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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

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Appellate Case No. 2026-000971

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Mary Gray, by and through her Attorney-In-Fact, Thomas W. Cox, …….. Appellant,

v.

Dominion Anderson, LLC d/b/a Dominion Senior Living of Anderson, and Dominion Senior Living, LLC, …… Respondents.

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# INITIAL BRIEF OF RESPONDENTS

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## STATEMENT OF ISSUE ON APPEAL

1. Whether the trial court correctly determined that offers of judgment apply only to civil actions and are inapplicable to arbitrations.

## STATEMENT OF THE CASE

Plaintiff commenced a civil action in the Court of Common Pleas for Anderson County on May 21, 2024 (Civil Action No. 2024-CP-04-01069) alleging that she fell and sustained injuries when she was a resident in the memory care unit at Dominion Anderson. On August 6, 2024, Plaintiff filed and served an Offer of Judgment in the amount of $350,000.00, to which Defendants did not respond. (Offer of Judgment). Three days later, on August 9, 2024, the court entered a consent order referring the case to binding arbitration and staying the litigation. (Consent Order to Refer Case to Binding Arbitration and to Stay Litigation). The arbitration hearing was conducted on January 6-8, 2026. On January 14, 2026, the arbitrator issued an award in favor of Plaintiff which exceeded $350,000. Plaintiff did not ask the arbitrator to enforce the terms of the offer of judgment but, on January 29, 2026, filed a motion with the court to confirm the arbitration award and enforce the terms of the offer of judgment. (Motion to Confirm Award and Enforce Terms of Offer of Judgment). Defendants opposed the motion to enforce the terms of the offer of judgment but did not oppose the motion to confirm the arbitration award. (Defendants' Response in Opposition to Plaintiff's Motion to Confirm Award and Enforce Terms of Offer of Judgment). Defendants timely paid the arbitration award.

Plaintiff argued (a) that the offer of judgment statute, S.C. Code Ann. § 15-35-400, and rule, Rule 68, SCRCP, applied to arbitration awards as well as to judgments or awards in a civil action, and (b) that the parties' Consent Order to refer the case to arbitration provided that Plaintiff could seek all "remedies" available under governing law, including, as Plaintiff contended, the pre-

judgment interest and costs awardable under the offer of judgment statute and rule. The Consent Order provided,

> All remedies that would otherwise be available to Plaintiff under applicable federal, state and local laws remain available in the arbitration. The damages which are recoverable in the arbitration shall be those damages to which Plaintiff would otherwise be entitled according to the laws of the State of South Carolina. Any contractual limitations regarding the amount or type of damages that are recoverable shall not be enforced in the arbitration.

(Consent Order ¶ 4). In consenting to these terms, Defendants knowingly waived a prohibition in the underlying arbitration agreement on any award of punitive damages.

In response to Plaintiff's motion to enforce the terms of the offer of judgment, Defendants argued that South Carolina's offer of judgment statute and rule do not apply to arbitrations, which are separate and distinct from civil actions which may result in a judgment or award after a jury trial or bench trial. When the parties entered into an agreement to arbitrate, they agreed to resolve any claim of alleged negligence by way of binding arbitration, not by way of a lawsuit or civil action. Despite this agreement, Plaintiff filed her court case. Thereafter, when Plaintiffs' counsel were presented with the signed arbitration agreement, all parties to the action consented to refer the case to arbitration. Defendants argued that under the terms of the Consent Order to refer the case to arbitration, Plaintiff was allowed to recover any damages permitted by South Carolina law for her claims (i.e., economic damages, noneconomic damages, or punitive damages) but was not permitted to recover pre-judgment (or pre-award) interest or costs pursuant to the offer of judgment statute and rule, which by their express terms apply only to civil actions. (Defendants' Response in Opposition, pp. 5-7).

Judge R. Scott Sprouse heard arguments on Plaintiff's motion on February 11, 2026, and entered a Form 4 Order on February 13, 2026, confirming the arbitration award and denying Plaintiff's motion to enforce the Offer of Judgment. (Form 4 Order). Later, on March 25, 2026,

Judge Sprouse entered a final order. (Order Confirming Arbitration Award and Denying Plaintiff's Motion to Enforce Terms of Offer of Judgment).

