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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM MARLBORO COUNTY
Court of Common Pleas
The Honorable Robert E. Hood, Circuit Court Judge

Appellate Case No. 2026-000076
Circuit Court Case No.: 2025CP3400154

Sharon Covington and Dorothy Douglas, Respondents,

v.

1st Better Living 2, LLC; Marlboro County Delinquent Tax Collector; Newrez, LLC d/b/a Shellpoint Mortgage Servicing, Defendants,

of which Newrez, LLC d/b/a Shellpoint Mortgage Servicing is the Appellant.

REPLY BRIEF OF APPELLANT

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INTRODUCTION

Respondents' Initial Brief devotes most of its energy to a series of procedural arguments designed to keep this Court from reaching the merits of arbitrability. Four of Respondents' five argument headings (Sections I, IV, V, and VI) are framed as preservation, two-issue rule, or waiver arguments rather than challenges to the arbitration clause itself. The reason is plain. On the merits, the South Carolina Supreme Court's decision in *Munoz v. Green Tree Financial Corp.,* 343 S.C. 531, 542 S.E.2d 360 (2001) forecloses both the intrastate-transaction theory and the lack-of-mutuality theory upon which Respondents contest arbitration. Respondents' brief never engages *Munoz* on either point.

The procedural arguments fare no better. This Court has already made a preliminary determination, in its March 12, 2026 Order, that both the Form 4 Order and the Arbitration Order are subject to immediate appeal. The Form 4 Order denied Newrez's Motion to Dismiss in its entirety and is itself a complete adverse ruling on each ground asserted, including Newrez's request to compel arbitration. The Arbitration Order, expressly characterized by the trial court as "a more formal order" memorializing the December 9 oral ruling, was issued in response to the Court of Appeals' appealability inquiry. Newrez addresses each of Respondents' six arguments in turn.

ARGUMENT

I. The issues raised on appeal are preserved, and the Arbitration Order is not void.

Respondents' first argument rests on a series of flawed premises. They contend that: (1) the December 9, 2025 Form 4 Order (the "Form 4 Order") was the final operative order; (2) Newrez's January 8, 2026 Notice of Appeal therefore divested the trial court of jurisdiction; (3) the trial court's February 10, 2026 Order (the "Arbitration Order") is consequently void; and (4) because the Form 4 Order did not adequately address Newrez's three appellate arguments, Newrez was required to file a Rule 59(e), SCRCP, motion before appealing. Each step of that chain fails.

Respondents' arguments under this heading are also internally inconsistent. Respondents contend that the Form 4 Order did not adequately address arbitration while simultaneously contending that the trial court was divested of jurisdiction by Newrez's appeal of that very Order. Those positions cannot coexist. Either the Form 4 Order denied arbitration, in which case it was a complete adverse ruling and the appeal was proper, or it did not, in which case the trial court retained jurisdiction over the unresolved arbitration question, and the February 10 Arbitration Order is not void.

A. This Court has preliminarily determined that the orders are subject to immediate appeal.

As a threshold matter, this Court has already conducted a preliminary review of the appealability question. After Newrez filed its initial Notice of Appeal on January 8, 2026, this Court issued a January 14, 2026 letter requesting that both parties serve and file memoranda addressing appealability. This Court's March 12, 2026 Order then held: "After considering Appellant's memoranda, it appears the orders are subject to immediate appeal." (Mar. 12, 2026 Order at 1.) The Order specifically refers to "the orders" in the plural, encompassing both the Form 4 Order and the Arbitration Order, which is reflected in Newrez's Amended Notice of Appeal

filed February 19, 2026. Although the March 12, 2026 Order stated that it does not constitute a final determination on appealability, for the reasons stated in Newrez's prior appealability memorandum and in this brief, the Court of Appeals' preliminary determination is sound.

B. The Form 4 Order itself is an adverse ruling on each ground raised in the Motion to Dismiss.

Newrez's Motion to Dismiss expressly asserted three independent bases for relief, one of which specifically asked to "sever and stay the claims against Newrez and compel arbitration . . . ." (R. p. 39). After a hearing that included oral argument addressing arbitration, the trial court denied the Motion to Dismiss in its entirety. A denial that addresses every ground a movant asserts is an adverse ruling on each of those grounds and does not necessitate a Rule 59(e) motion to clarify prior to becoming appealable.

