RECEIVED
May 27 2026
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Appellate Case No.: 2025-002543

Delores Walker, …………………………………………… Respondent,

v.

RE Carroll Management Company,
Harborstone LLC, d/b/a Harborstone
Apartments…………………………………………………Appellants.

INITIAL REPLY BRIEF OF APPELLANTS

Amanda M. Gaston, Esq.
CLAWSON AND STAUBES, LLC
S.C. Bar No.: 104135
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
Phone: (843) 577-2026
Email: agaston@cslaw.com

Attorney for Appellants

TABLE OF CONTENTS

Table of Authorities………………………………………………………….…………iii

Reply Argument..…………………………………………………………………..1

I. The Circuit Court Applied an Impermissibly Restrictive Interpretation of Interstate Commerce Under the FAA……………………………………...1

II. Respondent Fails to Establish Procedural or Substantive Unconscionability…...2

III. The Circuit Court's Order Improperly Relied Upon Findings and Legal Conclusions Not Announced at the Hearing…………………………………….3

IV. The Circuit Court Erred in Refusing to Consider the Evidence Submitted with Appellants' Rule 59(e) Motion……………………………………………….4

Conclusion ………………………………….………………………………..5

TABLE OF AUTHORITIES

Allied-Bruce Terminix Cos., Inc. v. Dobson,
513 U.S. 265 (1995) 1, 5

AT&T Mobility LLC v. Concepcion,
563 U.S. 333, 341-42 (2011) 3

Dean v. Heritage Healthcare of Ridgeway, LLC,
408 S.C. 371, 759 S.E.2d 727 (2014) 1

Elam v. S.C. Dep't of Transp.,
361 S.C. 9, 602 S.E.2d 772 (2004) 4

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

Hicks Unlimited, Inc. v. UniFirst Corp.,
439 S.C. 632, 889 S.E.2d 568 (2023) 2

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

Munoz v. Green Tree Fin. Corp.,
343 S.C. 531, 542 S.E.2d 360 (2001) 1

Statutes

9 U.S.C. §§ 1-16 (Federal Arbitration Act)…………………………….....passim

Rule 59(e), SCRCP...4

REPLY ARGUMENT

I. The Circuit Court Applied an Impermissibly Narrow Interpretation of Interstate Commerce Under the FAA

Respondent argues the Lease Agreement is a purely intrastate transaction outside the scope of the Federal Arbitration Act ("FAA"). That position is inconsistent with controlling authority interpreting the FAA's "involving commerce" requirement coextensively with Congress's Commerce Clause authority.

The FAA applies in both federal and state courts to written arbitration agreements involving interstate commerce. *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 538-39, 542 S.E.2d 360, 363 (2001). The United States Supreme Court has interpreted the FAA broadly, extending its reach to intrastate contracts whose aggregate economic activity substantially affects interstate commerce. *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 277-81 (1995). South Carolina courts have applied that standard to residential lease agreements where the transaction bears a sufficient nexus to interstate commerce. *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 381, 759 S.E.2d 727, 732 (2014). The relevant inquiry is therefore not limited to the location of the leased premises or the residency of the tenant, but whether the contractual relationship forms part of an interstate commercial enterprise.

The Lease Agreement was executed within the operational structure of RE Carroll Management Company, a North Carolina entity engaged in the multistate ownership, financing, management, maintenance, and operation of residential apartment communities. Harborstone Apartments operates within that structure. Its operations involve interstate banking, interstate procurement of goods and services, interstate communications, out-of-state vendors, and contractual relationships with third-party contractors operating across state lines. Respondent does not dispute those facts.

Respondent relies on *Hicks Unlimited, Inc. v. Unifirst Corp.*, 439 S.C. 632, 889 S.E.2d 568 (2023), arguing the Lease Agreement lacks interstate characteristics. *Hicks Unlimited* does not hold that a contract executed in South Carolina falls outside the FAA merely because the parties or property are located in this State. The inquiry remains fact-specific and dependent upon the broader commercial context of the transaction. Unlike the garment service agreement at issue in *Hicks Unlimited*, the Lease Agreement here arises from a multistate property management enterprise.

Paragraph 42 of the Lease Agreement further provides that disputes "will be resolved by binding arbitration conducted pursuant to the Federal Arbitration Act." Although contractual invocation of the FAA is not dispositive under *Hicks Unlimited*, it reflects the parties' intent that the Arbitration Clause be governed by the FAA.

The Circuit Court therefore applied an unduly narrow interpretation of interstate commerce inconsistent with the FAA and controlling precedent.

II. Respondent Fails to Establish Procedural or Substantive Unconscionability

Respondent argues the arbitration provision is unconscionable because the Lease Agreement is a contract of adhesion and Respondent lacked meaningful choice. The record does not support either argument.