## STANDARD OF REVIEW

The issue on appeal involves the construction of a statute and court rule, which is a question of law subject to *de novo* review. *Garrison v. Target Corp*., 435 S.C. 566, 576–77, 869 S.E.2d 797, 803 (2022).

## ARGUMENT

The circuit court ruled correctly that the offer of judgment statute and rule applies only to civil actions, not to arbitrations.

### 1. Rule 68, SCRCP and S.C. Code Ann. § 15-35-400 apply only to civil actions, not to arbitrations.

According to the plain meaning of the offer of judgment rule and statute, offers of judgment apply only to civil actions, not to arbitrations. S.C. Code § 15-35-400 and Rule 68, SCRCP, which are substantially similar, govern offers of judgment in South Carolina. Rule 68 provides that any "party in a *civil action*…may file… a written offer of judgment…" Rule 68, SCRCP (emphasis added). S.C. Code Ann. § 15-35-400 states, "…after commencement of *any civil action*…any party may…file with the clerk of the court a written offer of judgment…" (emphasis added).

The court's duty is to interpret a statute so as to "ascertain and effectuate" the legislature's intent. *Duke Energy Carolinas, LLC v. S.C. Office of Regulatory Staff*, 434 S.C. 392, 434, 864 S.E.2d 873, 895 (2021) (quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)). The best evidence of legislative intent is unambiguous statutory language. *Id*.; *Edwards v. State*, 383 S.C. 82, 92, 678 S.E.2d 412, 417 (2009) (holding that reasonably plain statutory language conclusively states the legislature's intent). Appellant argues that the South Carolina Supreme Court has found the text of the offer of judgment statute to be "clear and unambiguous," citing

*Garrison v. Target Corp.,* 435 S.C. 566, 586, 869 S.E.2d 797 (2022). (Brief of Appellant p. 7.) But the *Garrison* case, which had nothing to do with arbitration, is inapposite here. One of the issues in *Garrison* was whether Denise Garrison was entitled to pre-judgment interest on the entirety of the damages the jury awarded to her, including punitive damages. 435 S.C. at 586, 869 S.E.2d at 808. The Court held, "[T]he language of both the [offer of judgment] rule and the statute clearly and unambiguously provides that Denise is entitled to eight percent interest on the entire amount of the verdict, including punitive damages." *Id*. The meaning of the term "civil action" in the offer of judgment statute or rule was not in dispute in *Garrison*.

The text of the offer of judgment statute is set forth below:

> **(A) Offer of Judgment.** Except in domestic relations actions, after commencement of *any civil action* based upon contract or seeking the recovery of money damages, whether or not other relief is sought, any party may, *at any time more than twenty days before the actual trial date*, *file with the clerk of the court* a written offer of judgment signed by the offeror or his attorney, directed to the opposing party, offering to take judgment in the offeror's favor, or as the case may be, to allow judgment to be taken against the offeror, for a sum stated therein, for property, or to the effect specified in the offer. The offeror shall give notice of the offer of judgment to the offeree's attorney, or if the offeree is not represented by an attorney, to the offeree himself, in accordance with the service rules for motions and other pleadings set forth in the South Carolina Rules of Civil Procedure. Within twenty days after notification, or at least ten days prior to the trial date, whichever date is earlier, the offeree or his attorney may file with the clerk of the court a written acceptance of the offer of judgment. Upon the filing, the clerk shall enter immediately judgment of the stipulation. If the offer of judgment is not accepted within twenty days after notification or prior to or on the tenth day before the actual trial date, whichever date occurs first, the offer shall be considered rejected and evidence thereof is not to be admissible except *in a proceeding after the trial* to fix costs, interests, attorney's fees, and other recoverable monies. Any offeror may withdraw an offer of judgment prior to its acceptance or prior to the date on which it would be considered rejected by giving notice to the offeree or his attorney in accordance with the service rules for motions and other pleadings outlined in the South Carolina Rules of Civil Procedure. Any offeror may file a subsequent offer of judgment in any amount provided that the subsequent offer supersedes any earlier offer that was rejected by the offeree or withdrawn by the offeror, and, on filing, terminates any rights of interest

or costs that may have been applicable to the superseded offer. Notwithstanding this provision, an offer is not considered rejected upon the making of a counteroffer by the offeree, but shall remain effective until accepted, rejected, or withdrawn as provided in this subsection. *Any and all offers of judgment and any acceptance of offers of judgment must be included by the clerk in the record of the case*.

