

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Daniel Coble, Circuit Court Judge

Appellate Case No. 2025-001658

Linda Plaag and Robert Plaag, Respondents,

v.

Charles Oliver, Leanna Oliver, Davis Oliver, Devin Patel, Foundations Investment Advisors, LLC, Strategic Equity Energy a Series of V360 Holdings LLC, Strategic Equity Path, LP, Strategic Equity Path, GP, Strategic Equity Technology a Series of V360 Holdings LLC, Strategic Equity Technology LLC, Strategic Equity Technology Management LLC, Hidden Wealth Management LLC, Alternative Wealth Solutions, LLC, The Institute of Financial Enrichment, LLC, Strategic Retirement Solutions, LLC, American Equity Investment Advisors, LLC, Innovative Medical Enterprises, LLC, CDO Enterprises, Inc., Event Labels LLC, Oliver Heritage, LLC, KTF, LLC, Strategic Equity Partners, LLC, Moving Future, LLC, Incredible Concepts, LLC, Upside Solutions, LLC, Oliver Avery and Bryant LLC, ERP LLC, GITW, LLC, Legacy of Faith LP, Legacy of Faith Trust, and John Doe Corporate Entities,..... Defendants.

Of which Charles Oliver, Leanna Oliver, Davis Oliver, Strategic Equity Energy a Series of V360 Holdings LLC, Strategic Equity Path, LP, Strategic Equity Path, GP, Strategic Equity Technology a Series of V360 Holdings LLC, Strategic Equity Technology LLC, Strategic Equity Technology Management LLC, Hidden Wealth Management LLC, Alternative Wealth Solutions, LLC, The Institute of Financial Enrichment, LLC, Strategic Retirement Solutions, LLC, American Equity Investment Advisors, LLC, Innovative Medical Enterprises, LLC, CDO Enterprises, Inc., Event Labels LLC, Oliver Heritage, LLC, KTF, LLC, Strategic Equity Partners, LLC, Moving Future, LLC, Incredible Concepts, LLC, Upside Solutions, LLC, Oliver Avery and Bryant LLC, ERP LLC, GITW, LLC, Legacy of Faith LP, and Legacy of Faith Trust are the Appellants.

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Appellants Charles Oliver, Leanna Oliver, Davis Oliver, Strategic Equity Energy a Series of V360 Holdings LLC, Strategic Equity Path, LP, Strategic Equity Path, GP, Strategic Equity Technology a Series of V360 Holdings LLC, Strategic Equity Technology LLC, Strategic Equity Technology Management LLC, Hidden Wealth Management LLC, Alternative Wealth Solutions, LLC, The Institute of Financial Enrichment, LLC, Strategic Retirement Solutions, LLC, American Equity Investment Advisors, LLC, Innovative Medical Enterprises, LLC, CDO Enterprises, Inc., Event Labels LLC, Oliver Heritage, LLC, KTF, LLC, Strategic Equity Partners, LLC, Moving Future, LLC, Incredible Concepts, LLC, Upside Solutions, LLC, Oliver Avery and Bryant LLC, ERP LLC, GITW, LLC, Legacy of Faith LP, and Legacy of Faith Trust (collectively, “Appellants”) submit this Reply Brief in further support of their appeal.

ARGUMENT

Respondents Linda Plaag and Robert Plaag (“Respondents”) entered into a valid and enforceable arbitration agreement which requires them to arbitrate:

all claims or controversies, and any related issues, which may arise at any time between the Parties (including FIA’s representatives, directors, officers, employees, and agents) concerning any investment or planning advice, recommendation, or exercise of limited discretionary authority with respect to any subject matter, any transaction or order, the conduct of FIA or its representatives, directors, officers, employees, and agents [,] the construction, performance, or breach of this or any other agreement between the Parties, whether entered into prior to, on, or subsequent to the date of this Agreement...

(IAR Investment Advisory Agreement between Foundations Investment Advisors, LLC and Respondents (“FIA Agreement”) ¶ 15.b. (emphasis added); R. ___). The arbitration provision also expressly states, “[a]ny arbitration pursuant to this Agreement shall be in accordance with, and governed by, the Code of Commercial Arbitration of the [AAA Rules].” (See FIA Agreement ¶ 15.c.).