In *Quality Trailer Products, Inc. v. CSL Equip. Co., Inc.*, the South Carolina Supreme Court held that "[t]he trial court's denial of the JNOV and new trial motions was a ruling on all issues raised, and preserved for appellate review all issues raised therein." 349 S.C. 216, 221, 562 S.E.2d 615, 618 (2002). Similarly, the outright denial of Newrez's motion necessarily denied all issues that Newrez raised, including arbitration.

The cases on which Respondents rely confirm this principle rather than undermine it. This Court in *Cowburn v. Leventis*, on which Respondents lean, held that a specific issue was not preserved for appeal where nothing in the record showed that the trial court ruled on it. 366 S.C. 20, 41, 619 S.E.2d 437, 449 (Ct. App. 2005). The same is true of *Noisette v. Ismail*, where the trial court did not rule on a particular argument supporting a ruling on a different issue. 304 S.C. 56, 58, 403 S.E.2d 122, 124 (1991). Neither case suggests that when a trial court denies a motion based on three asserted grounds, the movant must file a Rule 59(e) motion to confirm that the denial actually rejected each of those grounds. The denial itself is the ruling.

That conclusion is confirmed by the trial court's oral ruling at the December 4, 2025 hearing. After hearing argument on the Motion to Dismiss, Judge Hood stated: "[T]he motion to dismiss filed by the servicing company is denied. The motion to sever is denied. We'll do form fours to that effect. Mr. Luck, I need an order from you denying the motion to compel arbitration." (R. p. 164, lines 3-11.) Judge Hoods' comments directly distinguish this case from *Cowburn,* in which the trial court "never indicated whether it would consider" the affidavit at issue in that case. 336 S.C. at 41, 619 S.E.2d at 449. The Form 4 Order followed, denying the Motion to Dismiss in its entirety. Despite the Circuit Court's instruction at the hearing, Respondents' counsel did not submit a proposed order on the motion to compel arbitration, presumably based on an understanding that the Form 4 Order had adjudicated the arbitration issue. The failure of Respondents' counsel to submit what the Circuit Court requested does not change the record explicitly showing that the Circuit Court ruled on the arbitration issue.

C. The Arbitration Order properly supplemented the Form 4 Order.

Respondents' Argument I depends on the contention that the Arbitration Order is void because the trial court was divested of jurisdiction by Newrez's first Notice of Appeal. That contention misunderstands the trial court's jurisdiction and is self-contradictory to Respondents' argument that arbitration was not addressed in the Form 4 Order.

The Arbitration Order expressly characterizes itself as a memorialization of the prior ruling, not a new substantive determination: "The Court entered a Form 4 Order denying the Motion to Dismiss on December 9, 2025, and now enters a more formal order specifically finding that the parties do not have a binding agreement to arbitrate and denying Shellpoint's request to compel arbitration." (R. p. 9.) The trial court had requested such an order from Respondents' counsel at the December 4 hearing. After this Court issued its January 14, 2026 letter raising the appealability question, Newrez's counsel submitted a proposed order on February 4, 2026, gave

Respondents an opportunity to respond, and provided the relevant excerpt of the hearing transcript to the trial court at its request. Only then, on February 10, 2026, did the trial court enter the Arbitration Order, which the Order itself describes as a more formal version of the prior ruling. (R. p. 9.)

Although service of a notice of appeal generally divests the trial court of jurisdiction over matters affected by the appeal, that principle does not prohibit the entry of a subsequent order supplementing matters that were not dealt with in the prior order. *See Arnal v. Fraser*, 371 S.C. 512, 520, 641 S.E.2d 419, 423 (2007) (finding that the family court had jurisdiction to enter order addressing educational expenses not dealt with in prior final order). Respondents cannot have it both ways: either the Form 4 Order denied arbitration, in which case it was immediately appealable, or the Form 4 Order did not deny arbitration, in which case the trial court retained jurisdiction to enter a subsequent order addressing arbitration.

