

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

SC Court of Appeals

Benjamin H. Culbertson, Circuit Court Judge

Case No. 2024-CP-10-04598

Bettina Honeycutt, Francisco Gilmore, and Jennifer Colburn,
individually and on behalf of all others similarly situated,
Respondents,

v.

Broad River Physicians Group, LLC and Medlytix, LLC,
Appellants.

INITIAL BRIEF OF APPELLANT BROAD
RIVER PHYSICIANS GROUP

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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN FAILING TO FIND THAT ARBITRATION WAS REQUIRED UNDER THE PRINCIPLE OF DIRECT BENEFITS ESTOPPEL?
2. DID THE TRIAL COURT ERR BY MAKING A MERITS DETERMINATION IN DENYING BROAD RIVER'S MOTION TO COMPEL ARBITRATION?
3. DID THE TRIAL COURT ERR BY FAILING TO ADDRESS BROAD RIVER'S ARGUMENT THAT ISSUES OF ARBITRABILITY, INCLUDING THE SCOPE OF THE ARBITRATION PROVISIONS AND WAIVER, WERE CLEARLY AND UNMISTAKABLY DELEGATED TO THE ARBITRATOR?
4. NOTWITHSTANDING THE DELEGATION OF ISSUES OF ARBITRABILITY TO THE ARBITRATOR, DID THE TRIAL COURT ERR IN FINDING THE SCOPE OF THE ARBITRATION PROVISIONS DID NOT COVER THIS DISPUTE?
5. NOTWITHSTANDING THE DELEGATION OF ISSUES OF ARBITRABILITY TO THE ARBITRATOR, DID THE TRIAL COURT ERR IN FINDING THAT BROAD RIVER KNOWINGLY WAIVED ITS RIGHT TO COMPEL ARBITRATION?

STATEMENT OF THE CASE

On September 13, 2024, Betinna Honeycutt, Francisco Gilmore, and Jennifer Colburn (“Plaintiffs”), initiated this case by filing a complaint and summons against Broad River Physicians Group, LLC (“Broad River” or “BRPG”) and Medlytix, LLC (“Medlytix” and together with Broad River, “Defendants”) in the Charleston County Court of Common Pleas. *See* Compl. Plaintiffs-Respondents are individuals who allegedly suffered personal injuries in automobile accidents caused by third parties and sought emergency medical treatment from Broad River. *Id.* ¶¶ 23-24. Apparently dissatisfied with Broad River’s billing practices, Plaintiffs raise several claims broadly alleging that Broad River’s conduct violated provider agreements (of which they are allegedly third-party beneficiaries) that Broad River entered with BlueCross BlueShield of South Carolina (“BCBSSC”) (“Provider Agreements”). Specifically, Plaintiffs raised the following claims: (1) breach of contract, against Broad River; (2) tortious interference with a contractual relationship, against Medlytix; (3) negligence, against both Defendants; (4) unjust enrichment, against both Defendants; (5) declaratory judgment, against Broad River; (6) injunctive relief against both Defendants; and (7) violations of the Fair Debt Collections Practices Act, against Medlytix.

On October 17, 2024, Medlytix filed a notice of removal to the District Court for the District of South Carolina. *See Honeycutt, et al. v. Broad River Physicians Group, LLC, et al.*, No. 2:24-cv-05922 (D.S.C. Oct. 16, 2024). On November 14, 2024, Plaintiffs filed a motion to remand the case to the Charleston County Court of Common Pleas. *See Honeycutt, et al. v. Broad River Physicians Group, LLC, et al.*, No. 2:24-cv-05922 (D.S.C. Nov. 14, 2024). On November 20, 2024, Medlytix filed a motion to amend its notice of removal to include Broad River’s consent to removal. *See Honeycutt, et al. v. Broad River Physicians Group, LLC, et al.*, No. 2:24-cv-05922 (D.S.C. Nov. 20, 2024). On November 22, 2024, the Parties filed a consent motion to stay all

deadlines—including Broad River’s November 30, 2024 deadline to respond to Plaintiffs’ Complaint—pending resolution of Plaintiffs’ motion to remand. *See Honeycutt, et al. v. Broad River Physicians Group, LLC, et al.*, No. 2:24-cv-05922 (D.S.C. Nov. 22, 2024). By order dated April 14, 2025, the District Court for the District of South Carolina remanded the action to the Charleston County Court of Common Pleas. *See Honeycutt, et al. v. Broad River Physicians Group, LLC, et al.*, No. 2:24-cv-05922 (D.S.C. Apr. 14, 2025).