The circuit court correctly held that the FIA Agreement requires Respondents to arbitrate their claims against defendants Foundations Investment Advisors, LLC (“FIA”) and Devin Patel. (Order at *3; R. __). It erred in declining to compel arbitration of Respondents’ claims against Appellants. First, the language of the arbitration provision and its incorporation of the American Arbitration Association (“AAA Rules”) requires that an arbitrator, not the court, decide the “gateway issue” of whether Respondents’ claims against Appellants are subject to arbitration. After the circuit court found Respondents entered into a valid and enforceable arbitration agreement, it should have compelled arbitration and let the arbitrator decide any remaining issues, including whether Respondents’ claims against Appellants are subject to arbitration. Regardless, even if this Court addresses the arbitrability of Respondents’ claims, based on Respondents’ own allegations, under well-established South Carolina law, they should be compelled to arbitration. Accordingly, as set forth in detail below, Appellants respectfully request that this Court reverse the circuit court’s order and direct that the matter proceed to arbitration.

I. S.C. CODE ANN. § 15-48-200(A)(1) IS NOT UNCONSTITUTIONAL, AND THIS COURT HAS JURISDICTION OVER THIS APPEAL.¹

Respondents claim S.C. Code Ann. § 15-48-200(a), which provides for the immediate appeal of orders denying motions to compel arbitration but not orders compelling arbitration, is unconstitutional. Their argument is based on “a recent shift in arbitration case law” clarifying that there is no policy favoring arbitration (Respondents’ Brief at *15; R. __). According to Respondents, “with this policy gone, there is no longer a rational basis to treat orders denying

¹ Constitutional arguments are no exception to the preservation rules, and if they are not raised to the circuit court, the issues are deemed waived on appeal. *Herron v. Century BMW*, 395 S.C. 461, 465–66, 719 S.E.2d 640, 642 (2011); *see also Merriman v. Minter*, 298 S.C. 110, 378 S.E.2d 441 (1989) (refusing to consider an equal protection challenge to a statute on appeal where it was not raised to the circuit court). Respondents never raised their constitutional argument to the circuit court.

arbitration differently than orders compelling it.” (*Id.* at *16; R. ___). Thus, Respondents contend this Court lacks jurisdiction to hear this appeal. (*Id.*).

Respondents’ argument is flawed in many respects. As an initial matter, in the approximately five years since the “recent shift” in arbitration law, South Carolina appellate courts have addressed countless appeals involving the denial of a motion to compel arbitration. Neither the Supreme Court of South Carolina nor this Court have suggested, much less held, that the statute providing the basis for those appeals was unconstitutional. However, contrary to Respondents’ argument, the Supreme Court of the United States did recently reaffirm the reasoning which warrants the immediate appeal of orders denying motions to compel arbitration.

A. Section 15-48-200(a)(1) Is A Valid Exercise Of The General Assembly's Constitutional Authority.

Article V, Section 9 of the South Carolina Constitution states that the Court of Appeals "shall have such jurisdiction as the General Assembly shall prescribe by general law." S.C. Const. art. V, § 9. That provision delegates jurisdictional authority to the legislature in full. Section 15-48-200(a)(1), enacted in 1978 as part of South Carolina’s Uniform Arbitration Act, is a valid exercise of that authority.

Statutes are presumed constitutional, and that presumption "is a weighty one that can be overcome only by a showing of unconstitutionality beyond a reasonable doubt." *Planned Parenthood S. Atl. v. State*, 440 S.C. 465, 476, 892 S.E.2d 121, 127 (2023). The General Assembly's authority to legislate is broad—it may enact any law "not expressly prohibited by the Constitution of this state, or the Constitution of the United States." *Id.* Section 15-48-200 has been applied by South Carolina courts for nearly half a century without constitutional challenge. *See, e.g., Towles v. United HealthCare Corp.*, 338 S.C. 29, 34–35, 524 S.E.2d 839, 842–43 (Ct. App.

1999) (holding under section 15-48-200(a)(1) an order denying arbitration is immediately appealable). Respondents cite no authority holding otherwise.

B. Respondents' Constitutional Argument Fails Because There Is A Rational Basis To Allow The Immediate Appeal of Orders Denying Motions to Compel Arbitration.

