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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE CIRCUIT COURT
NINTH JUDICIAL CIRCUIT

The Honorable Thomas J. Rode

Appellate Court Case No. 2026-000910
Circuit Court Case No. 2024-CP-10-02642

Christopher Sawyer and Terese Sawyer, ... Appellants,

v.

Vacation Inspirations, Destination Travel, LLC, Joseph Shirley, Randy Gardner and Jeffrey Pumilia, ... Respondents.

INITIAL BRIEF OF RESPONDENTS

John A. Massalon (SC Bar #10279)
Carissa Steichen Land (SC Bar #104264)
WILLS MASSALON & ALLEN LLC
Post Office Box 859
Charleston, South Carolina 29402
(843) 727-1144
jmassalon@wmalawfirm.net
cland@wmalawfirm.net

Jeffrey Wayne Buncher, Jr. (SC Bar #78890)
Uricchio Howe Krell Jacobson
Toporek Theos & Keith, PA
P.O. Box 399
Charleston, SC 29402
Office: (843) 723-749
jeff@uricchio.com

Attorneys for Respondents

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I. STATEMENT OF ISSUES ON APPEAL

The issues are: (1) whether the appeal should be dismissed because the order compelling arbitration and staying proceedings are not immediately appealable, and (2) if the Court determines the order is immediately appealable, whether the circuit court erred in granting Respondents' motion to compel arbitration and stay proceedings.

II. STATEMENT OF CASE

Appellants purchased a Vacation Inspirations ("VI") Membership ("the Membership") distributed by Destination Travel, LLC in May 2021 in Charleston, South Carolina by Purchase Agreement (the "Purchase Agreement"). (Purchase Agreement, R. p. __). The Purchase Agreement includes the following arbitration provision:

> 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) and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The arbitrator shall be selected by VI. Upon final award, arbitrator compensation and. 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.

(Purchase Agreement, R. p. __).

On May 21, 2024, Appellants filed a lawsuit against Respondents in the Charleston County Court of Common Pleas, alleging among other things, that the Purchase Agreement (including the arbitration provision) was unconscionable and seeking injunctive and equitable relief. (Complaint, R. p. __). Respondents answered (Answer, R. p. __), denying these allegations. Respondents filed a motion to compel arbitration on November 12, 2024, pursuant to the arbitration provision in the Purchase Agreement. (Motion to Compel Arbitration, R. p. ___).

Attached to the motion were the following documents all signed by the Appellants: the Vacation Inspirations Membership Purchase Agreement with Membership Terms and Conditions

(Purchase Agreement, R. p. __); an Addendum/Exception to Contract (Addendum, R. p. ___); and a Vacation Inspirations Membership Acknowledgement with a series of questions answered by the Appellants. (Acknowledgment, R. p. __). The issues were briefed extensively before the hearings on the motion. Appellants filed a memorandum in opposition to the motion. (Memo in Opposition, R. p. __). Likewise, Respondents filed a supporting memorandum. (Memoranda in Support, R. pp. __).

The Court heard oral argument by counsel for Appellants and Respondents on October 7, 2025. After due consideration of all issues and matters, on December 9, 2025, the trial court entered its order granting Respondents' motion to compel arbitration. (Order, R. p. __). In the order, and pursuant to Rule 52 of the South Carolina Rules of Civil Procedure, the Court made specific Findings of Fact and Conclusions of Law and granted Respondents' motion in full. (Order, R. p. __). Thereafter on December 18, 2025, Appellants filed a Motion for Reconsideration, which was denied by the circuit court on March 16, 2026. (Motion for Reconsideration, R. p. __) (Order, R. p. __). Appellants filed a notice of appeal on or about April 13, 2026, appealing the order of the lower court compelling arbitration and denying their motion to reconsider. Appellants filed their initial brief on May 26, 2026.

III. STANDARD OF REVIEW

As a threshold matter, the order compelling arbitration is not subject to immediate appeal; therefore, the appeal should be dismissed without further consideration for the reasons further detailed in Respondents' Motion to Dismiss filed herewith. Toler's Cove Homeowners Ass'n, Inc. v. Trident Const. Co., 355 S.C. 605, 610, 586 S.E.2d 581, 584 (2003); Carolina Care Plan, Inc. v. United HealthCare Servs., Inc., 361 S.C. 544, 606 S.E.2d 752 (2004).

South Carolina courts have recognized that the determination of whether a claim is subject to arbitration, typically in the context of cases where a motion to compel arbitration is denied, is subject to de novo review. Chassereau v. Glob. Sun Pools, Inc., 373 S.C. 168, 171, 644 S.E.2d 718, 720 (2007); Wellman, Inc. v. Square D Co., 366 S.C. 61, 67, 620 S.E.2d 86, 89 (Ct.App.2005); United States v. Bankers Ins. Co., 245 F.3d 315, 319 (4th Cir.2001). A circuit court's factual findings will not be reversed on appeal if any evidence reasonably supports the findings. Chassereau, at 171, 644 S.E.2d at 720; see also Thornton v. Trident Med. Ctr., L.L.C., 357 S.C. 91, 94, 592 S.E.2d 50, 51 (Ct. App. 2003). The legal conclusions below were correctly decided and the factual findings are supported by sufficient evidence. Should the Court not dismiss the appeal as set forth in this Brief, the legal conclusions and factual findings and the trial court's rulings should be affirmed for the reasons set forth below.