On May 5, 2025, Broad River filed a Motion to Compel Arbitration. *See* BRPG Motion to Compel Arbitration (“MTCA”). On August 5, 2025, oral argument was held on Broad River’s Motion to Compel Arbitration and by order dated September 3, 2025, the trial court denied Broad River’s motion. *See* MTCA Order. On September 19, 2025, Broad River filed a Motion for Reconsideration of the order denying its Motion to Compel Arbitration, which the trial court denied by order dated May 5, 2026. *See* BRPG Motion for Reconsideration; Order Denying BRPG Motion for Reconsideration. This appeal followed.

SUMMARY OF THE ARGUMENTS

The Provider Agreements require arbitration for “any problems or disputes that may arise under” those agreements. *See* BRPG MTCA, Exs. 1, 2. Plaintiffs allege they are third-party beneficiaries of the Provider Agreements, Compl. ¶ 77, and each of their claims against Broad River is premised on purported obligations in the Provider Agreements. Based on Plaintiffs’ claims that they are indeed third-party beneficiaries of the Provider Agreements, and because they have brought this lawsuit to enforce obligations purportedly contained within those agreements as direct benefits, Plaintiffs are estopped from avoiding arbitration of their claims under well-settled law. The trial court erred in concluding otherwise.

The trial court compounded this error by ruling, as an apparent alternative basis, that Plaintiffs were not bound under the principle of equitable estoppel to arbitrate due to Broad River's alleged "bad conduct." MTCA Order at 7. The trial court erred twice in making this finding. First, South Carolina case law is clear that equitable estoppel and direct benefits estoppel are not two separate concepts requiring separate analyses in the context of ruling on a motion to compel arbitration. Rather, the direct benefits test is simply the framework for invoking equitable estoppel when analyzing a motion to compel arbitration. Second, Broad River's purported "bad conduct" was no more than Plaintiffs' unproven and disputed allegations that Broad River breached obligations supposedly contained within the Provider Agreements. *See* Pls.' Resp. to BRPG MTCA at 9, 12 (characterizing Broad River's "bad conduct" as its failure to "submit[] the bills to BCBSSC as required by the Provider Agreements" and instead "implementing its fraudulent billing scheme"). Whether the Provider Agreements even contain these obligations and whether Broad River's "billing scheme" somehow violated the Provider Agreements are the core merits questions in this case. It is black letter law that a court cannot rule on the potential merits of the subject claims in deciding whether to compel arbitration. Yet that is precisely what the trial court did in apparently finding both that these obligations exist and that Broad River's "bad conduct" violated those obligations.

Finally, the trial court erred by failing to even analyze—in its order denying Broad River's Motion to Compel Arbitration and in Broad River's Motion for Reconsideration—Broad River's argument that the Provider Agreements' arbitration provisions clearly and unmistakably delegated issues of arbitrability to the arbitrator by incorporating the American Arbitration Association's ("AAA") Commercial Arbitration Rules. Because the Provider Agreements' arbitration provisions expressly incorporate the AAA's rules in lieu of South Carolina's procedural law, the trial court

lacked authority to rule on issues of arbitrability, including challenges to the scope of the arbitration provisions and whether Broad River knowingly waived its right to compel arbitration. Yet again, that is precisely what the trial court did.

For each and all of these reasons, Broad River respectfully requests that this Court vacate the trial court's order denying Broad River's Motion to Compel Arbitration and remand with instructions for the trial court to enter an order compelling individual arbitration of Plaintiffs' claims.