Respondents' constitutional argument fails from the outset because it misunderstands how rational-basis review works. Even accepting the argument that the Section 15-48-200(a) draws a classification by treating orders denying arbitration differently from orders compelling it, the question is whether any reasonably conceivable basis supports that distinction. Rational-basis review does not turn on whether a rationale courts once used to describe a statute has since been refined in another context. The case upon which Respondents rely, *Morgan v. Sundance, Inc.*, 596 U.S. 411 (2022), addressed a narrow question—whether federal courts may condition a finding of waiver on a showing of prejudice. The Court held they may not, because the FAA does not authorize courts to "invent special, arbitration-preferring procedural rules." *Id.* at 418. That is the entirety of *Sundance's* holding. *Sundance* did not abolish arbitration statutes, eliminate legislative distinctions involving arbitration, or address the validity of any state appellate jurisdiction statute. The Court said nothing about equal protection, said nothing about statutory appellate jurisdiction, and expressly declined to address state law questions.²

Respondents' argument incorrectly assumes the only conceivable rational basis for section 15-48-200(a)(1) is the prior "pro-arbitration policy." However, under South Carolina's rational basis standard, a classification remains valid unless a challenger proves beyond a reasonable doubt that there is no admissible hypothesis upon which it can be justified. *McLeod v. Starnes*, 396 S.C.

² Respondents also cite *Palmetto Construction Group, LLC v. Restoration Specialists, LLC*, 432 S.C. 633, 856 S.E.2d 150 (2021) and *Lampo*, 445 S.C. 305, 914 S.E.2d 139. Neither case addresses the constitutional validity of a statute conferring appellate jurisdiction.

647, 657, 732 S.E.2d 199, 204 (2012). Stated another way, Respondents’ constitutional argument fails unless they can show that no conceivable rational basis supports the statute’s distinction between orders denying arbitration and orders compelling arbitration. They cannot make that showing. A party wrongly denied arbitration faces immediate, irreversible harm. The party is forced into the litigation it contracted to avoid, subjected to discovery, motion practice, and potentially trial, with no ability to recover that loss even if an appellate court ultimately agrees the case should have been arbitrated. For these reasons, courts uniformly allow for the immediate appeal of orders denying arbitration. A party wrongly compelled to arbitrate faces a different situation—one subject to later judicial review of the award.

[T]he harm suffered in having to litigate a dispute in a forum not of one’s choosing is no different from the harm suffered after having a motion to dismiss or motion for summary judgment denied, or having one’s case transferred or remanded to a different court. In none of these situations are the harms associated with having to proceed in the forum usually considered irreparable harm.

Valspar Corp. v. Nat’l Union Fire Ins. Co. of Pittsburgh, Pa., 81 F. Supp. 3d 729, 734 (D. Minn. 2014)) (internal quotations omitted).

The Supreme Court’s decision in *Coinbase, Inc. v. Bielski*, 599 U.S. 736, 143 S. Ct. 1915 (2023) is instructive, and it completely undermines Respondents’ argument. Notably, *Bielski* was decided after *Sundance*. In *Bielski*, the Supreme Court addressed whether a district court must stay its proceedings while an appeal of a denial of a motion to compel arbitration is ongoing. *Id.* at 738, 143 S. Ct. at 1919. Citing, 9 U.S.C. § 16(a), it plainly held “[t]he answer is yes.” *Id.* at 740, 143 S. Ct. at 1919. Explaining its decision, the Court wrote:

The common practice in § 16(a) cases... is for a district court to stay its proceedings while the interlocutory appeal on arbitrability is ongoing. That common practice reflects common sense. Absent an automatic stay of district court proceedings, Congress’s decision in § 16(a) to afford a right to an interlocutory appeal would be largely nullified. If the district court could move forward with pre-trial and trial proceedings while the appeal on arbitrability was ongoing, then many of the

asserted benefits of arbitration (efficiency, less expense, less intrusive discovery, and the like) would be irretrievably lost—even if the court of appeals later concluded that the case actually had belonged in arbitration all along. Absent a stay, parties also could be forced to settle to avoid the district court proceedings (including discovery and trial) that they contracted to avoid through arbitration. That potential for coercion is especially pronounced in class actions, where the possibility of colossal liability can lead to what Judge Friendly called “blackmail settlements.