In any event, the Arbitration Order did not alter the substance of the trial court's ruling, but rather memorialized the ruling previously announced by the trial court and supplemented the Form 4 Order in response to this Court's appealability inquiry. Accordingly, the Arbitration Order is properly before this Court through Newrez's Amended Notice of Appeal.

II. The Federal Arbitration Act governs this transaction.

Respondents' Argument II contends that the FAA does not apply because all relevant participants in the 1998 transaction allegedly resided in South Carolina, rendering the agreement purely intrastate. That position cannot be reconciled with controlling authority. In *Munoz*, the South Carolina Supreme Court held that a financing transaction involved interstate commerce even though the borrowers and builder were South Carolina residents, where (as here) the lender was a Delaware corporation headquartered in Minnesota. FAA applicability turns on "commerce in fact" established through examination of "the agreement, the complaint, and the surrounding facts."

Hicks Unlimited, Inc. v. UniFirst Corp., 439 S.C. 623, 632-33, 889 S.E.2d 564, 568-69 (2023). That standard has been met.

A. *Munoz* forecloses Respondents' intrastate-transaction argument.

The dispositive case for purposes of this appeal is *Munoz*. Although Respondents repeatedly characterize Newrez's reliance on *Munoz* as misplaced and contend the case is distinguishable, Respondents never address *Munoz*'s interstate-commerce holding at all. That silence is no accident.

In *Munoz*, the South Carolina Supreme Court considered whether a home improvement financing contract involved interstate commerce within the meaning of the FAA. Although the builder and borrowers, like Plaintiff Douglas, were South Carolina residents, and the transaction concerned a South Carolina home, the Supreme Court found that the transaction was in interstate commerce because it involved an out-of-state lender. 343 S.C. at 539, 542 S.E.2d at 364.

Here, the Loan Agreement was executed by Green Tree, a Delaware corporation with its principal place of business in Saint Paul, Minnesota. (R. p. 10.) The financing of a South Carolina manufactured home purchase by an out-of-state corporation establishes interstate commerce under *Munoz*. *See also Citizens Bank v. Alafabco, Inc.*, 539 U.S. 52, 56-58 (2003); *Cape Romain Contractors, Inc. v. Wando E., LLC*, 405 S.C. 115, 121, 747 S.E.2d 461, 464 (2013). Furthermore, lending activities by their nature have a broad impact on interstate commerce and are subject to Congress' power to regulate pursuant to the Commerce Clause. *See Citizens Bank v. Alafabco, Inc.*, 539 U.S. 52, 57-58, 123 S. Ct. 2037, 2041, 156 L. Ed. 2d 46 (2003).

Respondents' alternative argument, that the contract's express recitation of interstate commerce is "boilerplate," fails because the record supports a finding of interstate commerce in fact. In *Hicks Unlimited, Inc. v. UniFirst Corp.*, the court reaffirmed that, in determining whether a transaction involves interstate commerce, courts examine "the agreement, the complaint, and the

surrounding facts." 439 S.C. 623, 633, 889 S.E.2d 564, 569 (2023). Although a contractual recitation cannot by itself establish "commerce in fact," the recitation remains relevant when considered alongside the objective facts of the transaction. *Id*. at 632, 889 S.E.2d at 568. Here, the contractual recitation both reinforces and is reinforced by the transaction's objective interstate features, including the original lender's Delaware incorporation and Minnesota headquarters.

Respondents' reliance on *Flexon v. PHC-Jasper, Inc.* is similarly misplaced. 399 S.C. 83, 731 S.E.2d 1 (Ct. App. 2012). *Flexon* addressed a contract for a South Carolina resident to perform medical services at facilities exclusively in Hardeeville, Beaufort, and Jasper, South Carolina. 399 S.C. at 89, 731 S.E.2d at 4. No out-of-state party was involved in any aspect of that transaction. Here, the original lender was a Delaware corporation operating from Minnesota, and *Munoz* directly addresses the precise pattern of an out-of-state lender financing a South Carolina manufactured home purchase. *Flexon*'s narrow intrastate holding has no application to these facts.

