FAA inapplicable where a South Carolina resident was hired to perform services at a medical center in Hardeeville, South Carolina and other sites in Beaufort and Jasper Counties. 399 S.C. at 89, 731 S.E.2d at 4. Here, by contrast, the original lender was an out-of-state Delaware corporation, and the Loan Agreement expressly designates the transaction as interstate. *Flexon*'s narrow intrastate holding has no application to these facts. To the extent that the Circuit Court held otherwise, that ruling was in error.

B. The FAA's strong federal policy favoring arbitration requires enforcement of valid arbitration agreements.

The FAA embodies a "liberal federal policy favoring arbitration agreements." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983); *Lackey*, 330 S.C. at 396, 498 S.E.2d at 902. Courts must rigorously enforce arbitration agreements according to their terms. *See Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213, 218-21 (1985). Once a court determines that a valid arbitration agreement exists and that the dispute falls within its scope, the FAA mandates a stay of litigation and an order compelling arbitration. 9 U.S.C. § 3.

The circuit court's role is limited to determining whether a binding agreement to arbitrate exists; it does not evaluate the merits of the underlying claims. *Landers*, 402 S.C. at 108, 739 S.E.2d at 213.

Here, the existence of the arbitration clause is undisputed; Douglas signed the Loan Agreement; and Respondents' negligence and SCUTPA claims arise directly from Newrez's servicing of the Loan Agreement, placing them squarely within the clause's broad scope covering

"all disputes, claims or controversies arising from or relating to this Contract or the parties thereto." (Arbitration Order ¶ 2.) The circuit court was required to enforce the agreement. Its refusal to do so was legal error that this Court should correct.

II. The arbitration clause is valid and enforceable; it is not unconscionable.

Even if this Court were to find the FAA does not independently require reversal, the circuit court erred in finding the arbitration clause unconscionable. The unconscionability standard in South Carolina is demanding, and the arbitration clause at issue falls far short of meeting it.

A. The high bar for unconscionability is not met here.

"In South Carolina, unconscionability 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, 24-25, 644 S.E.2d 663, 668 (2007). Assessment of unconscionability must be made on a case-by-case basis, considering all facts and circumstances. *Damico*, 437 S.C. at 611, 879 S.E.2d at 755. "Adhesion contracts . . . are not per se unconscionable." *Simpson*, 373 S.C. at 27, 644 S.E.2d at 669. Even where a party may have lacked meaningful choice, the agreement "is not necessarily unconscionable" unless its terms are "so oppressive that no reasonable person would make them and no fair and honest person would accept them." *Damico*, 437 S.C. at 611, 879 S.E.2d at 754-55.

The arbitration clause in the Loan Agreement is objectively reasonable. It: (1) broadly covers all disputes without exclusions that favor one party; (2) provides for selection of an independent arbitrator consented to by the buyer; (3) permits judgment on any award to be entered in any court of competent jurisdiction; (4) preserves all legal and equitable remedies, including money damages, declaratory relief, and injunctive relief; and (5) contains a mutual jury trial

waiver. (*See* Arbitration Order at 2.) These are commercially reasonable and unremarkable features.

Moreover, courts applying the FAA must be careful not to impose unconscionability standards that single out arbitration clauses for disfavored treatment relative to other contractual provisions. *Lackey*, 330 S.C. at 397, 498 S.E.2d at 903; *see also AT&T*, 563 U.S. at 341 (FAA preempts state-law rules that disproportionately burden arbitration agreements). A court may not find an arbitration clause unconscionable simply because the contract is standardized or because one party had greater bargaining power. The clause here is not unconscionable.

B. The Supreme Court in *Munoz* explicitly rejects Plaintiffs' argument that the carve-out for certain enforcement remedies of the lender renders the clause oppressively one-sided.

Respondents argued in the court below that the arbitration clause is impermissibly one-sided because it reserves to the Assignee the option to pursue judicial remedies to enforce the security agreement, obtain a monetary judgment, or foreclose on the manufactured home, while compelling the borrower to arbitrate all other disputes. This argument has been expressly rejected by the South Carolina Supreme Court in *Munoz*.

The carve-out in this case serves a valid commercial purpose by allowing the lender to obtain prompt judicial relief on collateral that may depreciate, be destroyed, or otherwise lose value during extended arbitration proceedings, while still routing all non-enforcement disputes to arbitration. Critically, the carve-out merely changes the forum for the dispute and does not strip Douglas of any remedy. If Newrez were to sue judicially to enforce the security agreement or foreclose, Douglas would retain access to courts to defend that action.