A right to interlocutory appeal of the arbitrability issue without an automatic stay of the district court proceedings is therefore like a lock without a key, a bat without a ball, a computer without a keyboard—in other words, not especially sensible.

Id. at 742–43, 143 S. Ct. at 1921. The same reasons that warrant a stay of proceedings pending an appeal demonstrate that there is a rational basis to allow appeals of orders denying motions to compel.

Rational basis review is highly deferential. This Court must only conclude—as it readily can—that there is a reasonably conceivable basis for the distinction section 15-48-200(a)(1) draws. Respondents have not shown unconstitutionality beyond a reasonable doubt.

II. APPELLANTS' ARGUMENTS ARE ALL PRESERVED FOR THIS COURT'S REVIEW.

Respondents claim numerous issues raised on appeal are not preserved review.³ They are wrong on all accounts. Appellants properly raised all of the arguments asserted on appeal before the circuit court. Moreover, to the extent the circuit court did not rule on a particular argument, Appellants preserved the issue by raising it in their Motion to Alter or Amend pursuant to Rule

³ In addition to the preservation issues addressed below, Respondents claim “Appellants...argue that Arizona law applies to this case” and further state “Appellants’ argument that Arizona law applies is also unpreserved.” (Respondents’ Brief at *35). In actuality, Appellants’ Brief noted that the “FIA Agreement contains an Arizona choice of law provision” and then states “[t]o the extent this Court applies Arizona law, Appellants’ ability to enforce the arbitration provision is equally clear.” (Appellants’ Brief at *17 n.7). Appellants did not raise Arizona law as a new or independent ground for reversal. Appellants raised this issue in case this Court found Arizona law applicable. This issue demonstrates an unfortunate pattern of Respondents misstating Appellants’ arguments.

59(e), SCRCP. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (“A party must file [a Rule 59(e), SCRCP,] motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.”).

“Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review.” *Herron*, 395 S.C. at 465, 719 S.E.2d at 642 (quoting *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct.App.2006)). “Issue preservation requires that an issue be raised to and ruled upon by the trial judge.” *Id.* (citing *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998)). However, appellate courts are to be “mindful of the need to approach issue preservation rules with a practical eye and not in a rigid, hyper-technical manner” and thus should not apply preservation rules in a manner that “elevat[es] form over substance to trap trial lawyers so as to prevent the appeal of a legitimate issue.” *State v. Morales*, 439 S.C. 600, 609, 889 S.E.2d 551, 556 (2023) (quoting *Herron*, 395 S.C. at 470, 719 S.E.2d at 644).

A. Appellants’ Agency And Veil Piercing/Alter Ego Argument Is Preserved.

Respondents first claim that Appellants failed to raise agency and veil piercing/alter ego as theories under which non-signatories can compel arbitration. (See Respondents’ Brief at *21). That is not true. Appellants repeatedly raised this argument in their briefing. (See Appellants’ Motion to Compel Arbitration at *4 – 5; R. __; Appellants’ Memorandum of Law in Support of their Motion to Compel Arbitration at *12 – 13; R. __; Appellants’ Reply in Support of their Motion to Compel Arbitration at *5 – 7; R. __). Appellants also specifically raised both agency and veil piercing/alter ego as theories under which Appellants can compel arbitration at the hearing. (See Hearing Trans. 21:11 – 23:11; R. __). Finally, Appellants raised the veil piercing/alter ego arguments in their Motion to Alter or Amend. (See Appellants’ Motion to Alter or Amend at *8 – 13; R. __). The argument is preserved.

B. Appellants' Argument That This Case Presents A Question Concerning The Scope Of The FIA Agreement's Arbitration Provision Is Preserved.

Respondents next claim the argument that Respondents' claims fall within the scope of the FIA Agreement's arbitration provision is not preserved. (*See* Respondents' Brief at *25). This argument likewise fails. Once again, Appellants repeatedly raised this argument in their briefing. (*See* Appellants' Motion to Compel Arbitration at *4 – 5; R. ___; Appellants' Memorandum of Law in Support of their Motion to Compel Arbitration at *10 – 14; R. ___; Appellants' Reply in Support of their Motion to Compel Arbitration at *5 – 7; R. ___). In fact, one of the headings in Appellants' Memorandum of Law in Support of their Motion to Compel Arbitration is "The Claims Asserted by [Respondents] Fall Within the Scope of the FIA Agreement's Arbitration Provision." (Appellants' Memorandum of Law in Support of their Motion to Compel Arbitration at *10; R. ___). At the hearing, Respondents' counsel even acknowledged "[i]n [Appellants'] briefing and -- and somewhat in -- in argument, they tried to frame this issue as one of scope of arbitrability." Appellants also raised the scope argument in their Motion to Alter or Amend. (*See* Appellants' Motion to Alter or Amend at *9; R. ___). This issue is preserved.