STANDARD OF REVIEW

"Unless the parties otherwise provide, the question of the arbitrability of a claim is an issue for judicial determination. Appeal from the denial of a motion to compel arbitration is subject to de novo review." *New Hope Missionary Baptist Church v. Paragon Builders*, 379 S.C. 620, 625, 667 S.E.2d 1, 3 (2008) (citation omitted). "The party resisting arbitration bears the burden of proving that the claims at issue are unsuitable for arbitration." *Dean v. Heritage Healthcare of Ridgeway, LLC*, 408 S.C. 371, 759 S.E.2d 727, 731 (2014) (quotation marks omitted).

ARGUMENTS

I. The Trial Court Erred by Failing to Properly Apply Direct Benefits Estoppel

Plaintiffs sued Broad River as purported third-party beneficiaries of Provider Agreements that Broad River entered into with BCBSSC. Compl. ¶¶ 9, 77. Each of Plaintiffs' claims is premised on purported obligations owed by Broad River to Plaintiffs under the Provider Agreements. *See, e.g., id.* ¶ 78 ("Broad River breached the provider agreement(s) by not submitting bills directly to BCBS . . ."). Specifically, Plaintiffs alleged they were denied benefits owed to them as third-parties under the Provider Agreements—for Broad River to submit bills directly and only to BCBSSC for medical services rendered and to accept discounted reimbursement rates as

payment in full for those services. *See id.* ¶¶ 9-11. However, the Provider Agreements contain broad arbitration provisions, requiring arbitration for “any problems or disputes that may arise under” those agreements. BRPG MTCA, Ex. 1 at 14; *id.*, Ex. 2 at 10. Plaintiffs cannot sue to enforce certain purported portions of the Provider Agreements while avoiding others, including the arbitration provisions. Accordingly, the trial court erred by finding direct benefits estoppel did not require arbitration of this dispute.

“A party may be estopped from asserting that the lack of his signature on a written contract precludes enforcement of the contract’s arbitration clause when he has consistently maintained that other provisions of the same contract should be enforced to benefit him. To allow a plaintiff to claim the benefit of the contract and simultaneously avoid its burdens would both disregard equity and contravene the purposes underlying enactment of the Arbitration Act.” *Dixon v. Pattee*, 442 S.C. 233, 257, 898 S.E.2d 158, 170-71 (Ct. App. 2023) (citation modified). “When a claim depends on the contract’s existence and cannot stand independently—that is, the alleged liability arises solely from the contract or must be determined by reference to it—*equity prevents a person from avoiding the arbitration clause that was part of that agreement.*” *Bennett v. ACS Primary Care Physicians-Se. P.C.*, 444 S.C. 458, 472, 908 S.E.2d 110, 116-17 (Ct. App. 2024) (quotation marks omitted). In other words, “[a] party may not rely on the contract when it works to its advantage, and repudiate it when it works to its disadvantage.” *Dixon*, 442 S.C. at 258, 898 S.E.2d at 171 (citation modified). That is exactly what has happened here.

The entire basis for this lawsuit, and the universal theory of Plaintiffs’ claims, is that Broad River breached purported obligations in the Provider Agreements “to submit bills directly to BCBS for services rendered to patients who are covered by BCBS health insurance plans” and “to accept discounted reimbursement rates” set forth in the Provider Agreements. *See, e.g.*, Compl. ¶¶ 9-11.

Indeed, Plaintiffs seek to represent a class that extends *only to those individuals* for whom Broad River allegedly breached these purported obligations. *See id.* ¶ 65 (defining the class as members “whose medical bills resulting from that treatment were not submitted to Blue Cross Blue Shield of South Carolina or one of its affiliates for payment”).

This is not a case where the substance of Plaintiffs’ claims arises from “common law and statutory duties,” nor is it a case where “only a portion of Plaintiffs’ claims against Broad River look to the Provider Agreements.” MTCA Order at 9, 11. As explained below, each of Plaintiffs’ claims is premised on purported obligations allegedly found in the Provider Agreements. Because Plaintiffs sue to enforce these purported obligations as a direct benefit, they are estopped from evading arbitration. The trial court erred in concluding otherwise.