IV. ARGUMENTS

A. THE ORDER GRANTING THE MOTION TO COMPEL ARBITRATION IS NOT IMMEDIATELY APPEALABLE

By statute, an order *denying* a motion to compel arbitration is immediately appealable, but an order *granting* such a motion is not. S.C. Code Ann. § 15-48-200. It is well established and long-standing precedent that an order compelling arbitration is not immediately appealable. Toler's Cove, 355 S.C. 605, 610, 586 S.E.2d 581, 584 (2003); Carolina Care Plan, Inc., 361 S.C. 544, 606 S.E.2d 752 (2004). Specifically, the South Carolina court held in Toler's Cove there is no federal policy favoring arbitration under a certain set of procedural rules and that South Carolina law defines whether an order addressing arbitrability is subject to appeal. Pursuant to S.C. Code Ann. § 15-48-200(a), an appeal may be taken from:

(1) An order denying an application to compel arbitration made under § 15-48-20

(2) An order granting an application to stay arbitration made under § 15-48-20(b)

(3) An order confirming or denying confirmation of an award;

(4) An order modifying or correcting an award;

(5) An order vacating an award without directing a rehearing; or

(6) A judgment or decree entered pursuant to the provisions of this chapter.

Notably absent from the list in Section 15-48-200 is an appeal from an order granting an application to compel arbitration or from an order to stay claims pending arbitration. Therefore, the order compelling arbitration of the claims by the Appellants is not immediately appealable.

Appellants recognize and acknowledge this longstanding principle in their brief yet argue that this appeal is different because it affects a substantial right. In support of the argument that the order compelling arbitration affects a substantial right, Appellants rely on S.C. Code Ann. 14-3-330, which defines appellate jurisdiction in certain cases, including where:

> (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action.

S.C. Code Ann. § 14-3-330(2).

This very argument was made and rejected by the South Carolina Supreme Court in Heffner v. Destiny, Inc., 321 S.C. 536, 471 S.E.2d 135 (1995).[1] In Heffner, the Appellants challenged an order compelling arbitration under the F.A.A. The Court applied the rule of statutory construction "expressio unius est exclusio alterius" (the mention of one is the exclusion of another), to reach the conclusion that orders compelling arbitration are not immediately appealable under §

[1] The Heffner court also found that an order staying an action and compelling arbitration is not immediately appealable under 9 U.S.C.A. § 16(a)(3) (1999) of the FAA. Toler's Cove Homeowners Ass'n v. Trident Constr. Co., 355 S.C. 605, 610 n.3, 586 S.E.2d 581, 584 (2003). The United States Supreme Court's subsequent decision in Green Tree Fin. Corp.-Alabama v. Randolph, 531 U.S. 79, 121 S. Ct. 513, 148 L. Ed. 2d 373 (2000), overruled the Heffner decision to the extent it can be read to mean that a federal court's order compelling arbitration under the FAA is not immediately appealable. Id. However, Green Tree does not affect our state's procedural rule that a South Carolina court's order compelling arbitration is not immediately appealable. Id.

15-48-200 because such orders were omitted from the list of appealable orders. Id. 321 S.C. at 538, 471 S.E. 2d at 136. Additionally, the Appellants in that case argued that S.C. Code Ann. § 14-3-330 should be applied to determine appealability just as the Appellants in this case do. In rejecting that argument, the South Carolina Supreme Court concluded that "[t]o apply the general appealability provisions of § 14-3-330 would conflict with the more specific provisions of § 15-48-200 regarding the appealability of orders relating to arbitration. Id. 321 S.C. at 538, 471 S.E. 2d at 136, citing National Advertising Co. v. Mount Pleasant Board of Adjustment, 312 S.C. 397, 440 S.E.2d 875 (1994) (specific laws prevail over general laws).

Additionally, Appellants' arguments ignore the language of the subsections of this statute. This statute does not apply to *any* order affecting a substantial right, but only such orders that fall into categories (a), (b), or (c). See S.C. Code Ann. § 14-3-330(2). "Absent some specialized statute, determining if an interlocutory order is immediately appealable depends on whether the order falls within one of the several categories of appealable judgments, decrees, or order listed in S.C. Code Ann. § 14-3-330." Baldwin Const. Co. v. Graham, 357 S.C. 227, 230, 593 S.E.2d 146, 147 (2004). In other words, an interlocutory order must fall into one of these subsections to warrant immediate appeal.

None of the categories are applicable here. Subsections (b) and (c) are indisputably not a factor as there is no claim for new trial, and no pleadings have been stricken. The only category Appellants can attempt to argue applies is that the order "prevents a judgment from which an appeal might be taken or discontinues the action." See S.C. Code Ann. § 14-3-330(2)(a). The fact that Respondents' motion to compel arbitration includes a request to stay the circuit court case inherently means the order granting Respondents' motion is not a final order discontinuing the action. On the other hand, the Court of Appeals has explored certain cases where the lower court dismisses a pending case rather than staying it during arbitration. Widener v. Fort Mill Ford, 381 S.C. 522, 674 S.E.2d 172 (Ct. App. 2009). In such circumstance which does not exist here, the trial court's order did not stay the action pending arbitration and instead dismissed it without prejudice. Id, 381 S.C. at 524, 674 S.E.2d at 174. The dismissal, as opposed to a stay, was the key distinction leading to the court's ruling that the order was immediately appealable. Id.