C. Appellants' Delegation Arguments Are Preserved.

Respondents are also wrong that Appellants failed to preserve their arguments relating to the delegation of issues to an arbitrator. (*See* Respondents' Brief at *27). The assertion that that this issue was first raised in Appellants' July 7, 2025 Reply Brief is not true.⁴ Delegation was raised in Appellants' supporting memorandum filed on April 11, 2025—nearly three months

⁴ Respondents rely on *McClurg v. Deaton*, 395 S.C. 85, 87 n.2, 716 S.E.2d 887, 888 n.2 (2011), for the proposition that arguments first raised in a reply brief are not preserved. However, *McClurg* addresses reply briefs filed in appellate proceedings—it has no application to the timing of arguments in circuit court briefing. Indeed, this Court has held there is "no authority supporting the idea that an argument is not preserved at the circuit court just because it was raised in a 'reply brief.'" *Blume v. Starbucks Corp.*, No. 2023-001506, 2025 WL 2159033, at *4 (S.C. Ct. App. July 30, 2025).

before the hearing. (Appellants’ Memorandum of Law in Support of their Motion to Compel Arbitration at *10 – 11; R. ___ (arguing “binding United States Supreme Court precedent mandates that the issue of arbitrability, including whether the parties are required to arbitrate the claims in this case, be decided by the arbitrator.”)). After Respondents filed their Amended Opposition to Defendants’ Motions to Dismiss and Compel Arbitration, Appellants filed their reply brief which, once again, raised the delegation arguments, including the argument relating to the incorporation of the AAA Rules. (Appellants’ Reply in Support of their Motion to Compel Arbitration at *2 – 4; R. ___). Appellants’ delegation argument also was addressed—by Appellants and Respondents— at the hearing. (Hearing Trans. 19:8 – 21:7; 35:12 – 39:3; R. ___). Finally, Appellants also raised the delegation arguments in their Motion to Alter or Amend. (Appellants’ Motion to Alter or Amend at *6 – 8; R. ___). This issue is preserved.

III. THIS MATTER SHOULD BE COMPELLED TO ARBITRATION.

Like their constitutional and procedural arguments, Respondents’ arguments on the merits all fail. The issue of whether Appellants can compel arbitration under the FIA Agreement is an issue for the arbitrator. However, if this Court finds it should address that question, the law requires that Respondents’ claims against Appellants be decided in arbitration.

A. Contract Formation Is Not In Dispute.

The circuit court correctly held that Respondents are signatories to a binding and enforceable arbitration provision which covers claims asserted in this matter. (Order at *3; R. ___). The issue of contract formation, which looks to “whether an arbitration agreement was ever created,” has been decided. *Sanders v. Savannah Highway Auto. Co.*, 440 S.C. 377, 388, 892 S.E.2d 112, 117 (2023). Here, the issue is whether Appellants, as non-signatories, can enforce the arbitration provision in the FIA Agreement. Appellants do not need to prove that a separate

arbitration agreement exists between them and Respondents.⁵ That argument completely ignores the well-established and well-reasoned body of law that allows non-signatories to enforce arbitration provisions against signatories. *See e.g., S.C. Pub. Serv. Auth. v. Great W. Coal*, 312 S.C. 559, 563 437 S.E.2d 22, 24-25 (1993) (“[A] a party should not be allowed to avoid an arbitration agreement by naming nonsignatory parties in his complaint, or signatory parties in their individual capacity because this would nullify the rule requiring arbitration.”). It is axiomatic that a non-signatory seeking to compel arbitration will not be a party to the contract under which arbitration is sought.