B. *Contra proferentem* does not apply to the federal preemption inquiry.

Respondents argue that the contract's interstate-commerce recitation should be construed against Newrez under *contra proferentem* because the recitation purportedly conflicts with the Columbia, South Carolina address listed for Green Tree on the face of the contract. The argument is doubly mistaken.

First, *contra proferentem* is a rule of contractual construction that applies to ambiguous substantive terms as between the contracting parties. It is not a rule for adjudicating federal preemption. Whether a transaction "involves" interstate commerce within the meaning of 9 U.S.C. § 2 is a "commerce in fact" inquiry focused on the transaction's actual connection to interstate commerce. *See Citizens Bank v. Alafabco, Inc.*, 539 U.S. 52, 56-58 (2003). The parties' subjective intent, or self-characterization, is irrelevant. *Munoz*, 343 S.C. at 538. What matters is the objective

character of the commercial activity. The contract's recitation here aligns with that objective character, but even if it did not, *contra proferentem* would not alter the federal preemption analysis.

Second, there is no ambiguity to construe. A Delaware corporation with its principal place of business in Saint Paul, Minnesota does not become a South Carolina entity by virtue of operating a Columbia branch office. The Certificate of Authority filed with the South Carolina Secretary of State on May 9, 1995 establishes Green Tree's foreign status. (R. p. 10.) A foreign corporation engaged in business in South Carolina remains a foreign corporation.

C. The Certificate of Authority required no additional foundation.

Respondents' contention that Newrez failed to lay sufficient foundation at the December 4 hearing for the South Carolina Secretary of State's Certificate of Authority is unavailing. The Certificate is a self-authenticating, certified copy of a public record. *See* S.C.R.E. 902(4). The Certificate is for Green Tree Financial Servicing Corporation, the same company as the creditor under the Loan Agreement, and Respondents lodged no objection at the hearing to its admission. Respondents now urge that the Certificate cannot establish the corporate identity of the lender because the lender's branch office address listed in the contract is not on the Certificate. The Certificate establishes the state of incorporation and principal place of business of a foreign entity, precisely the matters relevant to the FAA's interstate-commerce inquiry.

In any event, this Court reviews arbitrability *de novo* on undisputed facts, and the Court "may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal." Rule 220, SCACR. The Certificate of Authority is part of the record, and it establishes the foreign incorporation and place of business of the original lender. That is sufficient to compel the conclusion, as a matter of law, that the transaction involves interstate commerce.

III. The arbitration clause is not unconscionable.

A. *Munoz* forecloses Respondents' lack-of-mutuality argument.

Respondents' Argument III rests on the same lack-of-mutuality theory that *Munoz* expressly rejected. The arbitration clause in *Munoz* contained a nearly identical carve-out reserving to the lender certain judicial remedies (enforcement of the security agreement, monetary judgment, foreclosure) while channeling other disputes to arbitration. *Munoz*, 343 S.C. at 542, 542 S.E.2d at 365. The court held: "We find the doctrine of mutuality of remedy does not apply here. An agreement providing for arbitration does not determine the *remedy* for a breach of contract but only the *forum* in which the remedy for the breach is determined." *Id.* The court further explained that, even apart from the forum/remedy distinction, "under state law, a lack of mutuality of remedy does not invalidate a contract." *Id.*

Respondents' Argument III asks this Court to reach a different conclusion on the same lack-of-mutuality theory on a contract executed by the same lender. Yet Respondents never engage *Munoz* on this point. They simply assert that the carve-out renders the contract "cruelly one-sided" and "oppressively one-sided," without acknowledging that those very arguments were considered and rejected by the Supreme Court.

Respondents' invocation of *Damico v. Lennar Carolinas, LLC* does not change the analysis. 437 S.C. 596, 879 S.E.2d 746 (2022). *Damico* set out the South Carolina unconscionability standard in the home builder warranty context. It did not overrule *Munoz* and did not address arbitration carve-outs of the kind at issue here. Indeed, this Court distinguished *Damico* and reversed for arbitration in *Mart v. Great S. Homes, Inc.*, 441 S.C. 304, 893 S.E.2d 360 (Ct. App. 2023). *Damico* itself acknowledged that "[a]dhesion contracts are not per se unconscionable." 437 S.C. at 613. The demanding unconscionability standard set forth in *Simpson*

and reaffirmed in *Damico* cannot be satisfied by a carve-out materially indistinguishable from the one the South Carolina Supreme Court approved in *Munoz*.