**(B) Consequences of NonAcceptance.** If an offer of judgment is not accepted and the offeror *obtains a verdict or determination* at least as favorable as the rejected offer, the offeror shall be allowed to recover from the offeree: (1) any administrative, *filing, or other court costs* from the date of the offer until judgment; (2) if the offeror is a *plaintiff*, eight percent interest computed on the amount of the verdict or award from the date of the offer; or (3) if the offeror is a *defendant*, a reduction from *the judgment or award* of eight percent interest computed on *the amount of the verdict or award* from the date of the offer.

**(C)** This section shall not be interpreted to abrogate the contractual rights of any party concerning the recovery of attorney's fees or other monies in accordance with the provisions of any written contract between the parties to the action.

S.C. Code Ann. § 15-35-400 (emphasis added).

The text of the offer of judgment rule is set forth below:

**(a) Offer of Judgment.** *Any party in a civil action*, except a domestic relations action, may file, no later than twenty days before the trial date, a written offer of judgment signed by the offeror or his attorney, directed to the opposing party, offering to take judgment in the offeror's favor, or to allow judgment to be taken against the offeror for a sum stated therein, or to the effect specified in the offer. Service of the offer of judgment shall be made as provided in these rules. Within twenty days after service of the offer of judgment or at least ten days prior to the trial date, whichever date is earlier, the offeree or his attorney may file a written acceptance of the offer of judgment. Upon the filing, the court shall immediately issue the judgment and the clerk shall enter the judgment as provided in the offer of judgment. If the offer of judgment is not accepted within twenty days after notification, or prior to or on the tenth day before the actual trial date, whichever date occurs first, the offer shall be considered rejected and evidence thereof is not admissible except *in a proceeding after trial* to fix costs, interest, attorney's fees, and other recoverable monies. Any offeror may withdraw an offer of judgment prior to its acceptance or prior to the date on which it would be considered rejected by giving notice to the offeree or his attorney as provided in these rules. Any offeror may file a subsequent offer of judgment in any amount which supersedes any earlier offer that was rejected

> by the offeree or withdrawn by the offeror, and, on filing and service, terminates any rights to interest or costs under the superseded offer. An offer is not considered rejected by a counter offer and shall remain effective until accepted, rejected, or withdrawn as provided in this subsection. *All offers of judgment and any acceptance of offers of judgment must be included by the clerk in the record of the case*.
>
> **(b) Consequences of Non-Acceptance.** If an offer of judgment is not accepted and the offeror obtains a verdict or determination at least as favorable as the rejected offer, the offeror shall recover from the offeree: (1) *any administrative, filing, or other court costs* from the date of the offer until the entry of the judgment; (2) if the offeror is a *plaintiff*, eight percent interest computed on the amount of the verdict or award from the date of the offer to the entry of judgment; or (3) if the offeror is a *defendant*, reduction from the judgment or award of eight percent interest computed on *the amount of the verdict or award* from the date of the offer to the entry of the judgment.
>
> **(c)** This rule shall not abrogate the contractual rights of any party concerning the recovery of attorney's fees or other monies in accordance with the provision of any written contract between the parties to the action.

Rule 68, SCRCP (emphasis added).

