

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Joseph Rich,
Plaintiff,

vs.

First-Citizens Bank & Trust Company;
First Citizens Investor Services, Inc.;
First Citizens Asset Management, Inc.;
and Robert P. Strickland,

Defendants.

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

Case No.: 2026-CP-40-02896

**ORDER DENYING DEFENDANTS' MOTION
TO COMPEL ARBITRATION AND STAY
PROCEEDINGS, OR IN THE ALTERNATIVE
MOTION TO DISMISS, AND MOTION FOR
PROTECTIVE ORDER**

Before the Court is Defendants First-Citizens Bank & Trust Company, First Citizens Investor Services, Inc., First Citizens Asset Management, Inc., and Robert P. Strickland's (collectively, "Defendants") Motion to Compel Arbitration and Stay Proceedings, or in the Alternative Motion to Dismiss, and Motion for Protective Order (the "Motion"). The Motion has been fully briefed by both Defendants and Plaintiff Joseph Rich ("Plaintiff"). A hearing was held on the matter on September 1, 2026, with Jonathan E. Schulz of Bradley Arant Boult Cummings LLP appearing on behalf of Defendants, and Robert G. Rikard of RP Legal, LLC appearing on behalf of Plaintiff. Having fully considered the matter, including the Motion, the parties' briefs and memoranda, and oral arguments, it is hereby **ORDERED** that Defendants' Motion to Compel Arbitration and Stay Proceedings is **DENIED**, and Defendants' Motion to Dismiss is **DENIED**, and Defendants' Motion for Protective Order is **DENIED** for the reasons set forth in more detail below.

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BACKGROUND

Plaintiff filed this action on April 29, 2026, asserting causes of action against Defendants for negligence, violation of the South Carolina Unfair Trade Practices Act (“SCUTPA”), negligent misrepresentation, and breach of fiduciary duty arising out of the 2014 recommendation and January 2015 sale of a Lincoln LifeReserve Indexed Universal Life Accumulator policy (the “Policy”).

This case arises out of Plaintiffs’ loss of retirement savings. Plaintiff alleges that Defendants sought him out and recruited him into their Wealth Management program, and after conducting a formal wealth management study, recommended the purchase of the Policy as an objective, institution-backed financial plan. According to Plaintiff, the Policy was the entirety of the retirement plan recommended to him and was completely unsuitable for his needs.

Defendants deny these allegations. On June 15, 2026, Defendants moved to compel arbitration and stay this action, contending that Plaintiff’s banking relationship with First-Citizens Bank & Trust Company is governed by a Deposit Account Agreement containing an arbitration provision, or, in the alternative, to dismiss the Complaint pursuant to Rule 12(b)(6), SCRCP, and for a protective order staying discovery pending resolution of the Motion. Defendants filed their Memorandum in Support of the Motion on August 27, 2026, and Plaintiff filed his Response in Opposition on September 1, 2026.

LEGAL STANDARD

A party seeking to compel arbitration bears the burden of proving a valid agreement to arbitrate, including offer, acceptance, and consideration, under ordinary South Carolina contract law. *Lampo v. Amedisys Holding, LLC*, 445 S.C. 305, 311, 914

S.E.2d 139, 142 (2025). When a customer disputes that any agreement to arbitrate exists, the party asserting the agreement must prove it in court; the failure to produce the agreement and demonstrate that the customer actually assented is alone fatal. *MBNA Am. Bank, N.A. v. Christianson*, 377 S.C. 210, 214-16, 659 S.E.2d 209, 212-13 (Ct. App. 2008) (vacating arbitration award where the bank, once the cardholder disputed the agreement's existence, never proved he had agreed to arbitrate).

A motion to dismiss under Rule 12(b)(6), SCRCP should not be granted if the facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff relief on any theory of the case. *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006); *see also Ashley River Props. I, LLC v. Ashley River Props. II, LLC*, 374 S.C. 271, 278, 648 S.E.2d 295, 298 (Ct. App. 2007). In considering such a motion, the Court must base its ruling solely on the allegations set forth in the operative pleading. *Spence v. Spence*, at 116, 628 S.E.2d at 874. The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his favor, the pleading states any valid claim for relief. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247-48 (2007).