Appellants also attempt to invoke S.C. Code Ann. § 14-3-330 on the grounds that the substantial right here is the right to due process, specifically the right to adjudication before a fair and impartial decision maker. This language is simply not a part of the statute that permits an immediate appeal. On that note, the Appellants' reliance on Lester v. Dawson, 327 S.C. 263, 491 S.E.2d 240 (1997) in support of their argument is misplaced. In that case, the Court recognized the order affecting "modes of trial" affect a substantial right. Appellants fail to explore what constitutes a "mode of trial" in an attempt to group arbitration into this category without support. Courts have recognized there are "two general modes of trial, trials by Court and trials by jury." Collier v. Green, 244 S.C. 367, 373, 137 S.E.2d 277, 281 (1964). See also Munoz v. Green Tree Fin. Corp., 343 S.C.531,542, 542 S.E.2d 360, 365 (2001). "To the Court belongs all issues of law and all cases in chancery, and to the jury all questions of fact in cases at law for the recovery of money or of any specific real or personal property." Id. "Issues regarding the mode of trial or limitations on relief do not equate to the issue of subject matter jurisdiction." Foggie v. CSX Transp., Inc., 313 S.C. 98, 23, 431 S.E.2d 587, 590 (1993).

Mode of trial is not the issue before the Court in assessing whether or not a motion to compel arbitration and stay proceedings is immediately appealable. Mode of trial means jury or non-jury in the lower court. Appellants conflate the concepts of a jury trial versus non-jury trial with the concepts of a circuit court proceeding versus an arbitration. Appellants offer no controlling authority to demonstrate that arbitration under the FAA is a mode of trial that would impact a "substantial right" under S.C. Code Ann. § 14-3-330. Further, Appellants cite no South Carolina cases or authority in support of the general assertion that the "substantial right" language is implicated in the context of arbitration. In sum, Appellants reasoning is flawed and they fail to show this statute provides a basis permitting an immediate appeal of an order compelling arbitration and staying the circuit court case.

Appellants next argue due process warrants immediate appeal here because the arbitration provision is structurally unfair and violative of due process rights. This portion of their brief focuses largely on the arbitrator selection provision. Appellants rely heavily on the decision in Hooters of America, Inc. v. Phillips, 173 F.3d 933 (4th Cir. 1999). However, that case is readily distinguished from the case before this Court. Significantly, the procedural posture of the Hooters case was the opposite of the current case. The trial court denied a motion to compel arbitration by Hooters and Hooters appealed that decision to the Fourth Circuit. Hooters, 173 F.3d at 936. Thus, Hooters does not stand for the proposition that this Court should ignore clear South Carolina precedent and allow Appellants to pursue an interlocutory appeal of the order compelling arbitration.

Additionally, since the decision in Hooters was rendered, the United States Supreme Court decided the case of Henry Schein, Inc. vs. Archer & White Sales, Inc., 586 U.S. 63,139 S. Ct. 524 (2019) which is discussed more fully below. In Schein the United States Supreme Court held the requirement the arbitration be conducted in accordance with the Arbitration Rules of the American Arbitration Association means that only the arbitrator and not the trial Court could decide the arbitrability question. That is noteworthy because the Court that decided Hooters held in part that "[i]t is for the court, not the arbitrator, to decide in the first instance whether the dispute is to be resolved through arbitration." Hooters, 173 F.3d at 937-938.

Substantively, the arbitration agreement at issue is vastly different from the arbitration provision that was the subject of the Hooters decision. The Appellants argue that the arbitrator selection provision is a "central defect that renders the process invalid." (App. Brief, p. 3). However, in refusing to enforce the arbitration provision in the Hooters case the Court cited the following as a basis for its findings:

- The rules required the employee to provide the company notice of her claim at the outset, but Hooters was not required to file any responsive pleadings or to notice its defenses.
- Additionally, at the time of filing this notice, the employee was required to provide the company with a list of all fact witnesses with a brief summary of the facts known to each. The company was not required to reciprocate.
- The arbitration rules drafted by Hooters allowed the employee and Hooters each select an arbitrator, and the two arbitrators in turn select a third, but the list of eligible arbitrators was created exclusively by Hooters.
- Once the proceedings were under way, Hooters could expand the scope of arbitration to any matter, but the employee could not raise "any matter not included in the Notice of Claim."
- Hooters could request a summary dismissal of employee claims before a hearing was held but the employee could not.
- Hooters, but not the employee, could record the arbitration hearing.
- The rules also gave Hooters the right to file suit in court to vacate or modify the award.
- The rules provided that upon 30 days' notice Hooters, but not the employee, could cancel the agreement to arbitrate.
- Hooters had the right to modify the rules, "in whole or in part," whenever it wanted and without notice to the employee.

Hooters of Am., Inc. v. Phillips, 173 F.3d 933, 938-939.

Those rules stand in stark contrast to the AAA Commercial Rules that apply to this arbitration and which do not suffer the infirmities cited by the Court in Hooters. For example, Respondent did not draft the AAA Rules and does not have the authority to amend or change them. Procedural rules such as those providing for changing a claim apply equally to all parties.

Appellants make much of the requirement that the arbitration take place in Charleston, South Carolina at the Courthouse or some other locale selected by the Respondent. However, the Appellants traveled to Charleston and entered into contracts with the Respondents there. Also, Appellants filed the lawsuits against the Respondents in Charleston County and, absent the order compelling arbitration, would have adjudicated their case in the same place provided for in their agreement to arbitrate. As for the arbitrator himself or herself, the AAA Rules require an arbitrator to be independent and impartial and allows for the disqualification of an arbitrator who is not. (Rule 19, AAA Commercial Rules, R. p. __).