First, there is no mention of arbitration in either the statute or the rule. If the legislature had intended offer of judgment procedures to apply to arbitrations as well as civil actions, then it could have said so. Second, the statute and rule use terms which pertain only to court cases, not to arbitrations (italicized in the text above), such as *civil action*, *trial*, *actual trial date*, *file*, *clerk of court*, *record of the case*, *plaintiff*, *defendant*, *any administrative, filing, or other court costs,* and *the amount of the verdict or award.*

Appellant argues that the term *award* is broad enough to include an arbitration award, but the term *award* has a narrower meaning specific to litigation. A jury can award damages. After a bench trial, a judge may award damages. Or, after a jury trial, a judge may modify a jury's verdict and award a different amount of damages and enter judgment on the award as modified (e.g., by applying noneconomic damages caps or punitive damages caps to reduce the jury's verdict). There

is no textual basis upon which to conclude that the legislature intended the term award to include an arbitration award. Rather, the plain language of the statute and rule focuses exclusively on civil actions.

Appellant erroneously argues that Plaintiff, as a "party in a civil action," was "indisputably eligible to make an offer of judgment." (Brief of Appellant, p. 8.). This argument fails to preserve the essential distinction between a civil action and arbitration. Here, Plaintiff initiated a civil action but had no legal right to do so. When she became a resident at Dominion Anderson, she entered into an agreement to arbitrate which required her to submit her claims to arbitration rather than to a civil court. (Resident Admission Agreement, ¶ 13 "Agreement to Arbitrate"). She and her attorneys disregarded that contractual obligation and filed her case anyway. Only when presented with the agreement to arbitrate did Plaintiff through her counsel consent to refer this case to binding arbitration, as the agreement required.

Put simply, South Carolina's offer of judgment statute and rule do not apply to arbitrations or to arbitral awards. This is evident from a plain reading of the statute and rule. Further, Respondents have found no South Carolina case in which a court granted a motion for pre-award interest to a victor in arbitration pursuant to an offer of judgment, nor has Appellant cited any such authority.

**2. Arbitration is fundamentally distinct from a civil action.**

It is well settled in South Carolina and jurisdictions throughout the United States that arbitration is a distinct means of resolving disputes separate from litigation. "[A]rbitration is not litigation carried on by other means. It is intended to be, and it is, an alternative means for resolving disputes without the cost and delay of a lawsuit." *White v. Preferred Rsch, Inc.*, 315 S.C. 209, 212, 432 S.E.2d 506, 508 (Ct. App. 1993). The South Carolina Court of Appeals reaffirmed

the principle in *Lauro v. Visnapuu*: "Arbitration is not litigation carried on by other means, but is an alternative means for resolving disputes without the cost and delay of a lawsuit." 351 S.C. 507, 516, 570 S.E.2d 551, 556 (Ct. App. 2002).

Federal courts consistently distinguish between arbitration proceedings and civil actions, treating arbitration as an alternative dispute resolution mechanism that operates outside of the court system. In *Morrison v. Colorado Permanente Medical Group, P.C.*, the Court held, "Arbitration is an alternative dispute resolution mechanism designed to avoid the need for filing a civil action or to resolve a civil action. Moreover, cases and statutes discuss consistently the terms 'arbitration' and 'civil action' in a manner that leaves no doubt that arbitration is a creature separate from, and not just a form of civil action." 983 F. Supp. 937, 944 (D. Colo. 1997).

Appellant highlights that counsel for Respondents incorrectly argued to the court below that once the case was referred to binding arbitration it "ceased to be a civil case." (Brief of Appellant, p. 13). Respondents respectfully contend that counsel did not mean to imply that upon referral to arbitration the pending civil action was dismissed or "extinguished" or that the court no longer retained jurisdiction to facilitate the process of arbitration (as the FAA makes quite clear the court can and must do). To the contrary, it was Respondents' counsel who clarified for the court the applicability of the FAA, not the UAA, and the role that the court retained to confirm the arbitration award. Respondents' counsel *did* mean to say that the *effect* of the consent order to refer the case to binding arbitration and stay the litigation was that the underlying factual disputes, including any award of damages, must be resolved by the arbitrator, not by a judge or jury as would happen in a civil case, and that Plaintiff could not benefit from a Rule 68 offer of judgment simply because she managed to file a civil action before consenting to an order referring the matter to arbitration.

