

cost of the location shall be paid by the non-prevailing party. The arbitration shall take place in Charleston, S.C. at the Charleston County Courthouse or other location determined by VI.

On May 21, 2024, Plaintiffs filed a lawsuit against Defendants in the Charleston County Court of Common Pleas. In their Verified Complaint, Plaintiffs allege that Defendants: (1) violated South Carolina's Unfair Trade Practices Act ("SCUTPA"), and/or (2) made negligent or fraudulent misrepresentations. For relief, Plaintiffs seek: 1) declaratory judgment that the arbitration clause is unenforceable because its terms are so oppressive that no reasonable person would make them and no fair and honest person would accept them, 2) injunctive relief pursuant to S.C. Code Ann. § 39-5-38(D)(1) ("A court of this State may issue a temporary or permanent injunction for a violation or attempted violation of this chapter where the court believes an injunction would best serve the public interest"), and 3) rescission of the contract. Defendants answered and filed a counterclaim on July 3, 2024. Plaintiffs answered the counterclaim on August 1, 2024.

On November 12, 2024, Defendants filed the instant Motion to Compel Arbitration and Stay Proceedings. After hearing argument from the parties, on October 20, 2025, the Court entered a Form 4 Order which indicated it was inclined to GRANT Defendants' motion and the Court subsequently received proposed Orders from both parties. This Order constitutes the formal and final order on the Motion.

CONCLUSIONS OF LAW

The Court finds the matters at issue have the required nexus to interstate commerce to invoke the provisions of the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.* (the "FAA"), to govern the issues herein. See Allied-Bruce Terminix Cos. v. Dobson, 513 U.S. 265 (1995); See also Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 538 (2001). Plaintiffs allege in their Complaint that they are residents of Pennsylvania and that Defendants are residents of Charleston or businesses operating here. The connection to interstate commerce is further supported by the Affidavit of

Randy Gardner filed in support of Defendants' Motion, which shows that the subject transaction involved and affected interstate commerce as contemplated by the FAA. Furthermore, during oral argument on the Motion, Plaintiffs' counsel stipulated that the FAA applies to this case.

Pursuant to the FAA, all issues of arbitrability and enforceability are for the court to decide unless there is "clear and unmistakable evidence" that the parties agreed to do so. See e.g. Henry Schein, Inc. v. Archer & White Sales, Inc., 586 U.S. 63, 72 (2019) ("[C]ourts 'should not assume that the parties agreed to arbitrate arbitrability unless there is clear and unmistakable evidence that they did so.'" (citation omitted)). To examine whether there is "clear and unmistakable evidence," the Court turns to the language of the agreement. The Court need not consider Plaintiffs' unconscionability arguments because parties are presumed to have read the agreement they signed.

The arbitration provision states that "Any controversy, claim or dispute arising out of or relating to this Purchase Agreement, shall be resolved and decided by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "AAA") (however, not under the auspices of AAA)..."

As an initial matter the parties do not agree whether the AAA Commercial Arbitration Rules apply or whether the AAA Consumer Arbitration Rules apply. However, the Court finds it makes no difference as it concerns the issue at hand, because the proposed orders submitted by the parties reflect that the relevant provision of the AAA Commercial Arbitration Rules and Consumer Arbitration Rules provide the same.

Plaintiff represents that the AAA Consumer Rules provide at Rule R-7(a) and (b) that:

The arbitrator shall have the power to rule on their own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or the arbitrability of any claim or counterclaim.

The arbitrator shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause shall

be treated as an agreement independent of the other terms of the contract. A decision by the arbitrator that the contract is null and void shall not, for that reason alone, render invalid the arbitration clause.

See AAA Consumer Arbitration Rules R-7(a) and (b) as cited by Plaintiff.

Similarly, Defendant asserts that the AAA Commercial Arbitration Rules provide at R-7(a) and (b) the same:

The arbitrator shall have the power to rule on their own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or the arbitrability of any claim or counterclaim.

The arbitrator shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitrator that the contract is null and void shall not, for that reason alone, render invalid the arbitration clause.

See AAA Commercial Arbitration Rules R-7(a) and (b) as cited by Defendant.

Under the Federal Arbitration Act, the arbitrator should decide arbitrability and issues about the enforceability of the contract if the parties clearly and unmistakably delegated those questions to an arbitrator. See also Masters v. KOL, Inc., 431 S.C. 28, 846 S.E.2d 893, 894 (Ct. App. 2020). In Masters, the purchaser of a car challenged the Dealer's claim for arbitration on grounds that execution of subsequent agreements rendered the original agreement "moot and unenforceable". The Court held that questions about whether the agreement was moot or unenforceable were for the arbitrator, not the Court. Specifically, the Court stated "[w]hile it is the default procedure for the court to decide the issues of whether a valid agreement to arbitrate exists and whether the specific dispute falls within the agreements scope, the parties may delegate this determination to the arbitrator if they clearly and unmistakably do so." The Court concludes as a matter of law that the parties agreed to delegate issues regarding the enforceability of the Purchase Agreement itself to the arbitrator.

Plaintiffs also contend that even if the Court is to compel arbitration, it must modify several aspects of the arbitration process which Plaintiffs claim are unconscionable or against public policy because it does not provide for an independent forum. Specifically, Plaintiff complains of the provision of the agreement that allows the Defendant to pick the arbitrator. However, Plaintiff provides no binding authority to support this Court's ability, pre-arbitration, to alter the terms of the parties' agreement as it concerns the selection of an arbitrator.

THEREFORE, it is ORDERED that:

1. All issues including questions regarding arbitrability, the Plaintiffs' claims, the defenses raised by the Defendants, Defendants' counterclaim and other matters shall be determined and decided through arbitration, and it will be for the arbitrator to determine the appropriate arbitration rules; and
2. All proceedings in the within case are hereby stayed pending arbitration.

End of Order.

[electronic signature page to follow]



Charleston Common Pleas

Case Caption: Terese Sawyer , plaintiff, et al VS Vacation Inspirations , defendant,
et al
Case Number: 2024CP1002642
Type: Order/Compel

So Ordered

s/ T.J. Rode (#2792)