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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 Deadra L. Jefferson

Appellate Court Case No. 2026-000058
Circuit Court Case No. 2024-CP-10-02646

Peter Skoler and Patricia Skoler, Appellants,

v.

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

AND

Circuit Court Case No. 2024-CP-10-04606

Frank Perrelli, Jr., Appellant,

v.

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

FINAL BRIEF OF RESPONDENTS

September 30, 2026

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) 723-7491
jeff@uricchio.com

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I. STATEMENT OF ISSUES ON APPEAL

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

II. STATEMENT OF CASES

Skoler Appellants purchased a Vacation Inspirations ("VI") Membership ("the Membership") distributed by Destination Travel, LLC in March 2022 in Charleston, South Carolina by Purchase Agreement (the "Purchase Agreement"). (Purchase Agreement, R. pp. 137-138). Appellant Perrelli purchased a Vacation Inspirations ("VI") Membership ("the Membership") distributed by Destination Travel, LLC on October 8, 2022 in Charleston, South Carolina by Purchase Agreement (the "Purchase Agreement"). (Perrelli Purchase Agreement, R. pp. 145-146). Both Purchase Agreements include 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.

(Skoler Purchase Agreement, R. p. 138, Perrelli Purchase Agreement, R. p. 146). For ease of reference, these agreements are collectively referred to as "Purchase Agreement" throughout.

On May 21, 2024, Skoler 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. (Skoler Complaint, R. pp. 29-46). Appellant Perrelli filed essentially the same lawsuit

against Defendants on September 13, 2024. (Perrelli Complaint, R. pp. 58-77). Respondents answered in both cases (Skoler Answer, R. pp. 47-57; Perrelli Answer, R. pp. 78-88), denying these allegations. In both cases, Respondents filed a motion to compel arbitration on November 12, 2024 pursuant to the arbitration provision in the Purchase Agreement. (Skoler Motion to Compel Arbitration, R. pp. 135-136; Perrelli Motion to Compel Arbitration, R. pp. 143-144).

Attached to these motions were the following documents all signed by the Appellants: the Vacation Inspirations Membership Purchase Agreement with Membership Terms and Conditions (Skoler Purchase Agreement, R. pp. 137-138; Perrelli Purchase Agreement, R. pp. 145-146); an Addendum/Exception to Contract (Skoler Addendum, R. p. 139; Perrelli Addendum, R. p. 147); and a Vacation Inspirations Membership Acknowledgement with a series of questions answered by the Appellants. (Skoler Acknowledgment, R. p. 140; Perrelli Acknowledgment, R. p. 148). The issues were briefed extensively in both cases before the hearings on the motions. Appellants filed a memorandum in opposition to the motions. (Skoler Memo in Opposition, R. pp. 151-172; Perrelli Memo in Opposition, R. pp. 173-194). Likewise in each case, Respondents filed a supporting memorandum and an amended supporting memorandum in support of the motion. (Skoler Memoranda in Support, R. pp. 195-204, 232-240; Perrelli Memoranda in Support, R. pp. 205-215, 241-250). Thereafter, Appellants filed sur-reply memorandum in each case to respond to the Respondents' supporting memorandum. (Skoler Sur-reply, R. pp. 218-224; Perrelli Sur-reply, R. pp. 225-231).

In both cases, the Court heard oral argument by counsel for Appellants and Respondents on March 27, 2025. After due consideration of all issues and matters, on July 25, 2025, in Skoler and on July 23, 2025, in Perrelli, the trial court entered its order granting Respondents' motion to compel arbitration. (Skoler Order, R. pp. 4-10; Perrelli Order, R. pp. 11-16). In the orders, 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. (Skoler Order, R. pp. 4-10; Perrelli Order, R. pp. 11-16). Thereafter, on August 2, 2025, Appellants filed their Motion for Reconsideration in both cases, which were denied by the circuit court on December 12, 2025 in Skoler and in Perrelli. (Skoler Motion for Reconsideration, R. p. 305-330; Skoler Order, R. pp. 17-21; Perrelli Motion for Reconsideration, R. p.331-356; Perrelli Order, R. pp. 22-26).