In support of the argument that this case presents a question of contract formation rather than enforceability, Respondents cite cases addressing whether an arbitration provision can be enforced *against* a nonsignatory. *See Wilson v. Willis*, 426 S.C. 326, 331, 827 S.E.2d 167, 170 (2019) (“The question before this Court is whether arbitration should be enforced against nonsignatories to a contract containing an arbitration clause.”); *Weaver v. Brookdale Senior Living, Inc.*, 431 S.C. 223, 228, 847 S.E.2d 268, 271 (Ct. App. 2020) (addressing whether an arbitration agreement could be enforced against a nonsignatory). The distinction is critical. “Most courts...have distinguished between non-signatories seeking to compel arbitration by signatories to an agreement with an arbitration clause and signatories attempting to compel non-signatories to arbitrate. *Sun Valley Ranch 308 Ltd. P’ship ex rel. Englewood Props., Inc. v. Robson*, 231 Ariz. 287, 296, 294 P.3d 125, 134 (Ct. App. 2012); *see also CD Partners, LLC v. Grizzle*, 424 F.3d 795, 799 (8th Cir.2005) (“The test for determining whether a nonsignatory can force a signatory into arbitration is different from the test for determining whether a signatory can force a nonsignatory into arbitration....”). When arbitration is sought against a nonsignatory, the

⁵ Appellants met their burden of proving the existence of an enforceable arbitration through their reliance on the FIA Agreement.

question goes to “the very existence of a valid arbitration agreement.” *Blanton v. Domino's Pizza Franchising LLC*, 962 F.3d 842, 848 (6th Cir. 2020). In that situation, the court must determine whether there is an agreement to arbitrate in the first instance. By contrast, here, it has already been decided that Respondents agreed to arbitrate. Thus, this case presents “no...risk of sending a party to arbitration when that party *never* agreed to arbitration.” *Sanders*, 440 S.C. at 391, 892 S.E.2d at 119 (emphasis in original).

B. The FIA Agreement Delegates Questions Of Arbitrability To The Arbitrator.

Because the circuit court found that Respondents entered into a valid and enforceable arbitration agreement and because that arbitration agreement delegates gateway issues to the arbitrator, either by its express terms or by virtue of its incorporation of the AAA rules, the arbitrator should decide whether Respondents’ claims against Appellants are subject to arbitration. Pursuant to the FIA Agreement, Respondents “waiv[ed] their right to seek remedies in court” and agreed that “all claims or controversies, **and any related issues...**shall be resolved by binding arbitration rather than by a lawsuit in a court of law or equity.” (FIA Agreement ¶ 15.b.; R. __). The language of the FIA Agreement meets the “clear and unmistakable” standard required to delegate gateway questions, like whether Appellants can compel arbitration, to the arbitrator. *See Doe v. TCSC, LLC*, 430 S.C. 602, 608, 846 S.E.2d 874, 877 (Ct. App. 2020).

Regardless, nearly every court that has addressed the issue has found that when like here, parties incorporate the AAA Rules, it is clear and unmistakable evidence of the parties’ intent to arbitrate arbitrability that parties intended to delegate arbitrability issues to an arbitrator. Respondents’ argument that the “AAA rules merely *allow* an arbitrator to decide gateways” falls flat. (Respondents’ Brief at *30). Rule 7(a) of the AAA Commercial Rules,⁶ provides: “The

⁶ The AAA Commercial Rules are available at <https://adr.org/industries/commercial/>.

arbitrator **shall** have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim or counterclaim, without any need to refer such matters first to a court.” (emphasis added). Rule 7(b) of the AAA Commercial Rules states: “The arbitrator **shall** have the power to determine the existence or validity of a contract of which an arbitration clause forms a part.” (emphasis added). The rules are clear that the arbitrator will decide issues relating to jurisdiction. *Ali v. Vehi-Ship, LLC*, No. 17 CV 02688, 2017 WL 5890876, at *4 (N.D. Ill. Nov. 27, 2017) (“Rule 7(a) of the AAA Rules could not be clearer about the power of the arbitrator to decide gateway arbitrability issues....Because the AAA Rules were incorporated by reference into the Agreement, the parties intended to arbitrate gateway arbitrability issues.”) This Court should follow nearly every other court across the country that has reached the same conclusion. *See e.g., Chesapeake Appalachia, LLC v. Scout Petroleum, LLC*, 809 F.3d 746, 763-64 (3d Cir. 2016) (“It appears that virtually every circuit to have considered the issue has determined that incorporation of the [AAA] rules constitutes clear and unmistakable evidence that the parties agreed to arbitrate arbitrability.” (citations omitted)).