Appellant cites a recent U.S. Supreme Court case, *Jules v. Andre Balazs Properties,* for the proposition that when a federal court grants a motion to stay and compel arbitration the court retains jurisdiction over the matter and performs an ongoing, supervisory role. 146 S.Ct. 1209 (2026) (holding that a federal court with pre-existing jurisdiction over claims that it stayed pending arbitration under § 3 [of the FAA] can adjudicate a § 9 or § 10 motion even if that motion does not present, on its face, an independent basis for federal jurisdiction). (Brief of Appellant, p. 13). Respondents agree. The same would be true, as in this case, for a state court that stayed and compelled arbitration or by consent stayed and referred the case to arbitration under the FAA. But the FAA *limits* the role of the court in matters submitted to arbitration. As Justice Sotomayor wrote for a unanimous Court,

> The FAA "authorizes a party to an arbitration agreement to seek several kinds of assistance from a federal court." *Badgerow v. Walters*, 596 U.S. 1, 4, 142 S.Ct. 1310, 212 L.Ed.2d 355 (2022). At the front end, § 3 of the FAA directs federal courts to stay any lawsuit that involves an issue that is "referable to arbitration," and § 4 allows federal courts to compel arbitration if a party to an arbitration agreement refuses to arbitrate. During arbitration, federal courts may facilitate the proceedings, including by appointing an arbitrator under § 5 and enforcing subpoenas under § 7. On the back end, and central here, after an arbitral award has issued, federal courts may confirm, vacate, or modify such an award under § 9, § 10, or § 11. Under § 9, a court must confirm an award upon request "unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11." The grounds for vacatur and modification are limited. See § 10(a) (allowing vacatur for "corruption, fraud, or undue means," "partiality" or "misconduct" by an arbitrator, and "where the arbitrators exceeded their powers"); § 11 (allowing modification of "material miscalculation[s]" and in other narrow circumstances).

*Jules*, 146 S.Ct. at 1215. The court may confirm an arbitration award or vacate, modify, or correct the award, but it cannot add pre-judgment interest to the award pursuant to South Carolina's offer of judgment statute and rule because they apply only to civil actions, not to arbitrations. (In this instance, Plaintiff moved to confirm the arbitration award, not to modify or correct it.)

Federal courts characterize a court proceeding to confirm an arbitration award as ministerial rather than adjudicative. The "'confirmation of an arbitration award is a summary proceeding that merely makes what is already a final arbitration award a judgment of the court.'" *Teamsters Loc. 177 v. United Parcel Serv.*, 966 F.3d 245 (3d Cir. 2020) (citing *Florasynth, Inc. v. Pickholz*, 750 F.2d 171, 176 (2d Cir. 1984)). The court in confirming an arbitration award does not adjudicate the underlying dispute but only gives legal effect to the binding resolution the parties obtained through arbitration by entering a judgment or decree making the arbitrator's award enforceable.

**3. Neither the Federal Arbitration Act or the South Carolina Uniform Arbitration Act allows the trial court to enforce offer of judgment rules and assess pre-award interest and costs when a case is stayed and referred to binding arbitration.**

The Federal Arbitration Act (FAA), 9 U.S.C. §§ 1-16, and South Carolina's Uniform Arbitration Act (UAA), S.C. Code Ann. §§ 15-48-10 *et seq*., make no mention of offers of judgment. It is the FAA which applies here, as the UAA provides, "This chapter however shall *not* apply to: … (4) Any claim *arising out of personal injury*, based on contract or tort…" S.C. Code Ann. § 15-48-10(b) (emphasis added). Plaintiff's state court civil action was appropriately stayed upon the consent motion of the parties in accordance with § 3 of the FAA.