Appellants' reliance on Doe v. TCSC, LLC, 430 S.C. 602, 846 S.E.2d 874 (Ct. App 2020) is also misplaced. The appellant in Doe appealed from an order denying a motion to compel arbitration, whereas in the case before this Court, Appellants are attempting to appeal from an order compelling arbitration. Doe v. TCSC, LLC, 430 S.C. at 606, 846 S.E. 2d. at 876. Furthermore, in Doe the Court concluded that the parties did not delegate the decision of whether the Agreement was valid and enforceable to the arbitrator. Doe v. TCSC, LLC, 430 S.C. at 608-609, 846 S.E.2d at 877. The AAA Rules incorporated in the agreement at issue specifically provided that the arbitrator shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part and that such an arbitration clause shall be treated as an agreement independent of the other terms of the contract. Also, the rule provided that a decision by the arbitrator that the contract is null and void shall not for that reason alone render invalid the arbitration clause. (Respondents' Memorandum in Support of Motion to Compel Arbitration, R. p. __).

Likewise, neither Flores v. New York Football Giants, 150 F.4d 172 (2nd. Cir 2025), McMullen v. Meijer, Inc. 355 F. 3d 485 (6th Cir. 2004), nor Walker v. Ryan's Family Steak Houses, 400 F.3d 370 (6th Cir. 2005) support Appellants' claim to a right to appeal the order granting arbitration. In Flores, the arbitration agreement at issue granted unilateral substantive and procedural discretion over the arbitration to the NFL Commissioner who was the main executive employee of one of the Appellant's adversaries. Both Flores and McMullen were based on the effective vindication doctrine which is a matter of federal arbitration law applied for the purpose of avoiding a prospective waiver of federal statutory rights in some private arbitration agreements. Am. Express Co. v. Italian Colors Rest., 570 U.S. 228, 235, 133 S. Ct. 2304, 2310 (2013). Respondents have not provided any corresponding doctrine in South Carolina and Appellants have not cited any controlling authority on this point. Moreover, the Appellants here do not claim any federal statutory rights and so the holdings in those cases do not warrant or require the relief that Appellants seek. In Walker, the appeal was taken from an order denying a motion to compel arbitration and does not provide support of Appellants' argument that a pre-arbitration appeal may be taken from an order compelling arbitration. Walker, 400 F.3d at 373.

Additionally, Respondents refer to the remaining portions of this brief, which address such issues of arbitrability, unconscionability, and the important fact that Appellants are presumed to have read, understood, and agreed to the terms of the agreements they signed, including the arbitration provision, in response to these arguments. Importantly, Appellants signed and agreed to the terms of the arbitration provision in this case and cannot now attempt to invoke due process rights because they are unhappy with the terms agreed upon. For all of these reasons, there are no due process grounds for this Court to consider an interlocutory appeal of the order compelling arbitration.

Next, Appellants turn to the Toler's Cove case. Appellants' reliance on this case, specifically the "capable of repetition doctrine," does not support the interlocutory appeal of the decision below. In this section of their brief, Appellants, without any authority or citation, claim that: “South Carolina’s ‘capable of repetition’ doctrine provides an additional independent basis for appellate jurisdiction.” (App. Brief, p. 18). That is not the holding of Toler’s Cove. Instead, the Court held in Toler’s Cove that the “state procedural rule on appealability of arbitration order, rather than rule under Federal Arbitration Act (FAA), applied, and thus trial court's order compelling arbitration was not immediately appealable.” Toler's Cove, 355 S.C. at 605, 586 S.E.2d at 581. The Court ruled on the remaining issues in that case, whether respondent waived its right to arbitrate by engaging in the litigation process and whether the arbitration costs were unconscionable, in the respondent’s favor: “we find respondent did not waive its right to enforce the arbitration clause in the subcontract and that the clause is not unconscionable.” Id. at 614, 586 S.E.2d at 586. The trial court’s ruling was affirmed, and the case went to arbitration.

Importantly, the court considered the appellant’s issues – not the respondent’s issues – as being capable of repetition. Id. at 611, 586 S.E2d at 585. The opinion contains no analysis defining the “capable of repetition doctrine” referred to by Appellants, and their attempt to apply this reasoning to acts or omissions of the Respondents here would require the Court to make logical leaps that are unsupported by the laws of this State. In support of their argument here, Appellants ask the Court to consider material not included in the record ruled on by the lower court, such as January 2026 consumer complaints, news articles, and pleadings in other cases. The court should not consider any new evidence submitted on appeal or issues not raised to or ruled on by the trial judge. “At a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge.” Herron, 395 S.C. 461, 719 S.E.2d 640 (2011). The information if offered as evidence, would have been the subject of an objection and likely excluded under Rules 403 and 404 of the South Carolina Rules of Evidence as well as under the hearsay rules and so it provides no basis for this Court to reverse the trial court's decision.

Also, Appellants heavily focus on AAA Consumer Rules in their due process argument. The AAA Consumer Rules as cited by and relied upon by Appellants is simply a "red herring" and a distraction from the actual facts and legal issues in this case. The arbitration provision here clearly invoked the AAA Commercial Rules. Also, even if Consumer Rules applied, which they do not, those rules contain the same requirements for independent, impartial neutrals and provide the same rules that permit neutrals to decide his/her own jurisdiction. The AAA Consumer Rules are not in any way relevant to any issue herein and should not be considered.