C. Regardless of Delegation, Respondents’ Claims Against Appellants Should be Compelled to Arbitration.

If this Court determines that it must decide whether Respondents’ claims against Appellants should all be compelled to arbitration, the answer is clearly “yes.” “To decide whether an arbitration agreement encompasses a dispute, a court must determine whether ***the factual allegations*** underlying the claim are within the scope of the broad arbitration clause, regardless of the label assigned to the claim.” *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 597, 553 S.E.2d 110, 118 (2001) (citing cases) (emphasis added). “[U]nless the court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute,

arbitration should be ordered.” *Id.* (citing *S.C. Pub. Serv. Auth. v. Great W. Coal*, 312 S.C. 559, 564, 437 S.E.2d 22, 25 (1993)).

The allegations of the Complaint provide an undeniable basis for Appellants to compel arbitration under the FIA Agreement. This Court has recognized that “[w]ell-established common law principles dictate that in an appropriate case ***a nonsignatory can enforce***, or be bound by, ***an arbitration provision within a contract executed by other parties.***” *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 733 S.E.2d 597, 601 (Ct. App. 2012) (quoting *Int’l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*, 206 F.3d 411, 416-17 (4th Cir. 2000)). Three theories recognized under South Carolina law—agency, veil piercing/alter ego, and estoppel—are applicable here. *See id.* Notably, Respondents do not attempt to address the merits of Appellants’ agency and veil piercing/alter ego arguments. They only incorrectly argue the arguments are not preserved. (*See* Respondents’ Brief at *21). As set forth in Appellants’ opening brief, Respondents cannot escape their own agency and alter ego allegations. (*See* Appellants’ Brief at *18 – 24).

Respondents try to circumvent Appellants’ estoppel argument by claiming it is no longer good law. (Respondents’ Brief at *21 – 23). However, Respondents cite no authority in support of that argument. Contrary to Respondents’ claim, the law in South Carolina is as follows:

equitable estoppel allows a non-signatory to compel arbitration in two different circumstances. ***First, equitable estoppel applies when the signatory to a written agreement containing an arbitration clause must rely on the terms of the written agreement in asserting its claims against the nonsignatory.*** When each of a signatory’s claims against a nonsignatory makes reference to or presumes the existence of the written agreement, the signatory’s claims arise out of and relate directly to the written agreement, and arbitration is appropriate. ***Second, application of equitable estoppel is warranted when the signatory to the contract containing an arbitration clause raises allegations of substantially interdependent and concerted misconduct by both the nonsignatory and one or more of the signatories to the contract.***

Pearson, at 295, 733 S.E.2d at 604 (emphasis in original) (quoting *Goer v. Jasco Indus., Inc.*, 395 F. Supp. 2d 308, 314 n. 9 (D.S.C. 2005)). Once again, as set forth in Appellants’ opening brief, Respondents’ own allegations are inescapable. (See Appellants’ Brief at *20 – 23). The Complaint relies on the FIA Agreement in support of Respondents’ claims against Appellants and alleges concerted misconduct by FIA, Patel and Appellants. (*Id.*).

Because Respondents cannot dispute that the factual allegations in the complaint fall within the scope of the FIA Agreement’s arbitration provision, they argue the Answer filed by Chuck Oliver, Devin Patel, and The Institute of Financial Enrichment—only 3 of the 28 Appellants—prevents all of the Appellants from compelling arbitration.⁷ This argument is in direct conflict with the law. It is the allegations in the complaint that control whether claims are subject to arbitration. See *Zabinski*, 346 S.C. at 597, 553 S.E.2d at 118 (2001). In factually similar cases in the arbitration context, “in assessing whether the plaintiff is advancing allegations that implicate doctrines concerning agency and concerted misconduct, cases have looked to the allegations of the plaintiff’s complaint—and have not asked whether the non-signatory defendant concedes it is, for example, a coconspirator or agent of a putative malefactor.” *Holden v. Deloitte & Touche LLP*, 390 F. Supp. 2d 752, 768 (N.D. Ill. 2005) (internal citations omitted); see also *Soar.Earth Ltd. v. Mahaffie*, No. 1:24-CV-02757-DDD-NRN, 2025 WL 2253697, at *4 (D. Colo. Apr. 24, 2025) (refusing to allow a plaintiff to “backtrack” on alter ego allegations in response to defendants’ motion to compel arbitration); *Kahn v. Peak*, No. 91 C 7148, 1992 WL 142297, at *3 (N.D. Ill. June 18, 1992) (holding where a plaintiff alleges a defendant is an agent for purposes of liability, the plaintiff cannot disclaim that allegation in an attempt to defeat enforcement of an arbitration provision).