A. Breach of Contract

Plaintiffs are estopped from evading arbitration as to their breach of contract claim because “the alleged liability arises solely from the contract or must be determined by reference to it.” *Dixon*, 442 S.C. at 258, 898 S.E.2d at 171. Plaintiffs alleged “Broad River is party to one or more *provider agreements* with BCBS, pursuant to which Broad River is contractually obligated to submit bills directly to BCBS,” “Broad River *breached the provider agreement(s)* by not submitting bills directly to BCBS,” and “[a]s a direct and proximate result of Broad River’s *breaches of the provider agreement(s)*,” Plaintiffs were harmed. Compl. ¶¶ 76, 78, 79 (emphasis added).

It cannot be reasonably disputed, then, that Broad River’s purported liability “must be determined by reference” to the Provider Agreements, as Plaintiffs’ claim is expressly tethered to purported obligations found in those contracts. *See Dixon*, 442 S.C. at 258, 898 S.E.2d at 171. Still, the trial court found that Plaintiffs did not allege a direct benefit from the Provider

Agreements and, thus, were not estopped from their attempt to avoid the arbitration provisions found in those agreements. This conclusion was contrary to clear South Carolina caselaw.

Indeed, in the nearly factually identical *Bennett* decision, the Court of Appeals held that the plaintiffs had conceded “that they received direct benefits from the Provider Agreements” by alleging identical benefits to those raised here: “not receiving bills directly from an in-network provider, and the costs of the services by an in-network provider being limited to [Insurer’s] negotiated rates.” *Bennett*, 444 S.C. at 474, 908 S.E.2d at 117. In holding that plaintiffs were seeking direct benefits under the provider agreements warranting arbitration, the *Bennett* Court specifically found that plaintiffs alleged the defendant-provider “deprived [plaintiffs] of the benefits of the discounts and other provisions negotiated between [Insurer] and [Provider].” *Id.*

Plaintiffs and the trial court relied on *Wilson v. Willis*, 426 S.C. 326, 827 S.E.2d 167 (2019), to conclude otherwise. This reliance was misplaced. There, the Court emphasized that plaintiffs were not even aware of the existence of the contract containing the purported obligations and arbitration provision until the lawsuit was initiated and held **both** that plaintiffs had not received **and were not seeking** a direct benefit from the previously unknown contract. *Id.* at 342-45, 827 S.E.2d at 176-77. In fact, the Court noted plaintiffs “have not **attempted to procure** any direct benefit from the [] Agreement itself while attempting to avoid its arbitration provision,” and the Court cited approvingly out-of-state authority that clearly recognizes that simply seeking a direct benefit from a contract is sufficient to estop that party from avoiding arbitration. *Id.* at 343-45, 827 S.E.2d at 177 (emphasis added); *see also In re Kellogg Brown & Root, Inc.*, 166 S.W.3d 732, 741 (Tex. 2005) (cited by *Wilson* and holding a non-signatory can be compelled to arbitration “if it **seeks, through the claim**, to derive a direct benefit from the contract containing the arbitration provision” (emphasis added)); *Int’l Paper Co. v. Schwabedissen Maschinen & Anlagen GMBH*,

206 F.3d 411, 418 (4th Cir. 2000) (cited by *Wilson* and stating “International Paper’s entire case hinges on its asserted rights under the [] contract; it cannot seek to enforce those contractual rights and avoid the contract’s requirement that ‘any dispute arising out of’ the contract be arbitrated”).

Moreover, even the *Wilson* Court recognized that “where plaintiffs sue and seek relief based on contracts containing arbitration clauses, courts have applied equitable estoppel.” *Wilson*, 426 S.C. 344, 827 S.E.2d at 177 (citing *Int’l Paper Co.*, 206 F.3d at 417-18); *see also OSRX, Inc. v. Anderson*, 2025 WL 1430648, at *4 n.4, 5 (4th Cir. May 19, 2025) (noting “our law is in line with South Carolina’s” on direct benefits estoppel and holding “[t]he ability to sue for breach of a contract to which one is allegedly not a party *is as direct a benefit as we can envision*” (emphasis added)). Here, Plaintiffs brought a lawsuit expressly premised on the validity of and supposed obligations contained within the Provider Agreements while at the same time attempting to avoid the arbitration provisions indisputably contained therein. This they cannot do, and the trial court erred in concluding otherwise.