In conclusion, Appellants are asking this Court to reverse the longstanding settled law governing appeals involving arbitrability all of which clearly hold that orders compelling arbitration and staying proceedings are not immediately appealable. Additionally, Appellants' arguments are contrary to the provisions of the South Carolina Arbitration Act (S.C. Code Ann. Sec. 15-48-200) which do not permit interlocutory appeals from orders compelling arbitration. For the reasons stated herein, the Court should dismiss the appeal as requested in the Motion to Dismiss being filed simultaneously with this brief and affirm the trial court's ruling to have the case arbitrated and to stay the proceedings pending such arbitration.

B. EVEN IF THE ORDER IS IMMEDIATELY APPEALABLE, THE TRIAL COURT RULING WAS CORRECT AND SHOULD BE AFFIRMED

i. ONLY THE ARBITRATOR HAS JURISDICTION TO DECIDE ISSUES OF ARBITRABILITY AND THE LOWER COURT APPLIED THE CORRECT STANDARD OF REVIEW

Respondents' motion to compel Arbitration specifically relied upon all applicable law, including, but not limited to the Federal Arbitration Act, 9 U.S.C. § 1, et seq. (the "FAA"), as well as the terms of the arbitration requirement contained in the Purchase (Membership) Agreement. (Motion to Compel, R. p. __). It is not disputed that the FAA governs the issues before the Court.

Now that the lower court ordered the case to arbitration, the Appellants attempt to recast the motion to compel as a motion for summary judgment in an apparent effort to confuse the issues, but the Court should not be distracted by those arguments. The arbitration paragraph includes the following provision:

> 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), and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The arbitrator shall be selected by [Vacation Inspirations].

See Agreement attached to Respondents' Motion to Compel Arbitration at Para. VIII. (Agreement, R. p. ___).

Pursuant to the FAA and the Commercial Arbitration Rules of the AAA and agreed to by Appellants, and the citations below, the question of arbitrability is to be determined and decided by the arbitrator, and respectfully, not the Court.

Rule R-7(a) and (b) of the Commercial Rules provide as follows:

> The 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.
>
> 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 FAA, Rule R-7(a) and (b). Based on this, the Court of Appeals should affirm the lower court's ruling compelling arbitration. (Rule, R. p. __).

This issue has been decided by the United States Supreme Court in the case of Henry Schein, Inc. vs. Archer & White Sales, Inc., 586 U.S. 63,139 S. Ct. 524(2019). In that case the arbitration provision provided that any dispute [with unrelated exceptions] "shall be resolved by binding arbitration in accordance with the arbitration rules of the American Arbitration Association [AAA]. The place of arbitration shall be in Charlotte, North Carolina**."** See Schein, Inc., 586 U.S. at 66, 139 S. Ct. at 528 (internal citations omitted).

The United States Supreme Court upheld the requirement the arbitration be conducted in accordance with the Arbitration Rules of the American Arbitration Association means that only the arbitrator and not the trial Court could decide the arbitrability question.

The Schein Supreme Court decision goes on to state the following:

> When the parties' contract delegates the arbitrability question to the arbitrator, a court may not override the contract. In those circumstances, a court possesses no power to decide the arbitrability issue.

Schein, Inc., 586 U.S. at 68, 139 S. Ct. at 529. The Court also stated:

> When the parties' contract delegates the arbitrability question to the arbitrator, the courts must respect the parties' decision as embodied in the contract.

Id. at 71, 139 S. Ct. 524 at 531.

Although not directly decided by the Fourth Circuit Court of Appeals, that Court noted in a recent decision that "other circuits have held that an arbitration provision's incorporation of the AAA commercial rules is a clear and unmistakable expression of the parties' intent to reserve the question of arbitrability for the arbitrator and not the court." Berkeley Cnty. Sch. Dist. v. Hub Int'l Ltd., 130 F.4th 396, 403 (4th Cir. 2025). That opinion cites several cases in which other federal appellate courts have included that by incorporating the AAA Commercial Rules into their agreement that delegate the issue of arbitrability to the arbitrator, the parties clearly and unmistakably agreed that the arbitrator should decide whether the arbitration clause is valid. See*, e.g.,* Fallo v. High-Tech Inst., 559 F.3d 874, 878 (8th Cir. 2009); Terminix Int'l Co. v. Palmer Ranch LP, 432 F.3d 1327, 1332 (11th Cir. 2005); Contec Corp. v. Remote Solution Co., 398 F.3d 205, 208 (2d Cir. 2005).

Appellants incorrectly argue that the lower court failed to consider their Verified Complaint as evidence that an agreement to arbitrate was not formed. Appellants' argument about the Verified Complaint is wrong and does not impact on this appeal. First, in the Complaint they admit that they entered into a contract with Vacation Inspirations. (Complaint, R. p. __). Second, the arguments offered by the Appellants as to why that contract should not be enforced are not facts alleged, but legal arguments which do not create any issue about whether Appellants agreed that disputes would be decided by an arbitrator.