⁷ As an initial matter, Respondents’ claim that Appellants denied the pertinent allegations is overstated. This fact is shown by Respondents own chart detailing the allegations in the Complaint and Chuck Oliver, Devin Patel, and The Institute of Financial Enrichment’s response. (See Respondents’ Brief *7 – 10).

There is ample authority (and logic) supporting Appellants' position. There is no authority requiring a defendant to concede allegations in a complaint before a court can compel arbitration. It would be patently unfair to require that a defendants' right to arbitration be conditioned on an admission before any discovery takes place. Respondents alone made the decision to bring this action and to assert the allegations in the Complaint. They should not be allowed to backtrack on those allegations to avoid arbitration.

IV. THE ISSUE OF WAIVER IS RIPE FOR THIS COURT'S REVIEW

The issue of waiver was addressed in briefing prior to the subject hearing, addressed at the hearing, and raised in Appellants' Motion to Alter or Amend. (*See* Respondents Opposition to Defendants' Motions to Dismiss and Compel Arbitration at * 14 – 15; R. __; Respondents' Amended Opposition to Defendants' Motion to Dismiss and Compel Arbitration at *20 – 21; R. __; Appellants' Reply in Support of their Motion to Compel Arbitration at *7 – 8; R. __; Hearing Trans. 23:12 – 25:3; 25:4 – 12; 39:13 – 40:22; 42:5 – 15; R. __; Appellants' Motion to Alter or Amend at *13 – 14; R. __). Although fully briefed and argued, the circuit court declined to definitively rule on the issue.

When an issue is raised but not ruled upon, it is preserved for appellate review if a party raises it in a motion to alter or amend under Rule 59(e), SCRPC. *Chastain v. Hiltabidle*, 381 S.C. 508, 515, 673 S.E.2d 826, 829 (Ct. App. 2009) (“When an issue is raised to but not ruled upon by the [circuit] court, the issue is preserved for appeal only if the party raises the same issue in a Rule 59(e) motion.”). Moreover, this Court may address issues on appeal in the interest of judicial economy. *Buist v. Huggins*, 367 S.C. 268, 275, 625 S.E.2d 636, 639 (2006) (deciding to address the merits of an issue in the interest of judicial economy when the trial court had already heard arguments and addressed the issue, and the record on appeal provided sufficient evidence to make a finding of fact); *Southern Bell Tel, and Tel. Co. v. Hamm*, 360 S.C. 70, 75, 409 S.E.2d 775,

778 (1991) (electing to address an issue on appeal in the interest of judicial economy after both parties had fully briefed the issue). The issue of waiver is preserved under the general rules governing issue preservation. Regardless, to avoid the possibility of a second appeal on the issue of waiver, this Court should make a decision on the issue in the interests of judicial economy.

On the merits, it is clear that Appellants have not waived the right to compel arbitration. According to Respondents, simply filing a responsive pleading results in waiver. Regardless of the standard applied, that is not the law in South Carolina. “A party may waive the right to arbitration by being unjustifiably slow in seeking arbitration.” *Evans v. Accent Manufactured Homes, Inc.*, 352 S.C. 544, 550, 575 S.E.2d 74, 76 (Ct. App. 2003). Appellants moved to compel arbitration approximately two and one-half months after accepting service of the complaint. This short delay is more than justified, especially given that Appellants are not parties to the agreement that provides the basis for arbitration. When Appellants’ motion was filed, no hearings had been held, and no discovery had been conducted. Finding waiver under these facts would be contrary to South Carolina law.

CONCLUSION

For these reasons, and those set forth in Appellants’ opening brief, Appellants respectfully request that this Court reverse the circuit court’s order denying Appellants’ motion to compel arbitration

Respectfully Submitted,

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