B. The Section 12 attorney's fees argument fails.

Respondents press a new variation on the unconscionability theme: that Section 12 of the Loan Agreement provides asymmetric attorney's fee shifting. Although the fee shifting provision is not part of the arbitration provision at issue, and although Respondents have never argued that the entire Loan Agreement is unenforceable, Respondents argue that when combined with the arbitration clause, the fee-shifting provision renders the overall structure unconscionable. That argument fails for three independent reasons.

First, lack of mutuality in remedy, standing alone, does not render an arbitration agreement unconscionable. The South Carolina Supreme Court so held in *Munoz*: "under state law, a lack of mutuality of remedy does not invalidate a contract." 343 S.C. at 542, 542 S.E.2d at 365. This Court reaffirmed the point in the arbitration context, holding that "any perceived lack of mutuality in this commercial context does not make the arbitration agreement unconscionable because Respondents are not deprived of a remedy." *One Belle Hall Prop. Owners Ass'n v. Trammell Crow Residential Co.*, 418 S.C. 51, 65, 791 S.E.2d 286, 294 n. 8 (Ct. App. 2016). Plaintiffs are not deprived of a remedy here. They will pursue their claims in the forum the Loan Agreement designates; with the same statutory remedies they would have in court.

Second, importing a separate contractual provision into the unconscionability analysis of the arbitration clause is precisely the kind of state-law approach the FAA preempts. "[C]ourts must place arbitration agreements on an equal footing with other contracts, and enforce them according to their terms." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011) (internal citations omitted). South Carolina courts apply state-law unconscionability principles to arbitration agreements only insofar as those principles apply equally to other contractual

provisions. *Lackey v. Green Tree Fin. Corp.*, 330 S.C. 388, 397, 498 S.E.2d 898, 903 (Ct. App. 1998). Respondents' theory, that the arbitration clause is unconscionable because of asymmetry in a separate fee-shifting clause, singles out the arbitration clause for disfavored treatment by aggregating unrelated contract terms in the unconscionability calculus.

Third, Respondents' asymmetry concern is largely illusory as to the central South Carolina Unfair Trade Practices Act ("SCUTPA") claim in Plaintiffs' complaint. SCUTPA itself provides that, upon a finding of violation, the court "shall award to the person bringing such action under this section reasonable attorney's fees and costs." S.C. Code § 39-5-140(a). That statutory fee remedy is equally available to a prevailing Plaintiff whether the SCUTPA claim is heard by a court or by an arbitrator. Section 12 does not bear on the statutory fee entitlement, and it cannot supply the asymmetry on which Respondents' unconscionability theory depends.

IV. Covington is subject to the arbitration clause under equitable estoppel.

Respondents argue that Newrez's equitable estoppel theory was not preserved below and, in any event, that the record contains no evidence Covington was aware of or benefited from the Loan Agreement. Neither contention withstands scrutiny.

The estoppel issue is preserved. Respondents advanced the argument that Covington was not bound by the arbitration agreement for the first time in a memorandum filed mere hours before the December 4, 2025 hearing. At the December 4, 2025 hearing, Newrez's counsel argued that Covington's claims were derivative of Douglas's claims because they purport to arise from rights and duties flowing from the Loan Agreement, and that she was therefore bound to the same arbitration requirements. (R. p. 163, lines 5-19.) That is the substance of equitable estoppel. A non-signatory cannot disclaim an arbitration clause while affirmatively asserting claims that depend on the agreement. *Dixon v. Pattee*, 442 S.C. 233, 258, 898 S.E.2d 158, 171 (Ct. App. 2023) ("A party may not rely on the contract when it works to its advantage, and repudiate it when

it works to its disadvantage.") . Newrez was not required to expressly invoke the phrase "equitable estoppel" to preserve the issue.