The FAA, like the UAA, gives courts no authority to enforce the terms of an offer of judgment in a proceeding to confirm or to modify or correct an arbitrator's award. In a case deciding whether attorney's fees should be awarded after an arbitration proceeding, the Seventh Circuit Court of Appeals held, "[T]here is nothing in the Federal Arbitration Act itself that would authorize a district court to go beyond confirming an arbitrators' award and independently award additional attorneys' fees." *Menke v. Monchecourt*, 17 F.3d 1007, 1009 (7th Cir. 1994). The court explained that section 9 of the FAA "is intended to be a summary proceeding that merely makes

the arbitrators' award a final, enforceable judgment of the court." *Id.* (citing *Florasynth, Inc. v. Pickholz*, 750 F.2d 171, 176 (2d Cir. 1986)). Respondents have found no reported federal or state case in which the terms of an offer of judgment were enforced in a motion to confirm an arbitration award pursuant to section 9 of the FAA or to modify or correct an arbitration award pursuant to section 11 of the FAA, and Appellant has cited no authority indicating that *any court* has done so.

Appellant argues that when a court confirms an arbitration award and enters a judgment, that judgment must be treated the same as a judgment entered in a civil case (i.e., after a civil trial). Appellant cites the FAA, 9 U.S.C. § 13, which provides, in pertinent part,

> … The judgment shall be docketed as if it was rendered in an action. The judgment so entered shall have the same force and effect, in all respects, as, and be subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered.

Respondents concede that a judgment entered on an arbitral award has "the same force and effect" as a judgment in a civil action, and may be enforced accordingly, but that has nothing to do with the application of South Carolina's offer of judgment statute and rule, which allow a civil litigant to recover *pre-judgment interest and court costs* if he or she prevails at trial and achieves a more favorable result than the unaccepted offer of judgment. So, Appellant's reliance on section 13 of the FAA is misplaced.

Appellant also cites *four* cases to support the proposition that "statutes granting interest to a prevailing party must apply to a judgment on a confirmed arbitration award if interest would be available to a similarly situated judgment on a verdict," *none of which* involve assessing or awarding *pre-award interest*. (Brief of Appellant, pp. 14-15). In *Parsons & Whittemore Ala. Mach. & Servs. Corp. v. Yeargin Constr. Co*., the court held that "once the court enters its judgment, it has the same effect as any other judgment recovered following a civil trial" and, therefore, "a district court judgment affirming an arbitration award is governed by statutory *post-judgment*

*interest rates*." 744 F.2d 1482, 1484 (11th Cir. 1984) (emphasis added). In *Carte Blanche (Singapore) v. Carte Blanche (Int'l)*, the court held that 28 U.S.C. § 1961(a) was an "inflexible, unitary rule" governing *post-judgment interest* on money judgments awarded by federal district courts and applied to an arbitral award, even when the arbitrator ordered a different rate of post-judgment interest. 888 F.2d 260, 269 (2d Cir. 1989) (holding that the proper post-judgment interest was 7% per § 1961 when the arbitrator's award provided for 10% post-judgment interest). In *AIG Baker Sterling, LLC v. AM. Multi-Cinema, Inc*., following arbitration of a dispute between a landlord and a shopping center tenant concerning the tenant's liability for real-estate taxes, the landlord filed an action seeking confirmation of the arbitration award. 579 F.3d 1268 (11th Cir. 2009). The tenant counterclaimed, seeking to modify the award. The district court revised the award. When the landlord appealed, the Court of Appeals reversed and remanded. The district court then confirmed the award but granted the tenant some relief from the judgment to account for taxes the tenant had already paid. The landlord appealed unsuccessfully, and the Eleventh Circuit Court of Appeals affirmed the decision of the district court, which had relied on two precedents in civil actions (not arbitrations) applying Rule 60(b) of the Federal Rules of Civil Procedure, providing that a court may relieve a party from a judgment if "the judgment has been satisfied, released, or discharged…" The Court reasoned that "section 13 of the FAA provides that a judgment which has confirmed an award is to be treated no better or worse than any other civil judgment" ("The judgment so entered shall have the same force and effect, in all respects, as, and be subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered."). 579 F.3d at 1273. Lastly, one of the cases involved "prejudgment interest" running from the date of an arbitral award to the date that the court entered judgment on the award. In *Phillips v. Merrill Lynch, Pierce,*