B. Negligence

Similarly, the trial court erred by finding Plaintiffs’ negligence claim relied on some unidentified, free-floating “duty to assess and execute medical billing in a manner consistent with the law and consistent with the interests of the patients.” MTCA Order at 9; *see also* Compl. ¶ 91. It is well-settled that no such duty exists. South Carolina caselaw confirms there is no special duty or fiduciary relationship “between a hospital and patient with respect to a hospital’s contractual duty to submit an insurance claim.” *Beverly v. Grand Strand Reg’l Med. Ctr., LLC*, 429 S.C. 502, 839 S.E.2d 468, 474 (Ct. App. 2020), *aff’d*, 435 S.C. 594, 869 S.E.2d 812 (2022).

Moreover, a cursory reading of Plaintiffs’ Complaint reveals their negligence claim improperly attempts to recast the alleged breach of contract as a tort. While Plaintiffs alleged

unidentified (and, as explained above, non-existent) “common law and statutory duties,” Compl. ¶¶ 90-91, they give up the game by clarifying “Plaintiffs and Class members paid more for healthcare services than they would have if the bills would have been *submitted to BCBS and paid at the discounted reimbursement rates*,” Compl. ¶ 94 (emphasis added). These are the same purported obligations alleged to arise from the Provider Agreements, which can be resolved only by reference to those agreements. *See id.* ¶ 78 (alleging, in their breach of contract claim, “Broad River breached the provider agreement(s) *by not submitting bills directly to BCBS . . . and instead pursuing payment directly from Plaintiffs and Class members for amounts greater than the discounted reimbursement rates set forth in the provider agreement(s)*” (emphasis added)).

Notably, the trial court’s finding as to Plaintiffs’ negligence claim relied on a misstatement of Plaintiffs’ allegation in Paragraph 94, the proper reading of which confirms that this claim is based on the same alleged obligations purportedly arising from the Provider Agreements—not common or statutory law. The trial court paraphrased Paragraph 94 as alleging that “Plaintiffs and proposed class members paid more for healthcare services than they would have if Defendants had *correctly submitted the bills in accordance with their duties*.” MTCA Order at 10 (emphasis added). Tellingly, Paragraph 94 reads differently and betrays Plaintiffs’ reliance on the same alleged duties stemming from the Provider Agreements: “Plaintiffs and Class members paid more for healthcare services than they would have if the *bills would have been submitted to BCBS and paid at the discounted reimbursement rates*.” Compl. ¶ 94 (emphasis added). As alleged, the purported duty underpinning Plaintiffs’ negligence claim is the same duty purportedly arising under the Provider Agreements. *See id.* ¶ 78.

Plaintiffs cannot simply recast purported obligations arising from a contract as duties supporting their claim for negligence. South Carolina courts “have long recognized the general

rule that where there is no duty except such as the contract creates, the plaintiff's remedy is for breach of contract." *Carroll v. Isle of Palms Pest Control, Inc.*, 446 S.C. 177, 187, 918 S.E.2d 532, 537 (2025) (quotation marks omitted). In other words, Plaintiffs cannot evade arbitration here by simply repackaging their breach of contract claim as a tort, no matter how (in)artfully pled. *See Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596-597, 553 S.E.2d 110, 118 (2001) (noting that, in determining whether to compel arbitration, courts look to "the factual allegations underlying the claim," not "the label assigned to the claim").