Additionally, Appellants incorrectly argue that the Respondents did not submit "competing evidence" in support of the motion to compel arbitration. However, that argument ignores the evidence that was submitted with the motion to compel arbitration filed on November 12, 2024. (Motion, R. p. __). Specifically, a copy of the Vacation Inspirations Membership Purchase Agreement signed by the Appellants was attached to that motion. (Purchase Agreement, R. p. __). In the arbitration provision herein, the Purchase Agreement clearly and unequivocally invoked the Commercial Arbitration Rules of the AAA. In support of this, Respondents refer to the arbitration provision and Rule 7 of the Commercial Rules cited above.

Moreover, the Appellants' motion ignores the affidavit of Mr. Randy Gardner filed along with the memoranda in support of motion to compel arbitration which proves, without contradiction, that the Purchase Agreement and the arbitration clause have the required nexus to interstate commerce sufficient to invoke the arbitration provisions of the FAA. (Affidavit, R. p. ___). See generally, Allied-Bruce Terminix Cos. v. Dobson, 513 U.S. 265, 115 S. Ct. 834 (1995). Therefore, under the Federal Arbitration Act, the Court properly determined that it could not decide whether an arbitration agreement applies to the instant dispute since the parties clearly and unmistakably delegated the question to an arbitrator. The AAA Commercial Rules specifically provide for such delegation to the arbitrator. (Order, R. p. __). Therefore, under the Federal Arbitration Act, the Court may not decide whether an arbitration agreement applies to the instant dispute if the parties clearly and unmistakably delegated the question to an arbitrator. See e.g., Masters v. KOL, Inc., 431 S.C. 28, 30, 846 S.E.2d 893, 894 (Ct. App. 2020). The trial court properly agreed. There are no disputed facts to be decided on that issue.

Moreover, under any circumstance, arbitration should be required under the FAA. "[The FAA applies . . . to any arbitration agreement regarding a transaction that in fact involves interstate commerce." See Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 538, 542 S.E.2d 360, 363 (2001). So long as interstate commerce is involved, the FAA controls arbitration. Mr. Gardner's affidavit provides clear evidence of the necessary involvement with interstate commerce. (Affidavit, R. p. ___). The arbitration should be conducted under the AAA Commercial Rules and in accordance with the FAA with any issues regarding arbitrability decided by the arbitrator. The lower court's ruling granting the motion to compel arbitration should be affirmed, and any issues regarding arbitrability should be decided by the arbitrator.

Appellants argue that the court below erred in not conducting an intensive factual inquiry into their claims prior to ordering arbitration. However, such an inquiry is not necessary where, as here, the parties to the Purchase Agreement clearly designated the arbitrator to decide such issues under the rules of the AAA. Moreover, the procedure urged by the Appellants would completely frustrate the purposes of arbitration which is to provide a prompt and efficient alternative to resolve disputes.

315 Corley CW, LLC v. Palmetto Bluff Dev., LLC 444 S.C. 521, 908 S.E.2d 892 (2024)("Corley I") affirmed as modified in 315 Corley CW LLC v. Palmetto Bluff Dev., LLC, No. 28339, 2026 S.C. LEXIS 98 (June 10, 2026) ("Corley II") is not controlling or applicable in

this instance. In Corley I, the Court of Appeals determined that it, and not the arbitrator, had the power to decide whether the case was subject to arbitration under the South Carolina Arbitration Act. Corley I, 444 S.C. at 531, 908 S.E.2d at 897. The Court of Appeals then concluded that the agreement was not enforceable because it could be unilaterally changed by the Defendants and precluded treble damages and other claims pursuant to the South Carolina Unfair Trade Practices Act (SCUPTA). Id. In Corley II, the Supreme Court affirmed the decision of the Court of Appeals denying arbitration on modified grounds. 315 Corley CW LLC, No. 28339, 2026 S.C. LEXIS 98.

Unlike the Court of Appeals, the Supreme Court concluded that the FAA applied because the transactions at issue involved interstate commerce. Id. at *4. Nonetheless, the Supreme Court held that under the "clear and unmistakable" standard the gateway determination of arbitrability had not been delegated to the arbitrator. Id. at *5. In making that finding the Court noted that the membership agreement in Corley II stated in all capital letters that it was subject to the "South Carolina Arbitration Act, 15-49-10 et. seq." Id. at *6-7. Additionally, the Supreme Court relied upon the broad choice of law provision in the membership agreement which stated "[t]his Membership Agreement shall be governed by and construed and enforced in accordance with the laws of the State of South Carolina without giving effect to principles of conflicts of laws." Id. at *7. Significantly, the Supreme Court distinguished cases in which courts had found "clear and unmistakable" evidence of intent to delegate arbitrability on the grounds that those cases contained only a reference to the AAA rules with no mention or reference to state arbitration rules that would negate an intent to delegate arbitrability to the arbitrator. Id. at *9-10.

In the instant case it is undisputed that the case was governed by the FAA and not SCUPTA. Unlike the membership agreements in the Corley II cases there is no reference to the SCAA and no broad choice of law provision. The only mention of South Carolina law in the documents is an acknowledgement that the agreement is not subject to "any right of recission under the laws of South Carolina." (Acknowledgment, R. p. __). The Corley II case is not on point with the facts of this case. Instead, the decision in this matter should be controlled by those cases that the Supreme Court distinguished in Corley II[2]. Here the only reference is to the AAA Rules which clearly and unmistakably delegate the gateway decision to the arbitrator. There is no reference to state arbitration rules which negate that delegation.