*Fenner & Smith, Inc*., the plaintiffs brought a series of federal and state securities laws claims, and on the defendants' motion the court compelled arbitration. 623 F. Supp. 493, 493 (D. Minn. 1985). On July 2, 1985, the arbitration panel found the defendants liable and issued an award in favor of the plaintiffs. By order dated September 19, 1985, the court confirmed the arbitration award. The plaintiffs sought prejudgment interest running from July 2, 1985, the date of the award, through the entry of the court's judgment. The parties agreed that the plaintiffs were entitled to some amount of prejudgment interest but disagreed about the rate of interest to be applied, as they disagreed on which law was applicable—whether federal law applied or whether the *Erie* doctrine required the application of the law of Minnesota, Wisconsin, or New York, which provided varying rates of interest. *Id*. The court held that Minnesota law governed and granted the plaintiffs' motion for prejudgment interest at the rate of 9 percent according to the relevant Minnesota statute, M.S.A. § 549.09 (providing for "interest from the time of the verdict, award, or report until judgment is finally entered"). *Id*. at 494. *Phillips* does not address and has no bearing on the issue before this Court, whether South Carolina's offer of judgment statute and rule apply to arbitral awards.

In conclusion, the FAA does not authorize courts to enforce the terms of a South Carolina offer of judgment which is inapplicable to arbitral awards, and Appellant has cited no legal authority or precedent in which a court has granted pre-award interest pursuant to an offer of judgment to a victor in arbitration.

**4. Pre-judgment interest and costs do not constitute "damages" or "remedies" available to a personal injury plaintiff under South Carolina law.**

Appellant contends that she is entitled to pre-award interest and costs according to the offer of judgment rule because the consent order to refer the case to arbitration provided that she was entitled to "all remedies" available under applicable law. Again, the Consent Order provided:

> All remedies that would otherwise be available to Plaintiff under applicable federal, state and local laws remain available in the arbitration. The damages which are recoverable in the arbitration shall be those damages to which Plaintiff would otherwise be entitled according to the laws of the State of South Carolina. Any contractual limitations regarding the amount or type of damages that are recoverable shall not be enforced in the arbitration.

(Consent Order, ¶ 4). First, there are no remedies under federal or local laws available to Appellant in this matter, since this is a personal injury action governed by South Carolina law. Second, under South Carolina law, three distinct categories of damages may be available to a claimant in a civil action for personal injury: (1) economic damages, (2) noneconomic damages, and (3) punitive damages. *See, e.g.*, S.C. Code Ann. § 15-32-210 (defining economic damages and noneconomic damages); *Mellen v. Lane*, 377 S.C. 261, 659 S.E.2d 236 (Ct. App. 2008) (actual or compensatory damages, punitive damages); *Boan v. Blackwell*, 343 S.C. 498, 541 S.E.2d 242 (2001) (noneconomic damages, including pain and suffering, mental anguish, and loss of enjoyment of life); *Gamble v. Stevenson*, 305 S.C. 104, 406 S.E.2d 350 (1991) (punitive damages). Here, the arbitration agreement precluded the resident from recovering any punitive damages. (Residential Admission Agreement, ¶ 13). The terms of the parties' Consent Order, however, altered that prohibition on punitive damages and allowed for the potential recovery of economic, noneconomic, and punitive damages (upon a proper showing). (Consent Order, ¶ 4). The pre-judgment interest and court costs referenced in South Carolina's offer of judgment rule do not fall within the definition or scope of the economic, noneconomic, or punitive damages which may be recovered in a personal injury action, and Paragraph 4 of the Consent Order, which uses the terms *remedies* and *damages* interchangeably, should not be construed to allow Appellant to recover pre-award interest pursuant to an offer of judgment as some other category or type of "remedy" when it is clear from the text of the offer of judgment statute and rule that offers of judgment are procedures applicable only to civil actions, not to arbitrations.

## CONCLUSION

The circuit court correctly ruled that offers of judgment made under Rule 68, SCRCP and S.C. Code § 15-35-400 are applicable only to civil actions, not to arbitrations. The circuit court's order denying pre-award interest should be upheld.

Respectfully submitted,

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