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**May 26 2026**

**SC Court of Appeals**

**STATE OF SOUTH CAROLINA IN THE COURT OF APPEALS**

**Appellate Case No. To Be Assigned**

**MIDLAND CREDIT MANAGEMENT, INC., Respondent,**

**v.**

**JULIAN RICHARDS, Appellant.**

**APPELLANT'S BRIEF**

**Appeal from Aiken County The Honorable Walton J. McLeod, Circuit Court Judge**

**Submitted by: Julian Richards,**

**Pro Se Appellant**

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**North Augusta,**

**SC 29841**

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## TABLE OF AUTHORITIES

### Cases

AT&T Mobility LLC v. Concepcion, 563 U.S. 333 (2011) Burns v. Watts, 286 S.C. 398, 333 S.E.2d 58 (Ct. App. 1985) Kindred Nursing Ctrs. Ltd. P’ship v. Clark, 137 S. Ct. 1421 (2017) Morgan v. Sundance, Inc., 596 U.S. 411 (2022) Rushing v. Gold Kist, Inc., 303 S.C. 469, 401 S.E.2d 426 (1991) Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 644 S.E.2d 663 (Ct. App. 2007) Smith v. Spizzirri, 144 S. Ct. 1173 (2024)

## **STATEMENT OF ISSUES ON APPEAL**

1. Whether the Court of Common Pleas erred in concluding that the Citibank arbitration provision remained inapplicable after Appellant exercised his statutory right to a de novo appeal pursuant to S.C. Code Ann. § 22-3-1000.
  
2. Whether the Federal Arbitration Act required enforcement of the arbitration agreement and a stay of proceedings once Appellant invoked arbitration.
  
3. Whether Appellant waived arbitration despite asserting that right throughout the litigation.

### **Statutes**

9 U.S.C. § 2 9 U.S.C. § 3 S.C. Code Ann. § 22-3-1000

## **STATEMENT OF THE CASE**

Respondent Midland Credit Management, Inc. commenced this collection action in the North Augusta Summary Court (Case No. 2025CV02.1000274) seeking \$2,249.01 allegedly owed on a Citibank credit card account.

Appellant filed an Answer on May 19, 2025, asserting arbitration as an affirmative defense.

After a hearing, the magistrate denied Appellant's request for arbitration and entered judgment in favor of Respondent.

Appellant timely filed a Motion for New Trial and Motion to Compel Arbitration, which were denied. On August 18, 2025, Appellant appealed to the Aiken County Court of Common Pleas (Case No. 2025-CP-02-02168) for de novo review pursuant to S.C. Code Ann. § 22-3-1000. On September 4, 2025, Appellant filed a Motion to Compel Arbitration in the Court of Common Pleas. By Order dated October 9, 2025, the Honorable Walton J. McLeod denied the motion and dismissed the appeal. Appellant filed a timely Rule 59(e), SCRCPP, Motion to Reconsider, which was denied by Order dated February 23, 2026. Appellant served the Notice of Appeal on March 23, 2026, and now brings this appeal.

### **STATEMENT OF FACTS**

The account at issue is governed by a Citibank Cardmember Agreement containing a broad arbitration provision permitting either party to elect arbitration of any claim. The agreement includes the following limited exception:

“Claims filed in a small claims court are not subject to arbitration so long as they remain in such court.”

Appellant has consistently asserted his right to arbitration at every stage of the proceedings.

### **STANDARD OF REVIEW**

The interpretation and enforceability of an arbitration agreement are questions of law reviewed de novo. The application of the Federal Arbitration Act is also reviewed de novo.

## ARGUMENT

This appeal presents a straightforward question of contract interpretation and arbitration law. The Citibank Cardmember Agreement excludes claims filed in small claims court from arbitration only “so long as they remain in such court.” After Appellant exercised his statutory right to a de novo appeal pursuant to S.C. Code Ann. § 22-3-1000, the action no longer remained in small claims court. The Court of Common Pleas nevertheless refused to compel arbitration. Because that ruling conflicts with both the governing statute and the parties’ agreement, it should be reversed.