DISCUSSION

I. MOTION TO COMPEL ARBITRATION AND STAY PROCEEDINGS

Defendants argued that Plaintiff accepted the arbitration provision contained in the Deposit Account Agreement by continuing to maintain and use his deposit account after First Citizens gave notice of the amendment. Plaintiff responded that the only document that was alleged to have been signed, a July 1, 2019 Account Signature Card, does not itself contain or reference any arbitration provision, and that his continued use of a pre-

existing account cannot manifest assent to a subsequently proposed, separate bilateral arbitration agreement.

The Court agrees with Plaintiff. Arbitration agreements are treated like other contracts, no more and no less; there is no federal or state policy favoring their formation. *Lampo*, 445 S.C. 317-18, 914 S.E.2d at 146. On materially indistinguishable facts, the South Carolina Supreme Court has held that continued performance of a preexisting contract does not manifest acceptance of a later bilateral arbitration agreement, even where the offeree received actual notice and the offeror declared that continued performance would constitute acceptance. *Id.* at 313-17, 914 S.E.2d at 143-46. Continued use of a pre-existing account is performance of the account relationship already in place; it is not, without more, a manifestation of assent to a subsequently proposed bilateral arbitration agreement.

Accordingly, Defendants have not proven a valid agreement, offer, acceptance, or any manifestation of assent sufficient to form a binding agreement to arbitrate, and the arbitration provision upon which Defendants rely is not binding on Plaintiff.

Defendants' Motion to Compel Arbitration and Stay Proceedings is therefore **DENIED.**

II. MOTION TO DISMISS

In the alternative, Defendants moved to dismiss the Complaint pursuant to Rule 12(b)(6), SCRCP, for failure to state facts sufficient to constitute a cause of action. Accepting the allegations of the Complaint as true and viewing them, together with all reasonable inferences, in the light most favorable to Plaintiff, the Court finds that Plaintiff

has properly pled his causes of action for negligence, violation of SCUTPA, negligent misrepresentation, and breach of fiduciary duty.

With respect to Defendants' statute of limitations defense, the Court finds that dismissal on that basis is not proper at the Rule 12(b) stage of these proceedings. A statute-of-limitations defense ordinarily must be raised and resolved after the pleadings unless the Complaint itself establishes the defense. *Spence v. Spence*, 368 S.C. 106, 123-24, 628 S.E.2d 869, 878 (2006). Dismissal is improper when accrual is not apparent from the Complaint's face. *Brown v. Leverette*, 291 S.C. 364, 367-68, 353 S.E.2d 697, 699 (1987). This ruling is without prejudice to Defendants' right to reassert the statute of limitations defense at a later, properly supported stage of this litigation, including on a motion for summary judgment.

Defendants' Motion to Dismiss pursuant to Rule 12(b)(6), SCRCP, is therefore **DENIED**.

CONCLUSION

For the reasons set forth above, Defendants' Motion to Compel Arbitration and Stay Proceedings is **DENIED**, and Defendants' Motion to Dismiss pursuant to Rule 12(b)(6), SCRCP, is **DENIED**, without prejudice to Defendants' right to reassert the statute of limitations defense at a later stage of this litigation. Because those Motions have been resolved by this Order, Defendants' Motion for Protective Order is **DENIED AS MOOT**, and this action shall proceed in the ordinary course.

IT IS SO ORDERED.

s/_____
The Honorable Daniel Coble

Columbia, South Carolina

September ____, 2026



Richland Common Pleas

Case Caption: Joseph Rich vs First-Citizens Bank & Trust Company , defendant, et al
Case Number: 2026CP4002896
Type: Order/Other

So Ordered

s/ Daniel Coble, 2774