The unconscionability issue on which the Supreme Court's decision was based does not apply to this case. In Corley II the Court based its finding of unconscionability on the reduced statute of limitations period contained in the membership agreement. The arbitration agreement that the Appellants agreed to does not reduce any applicable statute of limitations. 315 Corley CW LLC, No. 28339, 2026 S.C. LEXIS 9, at *11-12.

Lastly, the Court in Corley I noted in FN 3 that pursuant to the Rent-A-Center West case cited by Appellants (561 U.S.63) (2009), provides that where a delegation to the arbitrator clause is challenged as unconscionable, the Court may decide the question, but "an arbitrator must decide the question if a party merely challenges the arbitration agreement as a whole as unconscionable". Id. at 71-72. Clearly in the case before this Court, Appellants have challenged the entire arbitration language as unconscionable. The trial court properly followed appropriate law and determined that all issues (including but not limited to unconscionable question) are to be decided by the arbitrator.

Appellants' reliance on Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 644 S.E.2d 663 (2007) is unpersuasive on several grounds. First, the Court determined that the South Carolina Uniform Arbitration Act (UAA), specifically S.C. Code Section 15-48-20(a), controlled whether

[2] The Court in Corley II acknowledged that "almost every Federal Circuit Court of Appeals has found that the incorporation of the AAA Rules into an arbitration provision is by itself 'clear and unmistakable' evidence that the parties intended to delegate questions of arbitrability to the arbitrator." 315 Corley CW LLC, No. 28339, 2026 S.C. LEXIS 98, at *9.

the Court or the arbitrator would decide validity of the arbitration clause. Clearly, in the instant case, the parties agreed before the trial court that the FAA and not South Carolina law is determinative. Also, in Simpson, the plaintiff was required to forego certain remedies, which is not the case herein. And of course, as noted herein, the subject of Simpson was a vehicle needed in today's world, whereas herein the purchase was of a "luxury" item, a vacation club membership.

ii. APPELLANTS ARE PRESUMED TO HAVE READ, UNDERSTOOD AND AGREED TO THE TERMS OF THE PURCHASE AGREEMENT, INCLUDING THE ARBITRATION PROVISION

Alternatively, regardless of the decision maker, the ultimate question of arbitrability "is a matter of contract interpretation." See Am. Recovery Corp. v. Computerized Thermal Imaging, 96 F.3d 88, 92 (4th Cir. 1996) (internal citations omitted).

It is virtually black letter law that anyone who can read is presumed to have read any agreement that person signs. "[O]ne who has signed a contract is presumed to have read, understood and assented to its terms." See Gibson v. Epting, 426 S.C. 346, 352, 827 S.E.2d 178, 181 (Ct. App. 2019) (internal citations omitted). "A person signing a document is responsible for reading the document and making sure of its contents. Every contracting party owes a duty to the other party to the contract and to the public to learn the contents of a document before he signs it." Regions Bank v. Schmauch, 354 S.C. 648, 663, 582 S.E.2d 432, 440 (Ct. App. 2003).

The arbitration provision herein is governed by the FAA and cannot be set aside on the ground that the arbitration clause was not noticed or explained since the party signing the agreement is presumed to have read it. See Munoz, 343 S.C. 531 at 541 n.6, 542 S.E.2d at 365. In addition, the South Carolina Supreme Court noted the following:

> "In these circumstances, we are constrained to hold that her conduct, in failing to employ the opportunity and means given her to acquaint herself with the contents of the policy, was clearly a conscious and reckless disregard of her duty in the premises and was a proximate cause of her alleged injury or damage."

See Hood v. Life & Cas. Ins. Co. of Tennessee, 173 S.C. 139, 146, 175 S.E. 76 (S.C. 1934). Appellants therefore cannot argue that they did not read or understand the Purchase Agreement and all of its terms, including the arbitration provision, before signing the Purchase Agreement. And as noted below, Appellants had the choice not to enter into this transaction and simply chose not to do so before signing the Purchase Agreement. Appellants had a meaningful choice and they accepted the terms of the Purchase Agreement, including the arbitration provision.

iii. THE ARBITRATION PROVISION IS NOT UNCONSCIONABLE

The circuit court did not address the Appellants' unconscionability arguments, but this Court should reject those arguments if it is inclined to consider them. Neither the Purchase Agreement nor the arbitration provisions therein are on a "take-it-or-leave-it" basis with no negotiable terms and that is evident from the agreement itself. A review of the allegations reveals that Appellants failed to make any effort to negotiate the arbitration provision. Appellants had meaningful choices, they just did not choose to make any of those choices regarding the arbitration provision.

The Purchase Agreement includes an Addendum/Exception (Addendum, R. p. __), which by its nature presented an opportunity to alter or amend the arbitration provision. In fact, as seen on the Addendum/Exception, there are four (4) such handwritten items. None of the four (4) exceptions handwritten involve or address the arbitration provision. Appellants signed the handwritten page with the exceptions. (Addendum, R. p. __). Appellants had a meaningful choice but apparently chose not to raise any questions at the time of the Purchase Agreement regarding the arbitration provision. Appellants cannot now be permitted to claim otherwise.