The Supreme Court—interpreting a nearly identical carve-out in *Munoz v. Green Tree Financial Corporation*—rejected the notion that a lack of mutuality of forum rendered an

arbitration provision unenforceable. As the court stated: "We find the doctrine of mutuality of remedy does not apply here. An agreement providing for arbitration does not determine the *remedy* for a breach of contract but only the *forum* in which the remedy for the breach is determined. The Munozes have not been deprived of a remedy—they simply must seek their remedy through arbitration rather than through the judicial system." 343 S.C. 531, 543, 542 S.E.2d 360, 365 (internal citations omitted). In any event, "under state law, a lack of mutuality of remedy does not invalidate a contract." *Id*. (citing *Lackey v. Green Tree Fin. Corp*., 330 S.C. 388, 498 S.E.2d 989 (Ct. App. 1998)). Because *Munoz* expressly rejected Plaintiffs' argument, the Circuit Court's determination of unenforceability was in error.

III. Plaintiff Sharon Covington's claims are also subject to arbitration or, in the alternative, must be stayed.

The circuit court's Arbitration Order broadly denied enforcement of the arbitration clause without separately analyzing Plaintiff Sharon Covington's distinct status as a non-signatory. That failure constitutes independent error warranting reversal.

A. Covington's claims are subject to arbitration under equitable estoppel.

It is axiomatic that arbitration is a matter of contract: ordinarily, a non-signatory cannot be compelled to arbitrate. *Int'l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 416 (4th Cir. 2000). However, "in an appropriate case a nonsignatory can enforce, or be bound by, an arbitration provision." *Id.* at 416-17; *Wilson v. Willis*, 426 S.C. 326, 339, 827 S.E.2d 167, 174 (2019). "South Carolina has recognized several theories that could bind nonsignatories to arbitration agreements under general principles of contract and agency law, including (1) incorporation by reference, (2) assumption, (3) agency, (4) veil piercing/alter ego, and (5) estoppel." *Wilson*, 426 S.C. at 338, 827 S.E.2d at 174.

In particular, a non-signatory is estopped from refusing to comply with an arbitration clause where it seeks to obtain a direct benefit from the same contract. "A party may not rely on the contract when it works to its advantage, and repudiate it when it works to its disadvantage." *Dixon v. Pattee*, 442 S.C. 233, 258, 898 S.E.2d 158, 171 (Ct. App. 2023). Thus, where the plaintiffs' pleadings in *Dixon* showed that they sought to enforce warranties in an agreement, they were estopped from denying that they were bound by an arbitration provision in the same agreement. *See id.*

Covington's SCUTPA and negligence claims are necessarily dependent upon the Loan Agreement. Both claims assert that Newrez engaged in misconduct by: failing to inform the South Carolina Department of Motor Vehicles of its status as lienholder; failing to use escrow funds to prevent a tax sale of the manufactured home, or to redeem the property after the sale; and demanding loan payments and threatened enforcement of its security interest after the tax sale. (Am. Compl. ¶¶ 25, 31.) These allegations do not concern general tort duties that Newrez owes to the public at large. And Covington does claim any independent relationship to Newrez separate from its status as servicer for the Loan obtained by Douglas. Rather, these claims can *only* be made pursuant to purported obligations under the Loan Agreement.[3]

Plaintiffs' opposition brief to Newrez's Motion to Dismiss also demonstrates that their claims are based on the transaction created by the Loan Agreement. As to the duties supporting negligence, Plaintiffs first note that "A duty to exercise reasonable care in giving information exists when the defendant has a pecuniary interest in the transaction." (Pl. Memo. in Opp. to Mot. To

[3] Newrez does not concede or agree that Covington *actually* has standing to assert rights under the Loan Agreement, where she is neither a party nor a third-party beneficiary of the agreement. But Covington cannot use the Loan Agreement as a sword—or rather, a hook to draw Newrez into the tax sale dispute—while simultaneously using her status as a non-signatory as a shield against the arbitration clause.