In both cases, Appellants filed a notice of appeal on or about January 8, 2026, appealing the orders of the lower court compelling arbitration and denying their motion to reconsider. The appeals were dismissed on the grounds that an order compelling arbitration is not immediately appealable. (Skoler Order, R. p. 27; Perrelli Order, R. p. 28). Notwithstanding that, Appellants filed a petition for rehearing on February 2, 2026, in each case. (February 2, 2026 Petitions for Rehearing). The petitions were granted on April 1, 2026. See April 1, 2026 Orders Granting Petitions for Rehearing. The order reinstating appeals did not rule substantively that the orders were subject to immediate appeal. Instead, the orders state:

Appellant[s] petitioned this Court to rehear the dismissal of this appeal. After careful consideration and for good cause shown, Appellant's petition is granted and this appeal is reinstated. The parties may address the arguments raised in Appellant's petition for rehearing in their respective briefs. Appellant shall serve and file Appellant's Initial Brief and Designation of Matter within fifteen days of the date of this order.

(Order Granting Petition for Rehearing), Appellants also submitted documents with their reinstatement petition that were not part of the record in the court below, and that would likely not have been admissible evidence had that material been offered. This issue is the subject of Respondents' motion to strike those documents from the Appellants' Initial Brief and Designation of Matter filed herewith.

Appellants filed their initial brief in each case on April 16, 2026. The cases were held in

abeyance pending the Court's decision on the Appellants' motion to consolidate the matters, which was granted on June 1, 2026.

III. STANDARD OF REVIEW

As a threshold matter, the orders compelling arbitration are not subject to immediate appeal and so the appeals should be dismissed without further consideration. 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 and so in the event that this Court reaches the merits, the legal conclusions and factual findings should be affirmed for the reasons set forth below.

IV. ARGUMENTS

A. THE ORDERS GRANTING THE MOTIONS TO COMPEL ARBITRATION ARE 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 orders 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 § 15-48-200 because such orders were omitted from the list of appealable orders. Id. 321 S.C. 2t 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 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 orders 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.

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.

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 orders 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 orders 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 Plaintiffs argue that the “central defect rendering this process devoid of minimum due process protections ... is Respondents’ unilateral power to select the arbitrator.” 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 orders compelling arbitration, would have adjudicated their cases in the same place provided for in their agreements 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. 21).

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 and did not attempt to appeal from an order compelling arbitration as these Appellants do. 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' Memoranda in Support of Motions to Compel Arbitration, R. pp. 197, 209, 234, 243).

Likewise, neither Flores v. New York Football Giants, 150 F.4d 172 (2nd. Cir 2025) nor McMullen v. Meijer, Inc. 355 F. 3d 485 (6th Cir. 2004) support Appellants' claim to a right to appeal the orders 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 located 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.

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 is no due process grounds for this Court to consider an interlocutory appeal of the Orders compelling

arbitration.

Next, Appellants turn to the Toler's Cove case. Appellants reliance on this case, specifically their arguments regarding the “capable of repetition doctrine” do not support their position on appealability. In this section of their brief, Appellants, without any authority or citation, assert: “South Carolina’s ‘capable of repetition’ doctrine provides an additional independent basis for appellate jurisdiction.” (App. Skoler Brief, p.16; App. Perrelli Brief p. 17). That is not the holding of Toler's Cove. Instead, the holding in Toler's Cove was actually that the “state procedural rule on appealability of arbitration orders, 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, 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.E.2d 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, would have be the subject of an objection and likely excluded under Rule 403 and 404 of the South Carolina Rules of Evidence as well as under the hearsay rules.

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 go against the longstanding settled law governing appeals involving arbitrability all of which clearly holds 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 and order these cases to arbitration.

B. EVEN IF THE ORDERS ARE 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.

(Motions to Compel, R. p. 135-136, 143-144). Appellants' counsel acknowledged during the hearing that the FAA governs the issues before the Court. Now that the lower court decided to send 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 Agreements attached to Respondents' Motions to Compel Arbitration at Para. VIII. (Skoler Agreement, R. p. 138; Perrelli Agreement, R. p. 146).

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.

(FAA, Rule R-7(a) and (b), R. p. 569-570). Based on this, the Court of Appeals should affirm the lower court's ruling compelling arbitration.

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 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.