### **I. THE TRIAL COURT ERRED BY FAILING TO APPLY THE DE NOVO STANDARD**

Under South Carolina law, an appeal from magistrate court “shall be tried anew” in the Court of Common Pleas “as if no trial had been had in the lower court.” S.C. Code Ann. § 22-3-1000; *Burns v. Watts*, 286 S.C. 398, 333 S.E.2d 58 (Ct. App. 1985).

The Citibank Cardmember Agreement contains a conditional limitation: “Claims filed in a small claims court are not subject to arbitration so long as they remain in such court.” This language is explicit. The exception applies only while the case remains in small claims court.

Because Appellant exercised his statutory right to a de novo appeal, the case no longer remained in small claims court. The exemption therefore ceased to apply. The trial court’s conclusion conflicts with both the governing statute and the plain language of the agreement and constitutes reversible legal error.

### **II. THE SMALL CLAIMS CARVE-OUT DOES NOT APPLY AFTER A DE NOVO APPEAL**

The arbitration provision creates a limited, conditional exception — not a permanent exemption. The phrase “so long as they remain” imposes a temporal limitation. Once the case proceeded in the Court of Common Pleas, it no longer remained in small claims court. The condition for the exception no longer existed.

Additionally, the agreement permits arbitration to be invoked even where there is a pending lawsuit. The trial court’s interpretation imposes a limitation not contained in the agreement and fails to give effect to its plain language.

### **III. THE FEDERAL ARBITRATION ACT REQUIRES ENFORCEMENT OF THE AGREEMENT**

The Federal Arbitration Act provides that arbitration agreements “shall be valid, irrevocable, and enforceable.” 9 U.S.C. § 2. Once a valid arbitration agreement is invoked, the court must stay the action and compel arbitration. 9 U.S.C. § 3; *Smith v. Spizzirri*, 144 S. Ct. 1173 (2024).

#### **A. The Agreement Must Be Enforced As a Whole**

Respondent relies on the Citibank Cardmember Agreement to establish liability for the alleged debt. That same agreement contains a binding arbitration provision. The agreement must be enforced as a whole, not selectively.

#### **B. Preemption Applies**

By treating the de novo appeal as if the case still remained in small claims court, the trial court imposed a limitation not found in the agreement. This creates an impermissible barrier to arbitration preempted by the Federal Arbitration Act. *See AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011); *Kindred Nursing Ctrs. Ltd. P’ship v. Clark*, 137 S. Ct. 1421 (2017).

#### **IV. APPELLANT DID NOT WAIVE HIS RIGHT TO ARBITRATION**

Appellant preserved his right to arbitration at every stage: in his Answer (May 19, 2025), at the magistrate hearing, in his post-trial motions, and in the Court of Common Pleas. No discovery occurred, and Respondent suffered no prejudice.

Under *Morgan v. Sundance, Inc.*, 596 U.S. 411 (2022), waiver may not be based on arbitration-specific rules. Under *Rushing v. Gold Kist, Inc.*, waiver is disfavored absent prejudice.

#### **CONCLUSION**

For the foregoing reasons, Appellant respectfully requests that this Court:

1. Reverse the orders of the Court of Common Pleas;
2. Remand with instructions to compel arbitration pursuant to the Citibank Cardmember Agreement;
3. Stay all proceedings under 9 U.S.C. § 3; and
4. Grant such other relief as the Court deems just and proper.

#### **CERTIFICATE OF SERVICE**

I certify that on May 26, 2026, I submitted this filing to the Clerk of the South Carolina Court of Appeals by email and served a true copy upon counsel for Respondent, Stephen Elias Fain, Esq., by email at [wylie.clarkson@clarksonlawllc.com](mailto:wylie.clarkson@clarksonlawllc.com).

**Respectfully submitted,**

**Julian Richards**

A handwritten signature in black ink that reads "Julian Richards". The signature is written in a cursive style with a long horizontal flourish at the end.

**Pro Se Appellant**

**Date: May 26, 2026**