In any event, Respondents themselves placed the question of Covington's relationship with the Loan Agreement squarely before the trial court. In their memorandum opposing the Motion to Dismiss, Respondents argued that "certain agreements between the owner of this loan and Shellpoint create a duty to act in the best interests of Plaintiff Douglas" and that "Plaintiff Covington would also argue that these duties ***run to her*** through her payment of Douglas's mortgage payments." (R. p. 56 (emphasis added).) Respondents further alleged that Covington had made payments on the loan for years and that those payments included force-placed insurance charges that Respondents now challenge. (R. pp. 54-55.) At a minimum, those pleadings plainly establish: (a) that Covington was aware of and made payments on the Loan Agreement; and (b) that her claims purport to derive their substance from the rights and obligations the Loan Agreement creates.

Respondents' own theory of liability, that Covington steps into Douglas's shoes for purposes of pressing claims against the servicer, invokes equitable estoppel precisely. As this Court explained in *Dixon*: "[A] party may not rely on the contract when it works to its advantage, and repudiate it when it works to its disadvantage." 442 S.C. at 258, 898 S.E.2d at 171. Covington's claims, by Respondents' own characterization, depend on rights flowing through the Loan Agreement. The agreement's arbitration clause flows with them. *See Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 733 S.E.2d 597 (Ct. App. 2012) (applying equitable estoppel to bind non-signatory who received direct benefit from contract).

Respondents' contention that Covington was "previously unaware of" the Loan Agreement is irreconcilable with the pleadings. A person cannot make payments on a loan agreement of which

she is unaware. The same complaint that disclaims any contractual relationship with Newrez expressly alleges, as the basis for the SCUTPA and negligence claims, that Covington was making payments on the Loan and was charged for force-placed insurance, property inspections, and tax escrow on a manufactured home she occupies. Plaintiffs cannot have it both ways, and they cannot use Covington's purported "awareness" to limit only those aspects of the Loan Agreement that work against them.

V. The two-issue rule does not apply.

Respondents' Argument V invokes the two-issue rule on two theories: first, that Newrez's Motion to Dismiss raised three grounds and that Newrez has appealed only the arbitration ground, making the other grounds law of the case; and second, that Newrez did not appeal the trial court's January 2, 2026 Order, which Respondents characterize as an adjudication that Plaintiffs have stated viable SCUTPA and negligence claims against Newrez. Neither application is correct.

The two-issue rule applies where a *single ruling* rests on *multiple alternative grounds* and the appellant has failed to challenge one of those grounds. *Thompson v. Killian*, 447 S.C. 177, 195-96, 924 S.E.2d 606, 616 (2025). The unappealed alternative ground becomes law of the case for the ruling at issue. *Id.* The rule does not transform every unappealed component of a motion into law of the case on unrelated issues.

There is a threshold reason the two-issue rule has no application here. Arbitrability determinations are reviewed *de novo*, a standard Respondents themselves acknowledge in their Standard of Review section. *See Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 22, 644 S.E.2d 663, 667 (2007). The two-issue rule presupposes that an unappealed alternative ground forecloses appellate review of an appealed ground because the appellate court defers to the trial court on the unappealed ground. That premise dissolves under *de novo* review: when this Court examines arbitrability independently, without deference to the trial court's findings, an unappealed

component of the same motion cannot foreclose what independent review is already required to address. Because arbitrability is a question this Court reviews de novo, the rationale underlying the two-issue rule does not apply.

Here, the trial court's denial of arbitration did not rest on alternative grounds. The Arbitration Order denied Newrez's request to compel arbitration on the singular basis that the trial court adopted Plaintiffs' unconscionability theory and concluded "the purported agreement to arbitrate is unenforceable." (R. p. 11.) The denial of the alternative Motion to Sever, and the trial court's rejection of Newrez's argument that the Complaint must be dismissed for failure to state a claim, are independent rulings on independent requests for relief. They do not bear on the arbitrability inquiry, and Newrez's failure to appeal them in this interlocutory appeal does not affect the issues before this Court. Those rulings were not separately appealable at this interlocutory stage, and any challenge to them must await final judgment.