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 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 Complaints 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 Complaints they admit that they entered into a contract with Vacation Inspirations. (Skoler Complaint, R. p. 34; Perrelli Complaint R. p. 61-62). 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 motions to compel arbitration filed on November 12, 2024. (Skoler Motion, R. pp. 135-136; Perrelli Motion, R. pp. 143-144). Specifically, a copy of the Purchase Agreement Vacation Inspirations Membership signed by the Appellants was attached to that motion. (Skoler Purchase Agreement, R. pp. 137-138; Perrelli Purchase Agreement, R. pp. 145-146). 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 motions 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. 205-206). 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. (Skoler Order, R. pp. 6-7; Perrelli Order, R. pp. 13-14). 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. pp. 205-206). 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)

is not controlling or applicable in this instance. In Corley, the arbitration clause precluded treble damages and other claims pursuant to the South Carolina Unfair Trade Practices Act (SCUPTA). No such limitation is contained in the arbitration clause in this case. Additionally, in Corley, the parties agreed that South Carolina substantive law was to be determinative and the Court held that SCUPTA applied rather than the FAA. In the instant case the parties agreed at the hearing before the trial court that the case was governed by the FAA and not SCUPTA. When Judge Jefferson asked counsel at the hearing if the parties were conceding the FAA applied, counsel for Appellants responded “Yes, Your Honor, we are.” (Skoler Hearing Transcript, R. p. 93; Perrelli Hearing Transcript, R. p. 116).

Lastly, the Court in Corley 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 questions) 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 the Court or the arbitrator would decide validity of the arbitration clause. Clearly, in the instant case, the FAA and not South Carolina law is determinative. Also, in Simpson, the plaintiff was required to forego certain remedies, which is not the situation 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 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 ruled correctly that the arbitration provision is not unconscionable. Neither the Purchase Agreement nor the arbitration provisions therein is on a “take-it-or-leave-it” basis with no negotiable terms and that its 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 (Skoler Addendum, R. p. 139; Perrelli Addendum, R. p. 147), which by its nature was 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. (Skoler Addendum, R. p. 139; Perrelli Addendum, R. p. 147). Appellants had a meaningful choice but apparently chose not to raise any questions at the time of the Purchase Agreement regarding the arbitration provision and 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 This is yet another reason that 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. (Skoler Acknowledgment, R. p. 140; Perrelli Acknowledgment, R. p. 148).

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.

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. 574). 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. 576). 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 are excluded or waived. The arbitration agreement does not include any limits on damages. Appellants are attempting to raise issues that could have and should have been raised in proceedings in the lower court and/or at the hearing and oral argument. Appellants' arguments do not raise any new information that was not available when the lower court made its ruling on July 25, 2025. Appellants urged the court to rule and the court did rule; just not in Appellants' favor.

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. **THE COURT SHOULD NOT CONSIDER ANY ARGUMENT THAT LIMITED DISCOVERY PROVIDES 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. This issue was not raised prior to or during the hearing on the motion to compel arbitration and so Appellants cannot raise it for the first time on appeal. See Patterson v. Reid, 318 S.C. 183, 456 S.E.2d 436 (Ct. App. 1995) (a party may not raise an issue in a motion to reconsider, alter or amend a judgment that could have been presented prior to the judgment); see also McGee v. Bruce Hosp Sys., 321 S.C. 340, 468 S.E.2d 633 (1996) (a party may not raise an issue for the first time in a motion for a new trial).

In making this argument Appellants failed to advise the lower court that on November 22, 2024, Respondents' counsel sent Appellants' counsel an email as follows:

As noted in our motions to compel arbitration in the three cases that have been filed, we have also asked for a stay of the proceedings as there is law in South Carolina that the right to arbitrate may be waived by participating in the proceedings. As such, we cannot answer the discovery you have sent us in the three cases.

See Defendants' Memoranda in Opposition to Plaintiff's Motions to Reconsider, R. p.363, 374). Respondents did not ignore the Appellants' discovery requests. Instead, Respondents set forth an appropriate stated reason for not responding to the discovery. See e.g. Liberty Builders, Inc. v. Horton, 336 S.C. 658, 521 S.E.2d 749 (S.C. App. 1999).

The Respondents' motions to compel arbitration included a request to stay all discovery. (Skoler Motion, R. pp. 135-136; Perrelli Motion, R. pp. 143-144). 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 or even further discuss the matter in the briefs or at the hearing but instead waited until after the circuit court granted Respondents' motions to compel arbitration, to, for the first time, raise an issue regarding discovery. Having failed to act and having lost the motions to compel arbitration and stay proceedings, Appellants are not proceeding in good faith in their position to the Court on discovery matters.

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.

September 30, 2026

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