Furthermore, the Appellants' other arguments regarding unconscionability are based on unsubstantiated or irrelevant allegations and cannot be summarily decided by this court. The FAA provides in relevant part that "[i]f the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof." See 9 U.S.C. § 4. In making such a decision, the court is obliged to conduct a trial when a party unequivocally denies that an arbitration agreement exists and shows sufficient facts in support thereof. Berkeley Cty. Sch. Dist. v. Hub Int'l. Ltd., 944 F.3d 225, 234 (4th Cir. 2019). In light of the clear agreement to arbitrate and the delegation of decision-making authority to the arbitrator here, the factual review here is not warranted and would defeat the primary purpose of arbitration, which is to achieve a prompt, efficient proceeding. That is yet another reason which supports the lower court's decision to grant the Respondents' motion and refer this matter to arbitration. To the extent that an evidentiary hearing on the issue of arbitrability is deemed appropriate or necessary the arbitrator can hold that hearing.

The claims of unconscionability are unsubstantiated and do not justify overturning the trial court. An example of such an unsubstantiated allegation is the Appellants' claim that the agreement is unconscionable because they were supposedly subjected to high pressure sales tactics. However, item number 10 of the Vacations Inspirations Membership Acknowledgment of the Agreement specifically asks if the decision to purchase was "based on any high pressure sales tactics" and Appellants responded "no." Appellants also signed that page. (Acknowledgment, R. p. __).

As for the contention that Appellants did not have equal bargaining power, it is noteworthy that this purchase was a travel club membership. It is not an essential purchase such as shelter or even a core consumer purchase such as an automobile. Under any circumstance, Appellants could have just listened to the presentation and left at any time without signing the Purchase Agreement. It is not unusual for those who listen to the Respondents' sales presentation to do only that and then decline to purchase. The request for participants in the sales presentation to turn off their cell phones is not a high-pressure sales tactic. Instead, that request is made prior to the sales presentation because of the expectation that cell phone usage will be a constant distraction during the presentation.

Finally, it is irrelevant that Appellants did not "travel with any legal counsel" or that he did not consult with an attorney prior to signing the Agreement. Appellants cite no support for the idea that a contract is unconscionable unless the parties first have an opportunity to consult with counsel. Also, Respondents did not have any duty to advise Appellants to seek legal counsel. There is no support for the Appellants' argument that the arbitration provision is unconscionable on that basis

iv. THE AAA COMMERCIAL RULES OF ARBITRATION PROVIDE THE METHOD FOR APPOINTING A FAIR ARBITRATOR. THE ARBITRATION PROVISION IN THE PURCHASE AGREEMENT COMPLIES WITH THAT METHOD AND MUST BE FOLLOWED

Appellants also argue that arbitration should not be compelled because the arbitration agreement that he signed does not provide a fair, unbiased forum. However, an examination of the applicable rule conclusively refutes that claim. Rule R-14 of the AAA Commercial Arbitration Rules states in part as follows:

> (a) If the agreement of the parties names an arbitrator or specifies a method of appointment of an arbitrator, that designation or method shall be followed.

See FAA, Rule R-14 (Emphasis added) (Rule, R. p. __). Moreover, Rule R-19(a) states in part as follows:

> An arbitrator shall be impartial and independent and shall perform his or her duties with diligence and in good faith, and shall be subject to disqualification for
>
> (i) Partiality or lack of independence.

See FAA, Rule R-19(a). (Rule, R. p. __). While Rule R-19(b) permits appointment of a "non-neutral" arbitrator, that is not the case here. The arbitration clause challenged by the Appellants merely allows Vacation Inspirations to choose the arbitrator, but it does not relieve the arbitrator selected of his or her obligations under the AAA Commercial Rules to be impartial and independent. Moreover South Carolina ADR Rule 13(d) has a similar provision.

The arbitration provision does not put any limits on arbitrator's decision-making authority. No claims or remedies are excluded, waived or precluded. The arbitration provision does not include any limits on damages. Appellants' arguments do not raise any new information that was not available when the lower court made its ruling on December 9, 2025.

Contrary to Appellants' arguments, the arbitration provision invoking the Commercial Rules of the American Arbitration Association fully and completely complies with and is in accordance with the foregoing Rules and provides a forum for resolving this dispute by an unbiased arbitrator.

v. LIMITED DISCOVERY DOES NOT PROVIDE A BASIS TO DENY A MOTION TO COMPEL ARBITRATION

Appellants also miss the mark in making the argument that the motion should not have been decided because Respondents had not answered discovery. Respondents did not ignore the Appellants' discovery requests. Instead, Respondents did not respond to discovery because the motion to compel arbitration was pending. See e.g. Liberty Builders, Inc. v. Horton, 336 S.C. 658, 521 S.E.2d 749 (S.C. App. 1999). Moreover, the Respondents' motion to compel arbitration included a request to stay all discovery. (Motion, R. p. __). If Appellants were not satisfied with the stated reason, Appellants could have moved at any time to compel Respondents to respond. Appellants chose not to file any such motion.

V. CONCLUSION

For the reasons set forth herein and argument of counsel, Respondents request the Court to dismiss the appeal as improvidently granted, or in the alternative, affirm the trial court's rulings compelling arbitration and staying the proceedings.

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Respectfully submitted,

s/John A. Massalon

John A. Massalon (SC Bar #10279)
Carissa Steichen Land (SC Bar #104264)
WILLS MASSALON & ALLEN LLC
Post Office Box 859
Charleston, South Carolina 29402
(843) 727-1144
jmassalon@wmalawfirm.net
cland@wmalawfirm.net

Jeffrey Wayne Buncher, Jr. (SC Bar #78890)
Uricchio Howe Krell Jacobson
Toporek Theos & Keith, PA
P.O. Box 399
Charleston, South Carolina 29402
843-723-7491
jeff@uricchio.com

Attorneys for Respondents