A contract of adhesion is not unconscionable per se. *Lackey v. Green Tree Fin. Corp.*, 330 S.C. 388, 498 S.E.2d 898 (Ct. App. 1998). The relevant inquiry is whether the arbitration provision is so one-sided or oppressive that enforcement would be fundamentally unfair. *Fanning v. Fritz's Pontiac-Cadillac-Buick, Inc.*, 322 S.C. 399, 472 S.E.2d 242 (1996). Respondent has made no such showing.

The arbitration provision appears in Paragraph 42 of the Lease Agreement and was separately initialed by Respondent. The provision was not hidden or misleading. It applies equally to both parties and encompasses "any and all claims" arising from the landlord-tenant relationship. Respondent identifies no provision granting unilateral rights or remedies to Appellants.

Respondent's reliance on unequal bargaining power is likewise insufficient. Such disparities are common in residential leasing transactions and do not invalidate an arbitration agreement. The record contains no evidence of oppression, deception, unfair surprise, or lack of assent.

Nor does the formatting of the provision render it unenforceable. Once applicable, the FAA preempts state law rules imposing heightened notice or formatting requirements directed specifically at arbitration agreements. *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 341-42 (2011). Because the arbitration provision is neither procedurally nor substantively unconscionable, it remains enforceable under the FAA.

III. The Order Improperly Relies Upon Findings and Legal Conclusions Not Contemplated at the Hearing

Respondent argues the findings contained in the Circuit Court's Order were "fully articulated and heard" during the September 11, 2025 hearing. The record does not support that position. At the hearing, the Court made no findings concerning unconscionability, adhesion, bargaining power, sophistication of the parties, or insufficiency of evidence regarding interstate commerce. Nor did the Court indicate it intended to invalidate the arbitration provision on unconscionability grounds. Those findings first appeared in the written Order prepared by Respondent's counsel after the hearing.

Appellants do not challenge the Order merely because the Court denied arbitration. The issue is that the written Order introduced new findings concerning unconscionability and interstate

commerce that exceeded the scope of those articulated by the Court at the hearing and materially altered the basis for denying arbitration. Although a trial court may adopt a proposed order submitted by counsel, the resulting findings remain subject to appellate review to determine whether they are in fact supported by the record.

IV. The Circuit Court Erred in Refusing to Consider the Evidence Submitted with Appellants' Rule 59(e) Motion

Respondent argues the Circuit Court properly refused to consider the Affidavit of Associate General Counsel Adam Spivey because the evidence could have been presented earlier. The procedural record demonstrates otherwise.

During the September 11, 2025 hearing, interstate commerce became a disputed issue, and Appellants immediately requested leave to submit an affidavit further demonstrating the Lease Agreement's connection to interstate commercial activity. The Court denied that request. The written Order, which was prepared by Respondent's counsel and adopted by the Court in its entirety over Appellants' objection, subsequently introduced findings and legal conclusions concerning interstate commerce that were neither articulated nor contemplated during the hearing. Appellants' Rule 59(e) Motion narrowly addressed those newly asserted findings with additional evidence concerning the Lease Agreement's connection to interstate commerce and the applicability of the FAA.

Rule 59(e), SCRCP permits supplementation where a party lacked a meaningful opportunity to present material evidence before entry of the order. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). The Spivey Affidavit further emphasized RE Carroll Management Company's interstate operations, including multistate banking activity, interstate procurement of goods and services, interstate operational oversight, and interstate flow of funds.

Those facts bear directly upon whether the Lease Agreement falls within the FAA's "involving commerce" requirement.

Respondent offers no evidence disputing the facts as set forth in the Affidavit. Those undisputed facts satisfy the FAA's interstate commerce requirement. *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. at 277.

Respondent characterizes the Affidavit as an attempt to relitigate issues already decided. The Affidavit, however, addressed findings concerning interstate commerce that first appeared in the written Order after the Court denied Appellants' request to supplement the record. Refusing to consider the Affidavit prevented the Circuit Court from considering evidence directly relevant to the FAA analysis. Even without the Affidavit, the existing record demonstrates sufficient interstate commercial activity to invoke the FAA. The Circuit Court therefore erred in denying reconsideration and concluding the FAA did not apply.

CONCLUSION

For the foregoing reasons, the Circuit Court erred in denying Appellants' Motion to Dismiss and/or Compel Arbitration. The arbitration provision contained in the Lease Agreement is governed by the Federal Arbitration Act and is enforceable. Appellants therefore respectfully request that this Court reverse the Circuit Court's Order and remand this matter with instructions to compel arbitration pursuant to the parties' Lease Agreement.

[Signature Page to Follow]

Respectfully submitted,

Amanda M. Gaston, Esq.
CLAWSON AND STAUBES, LLC
S.C. Bar No.: 104135
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492
Phone: (843) 577-2026
Email: agaston@cslaw.com

Attorney for Appellants

May 27, 2026