Dismiss at 4.) Of course, the only "transaction" involving Newrez is the Loan Agreement. Second, Plaintiffs argue that "certain agreements between the owner of this loan and Shellpoint create a duty to act in the best interests of Plaintiff Douglas" and that "Plaintiff Covington would also argue that these duties *run to her* through her payment of Douglas's mortgage payments." (*See id.* (emphasis added)). This convoluted statement seems to mean that Newrez has obligations to *Douglas* by virtue of its status as servicer for the Loan, and that Douglas' rights have somehow devolved upon Covington because she is allegedly making the loan payments. (*See id.*) Of course, if Covington is claiming to step into Douglas's shoes to assert her rights as a borrower for the Loan, those rights are likewise subject to the arbitration provisions. *See Emps. Ins. of Wausau v. Bright Metal Specialties, Inc.*, 251 F.3d 1316, 1323 (11th Cir. 2001) (party that agreed to "step into the shoes" of a predecessor was likewise bound to arbitration provision). Finally, Plaintiffs' assert duties by loan servicers to assert accurate and truthful information in billing statements under CFPB rules, which again depend on obligations between mortgage servicers and borrowers. *See id.*; 12 C.F.R. 1026.41.

For their SCUTPA claim, Plaintiffs' opposition brief also raises a new theory that Newrez improperly charged Plaintiffs for "force-placed" insurance, including "ultimately Plaintiff Covington, who made the loan payments." (Pl. Memo. in Opp. to Mot. To Dismiss at 2-3.) Plaintiffs claim that this violated CFPB regulations that govern obligations by mortgage servicers to consumer borrowers and that this is a "perennial issue of abuse with loan servicers." *Id.*

South Carolina courts have applied equitable estoppel in analogous circumstances. In *Pearson v. Hilton Head Hospital*, the court applied equitable estoppel to bind a non-signatory physician to arbitration because he received a direct benefit from the contract even though he had not signed the relevant agreement. 400 S.C. 281, 733 S.E.2d 597, 600-05 (Ct. App. 2012); *see also*

Dixon v. Pattee, 442 S.C. at 258, 898 S.E.2d at 171 (Ct. App. 2023). Covington's position is directly analogous: Plaintiffs state that she has made payments on the loan, thus financially benefiting from the Loan Agreement by preserving her residence. More importantly, Covington's claims arise entirely from rights and duties arising by virtue of the Loan Agreement.

By contrast, estoppel was denied in *Weaver v. Brookdale Senior Living, Inc.*, where the non-signatory's claims "rel[ied] on general tort duties owed by [the defendant] to everyone" and did not "flow directly from the [relevant] agreement." 431 S.C. 223, 232, 847 S.E.2d 268, 273 (Ct. App. 2020). Covington's claims do not assert general duties owed to the public; they are entirely premised on Newrez's specific conduct as servicer for the Loan. She cannot rely on rights and duties created by the Loan Agreement while simultaneously disclaiming its arbitration clause.

B. In the alternative, Covington's claims must be stayed.

Should this Court decline to compel Covington to arbitrate, her claims must nonetheless be stayed pending arbitration. Allowing Covington's claims to proceed in court while Douglas arbitrates identical claims arising from the same loan servicing conduct would require Newrez to simultaneously litigate and arbitrate overlapping issues, risk inconsistent factual findings on the same underlying conduct, and undermine the FAA's purpose of streamlined and efficient dispute resolution.

A stay of Covington's claims pending completion of arbitration of Douglas's claims would prevent duplicative proceedings, avoid the risk of inconsistent judgments, and conserve judicial resources. This Court should grant this alternative relief at minimum.

CONCLUSION

For these reasons, this Court should reverse the circuit court's Order Denying Enforcement of Arbitration (February 10, 2026) and Form 4 Order (December 9, 2025), and remand with

instructions to: (1) stay the claims of Plaintiff Dorothy Douglas and compel arbitration of those claims; (2) either compel arbitration of the claims of Plaintiff Sharon Covington pursuant to equitable estoppel, or stay those claims pending the completion of arbitration; and (3) grant such other and further relief as this Court deems proper.

This 13th day of April, 2026.

/s/ G. Benjamin Milam
G. Benjamin Milam (S.C. Bar No. 80311)
BRADLEY ARANT BOULT CUMMINGS LLP
214 North Tryon Street, Suite 3700
Charlotte, North Carolina 28202
Telephone: (704) 338-6000
Facsimile: (704) 332-8858
bmilam@bradley.com

Attorney for Appellant Newrez, LLC d/b/a Shellpoint Mortgage Servicing