Respondents' alternative argument under the two-issue rule, that Newrez waived its arbitration rights by failing to appeal the January 2, 2026 Order, is even less tenable. The January 2 Order granted Plaintiffs partial summary judgment on their claim to set aside the November 6, 2023 tax sale, a claim against the *other* defendants, not Newrez, and granted Respondents leave to amend their complaint to add factual allegations against Newrez relating to force-placed insurance and escrow. (Summary Judgment Order at 1.) Granting leave to amend is not a Rule 12(b)(6) merits ruling. It is a procedural permission under Rule 15. Nothing in the January 2 Order adjudicated the merits of Plaintiffs' SCUTPA or negligence claims against Newrez, and accordingly there was nothing in that Order that Newrez was required or permitted to appeal at this interlocutory stage.

In addition, Respondents' premise misapprehends the nature of arbitration enforcement. Even if Respondents had received a favorable ruling on the merits of their claims against Newrez, and they have not, that ruling would not be an obstacle to arbitration. The arbitration clause covers "all disputes, claims or controversies arising from or relating to this Contract or the parties thereto," including claims with arguable merit. The arbitrator decides those disputes, applying the same law and considering the same evidence. Compelling arbitration of Respondents' claims does not extinguish them. It relocates them to the contractually agreed forum.

VI. Newrez has not waived its right to arbitrate.

Respondents' final argument advances waiver as an "additional sustaining ground," relying on the three-factor framework from *Davis v. KB Home of S.C., Inc.*, 394 S.C. 116, 713 S.E.2d 799 (Ct. App. 2011). At the threshold, Respondents themselves concede that the *Davis* factors "do not fit the somewhat unusual facts of this case." That concession should end the inquiry.

In any event, the *Davis* framework on which Respondents rely is no longer the controlling test. The South Carolina Supreme Court vacated the Court of Appeals' waiver analysis in *Davis* without endorsing the three-factor test. *See Davis v. KB Home of S.C., Inc.*, 429 S.C. 634, 635, 842 S.E.2d 653, 653 (2014) ("[V]acat[ing] the portion of the Court of Appeals' opinion regarding waiver of the right to compel arbitration."). The controlling South Carolina authority on arbitration waiver is *Dean v. Heritage Healthcare of Ridgeway, LLC*, which establishes "a presumption against finding a party has waived its right to compel arbitration," and places "a heavy burden" on the party asserting waiver to demonstrate prejudice through an "undue burden caused by delay." 408 S.C. 371, 388, 759 S.E.2d 727, 736 (2014). The factors courts consider include whether a substantial length of time transpired between the commencement of the action and the commencement of the motion to compel arbitration, whether the movant engaged in extensive discovery before moving to compel arbitration, and whether the non-moving party was prejudiced

by the delay. *Carlson v. South Carolina State Plastering, LLC*, 404 S.C. 250, 257, 743 S.E.2d 868, 872 (Ct. App. 2013).

Under either framework, Respondents have not come close to meeting their heavy burden. Newrez has pursued arbitration as grounds for dismissal since filing its Motion to Dismiss on September 3, 2025, the same pleading by which Newrez first appeared in the case. There has been no extended delay, no substantive merits litigation, no discovery initiated by Newrez, and no resulting prejudice to Plaintiffs. Respondents' attempt to bootstrap the two-issue rule analysis into a waiver theory fails for the same reasons addressed above. There is no January 2, 2026 ruling on the merits against Newrez that could have been waived by failure to appeal.

CONCLUSION

For the reasons set forth above and in Newrez's Initial Brief, Newrez respectfully requests that this Court reverse the trial court's Form 4 Order (December 9, 2025) and Order Denying Enforcement of Arbitration (February 10, 2026), and remand with instructions to: (1) stay Plaintiff Dorothy Douglas's claims and compel arbitration of those claims; (2) compel arbitration of Plaintiff Sharon Covington's claims pursuant to equitable estoppel or, in the alternative, stay those claims pending arbitration; and (3) grant such other and further relief as this Court deems proper.

Respectfully submitted this 13th day of July, 2026.

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