C. Unjust Enrichment

Plaintiffs' unjust enrichment claim is expressly based on these same purported obligations arising from the Provider Agreements, not from some other common law or statutory source: "Plaintiffs and Class members conferred a non-gratuitous benefit on Defendants in the form of higher payments for healthcare services than would have been if *the bills had been submitted to BCBS and paid at the discounted reimbursement rates set forth in the provider agreement(s)*," and "[i]t would be unjust for Defendants to retain these funds because payment for services provided *should have come from BCBS at the discounted reimbursement rates*." Compl. ¶¶ 98, 100 (emphasis added).

In case there were any doubt, Plaintiffs here essentially repeat the unjust enrichment theory raised and rejected by this Court in *Bennett*, where this Court compelled arbitration based on allegations that "had Provider complied with the Provider Agreement's terms rather than billing her at a rate higher than the agreed-upon rate, Provider would have received less money for the services it provided to Bennett, and therefore, she was entitled to recover the increased rates." *Bennett*, 444 S.C. at 472, 908 S.E.2d at 117 (quotation marks omitted). Accordingly, the Court concluded, because the unjust enrichment claim was based on alleged duties arising from the

agreement, and the plaintiff was suing to enforce those duties, the plaintiff in *Bennett*, as here, was bound to the arbitration provision also in that agreement. *Id.* at 480-82, 908 S.E.2d at 121-22.

At bottom, the propriety and fairness of Broad River’s billing practices cannot be determined without reference to the Provider Agreements—the source of the purported obligations Plaintiffs invoke to claim unjust behavior. *See Dixon*, 442 S.C. at 258, 898 S.E.2d at 171. Indeed, if the Provider Agreements allowed Broad River’s billing practices, there would be nothing unjust about Broad River’s challenged conduct. *See, e.g., Oakwood Prods., Inc. v. SWK Techs., Inc.*, 774 F. Supp. 3d 734, 763 (D.S.C. 2025) (applying South Carolina law, “[t]he plaintiff may not recover under unjust enrichment if the tasks the plaintiff is seeking compensation for under quantum meruit are encompassed within the terms of an express contract”).

D. Declaratory and Injunctive Relief

The trial court erred by denying arbitration as to Plaintiffs’ declaratory and injunctive relief claims, finding that “only a portion” of those claims “look to the Provider Agreements.” MTCA Order at 11. Respectfully, this finding is quite difficult to square with Plaintiffs’ allegations and requested relief.

For declaratory relief, Plaintiffs seek a declaration regarding Broad River’s duties under the Provider Agreements, including a judgment declaring that “Broad River’s *provider agreement(s)* with BCBS require Broad River to submit bills directly to BCBS . . . , to accept discounted reimbursement rates *set forth in the provider agreement(s)*,” and that “Broad River owes refunds for all amounts collected . . . in excess of the *discounted reimbursement rates set forth in the provider agreement(s)*.” Compl. ¶ 108(a), (b) (emphasis added); *see also Kiawah Island Util., Inc. v. Westport Ins. Corp.*, 2019 WL 5394200 at *3 (D.S.C. Oct. 22, 2019) (applying

South Carolina law and finding non-signatory “is clearly seeking a direct benefit from the [] Policy by seeking a declaration that [non-signatory] is entitled to coverage from the [] Policy.”).

The same reasoning applies to Plaintiffs’ claim for permanent injunctive relief, which seeks an order finding “Broad River is *contractually obligated* to submit bills directly to BCBS . . . , to accept *discounted reimbursement rates set forth in the provider agreement(s)*,” that “Broad River is violating *the terms of the provider agreement(s)*,” and “Broad River’s actions, policies, procedures, and misconduct as alleged herein are *in violation of the provider agreement(s)* with BCBS.” Compl. ¶¶ 111, 112, 115 (emphasis added). Consequently, the declaratory and permanent injunctive relief Plaintiffs seek—judgments concerning Broad River’s obligations under the Provider Agreements—necessarily cannot be made without reference to those agreements, which contain valid arbitration provisions. *See Dixon*, 442 S.C. at 258, 898 S.E.2d at 171.

In closing, the substance of each of Plaintiffs’ claims reveals Broad River’s alleged liability stems from the Provider Agreements and cannot be determined without reference to those agreements. As a result, Plaintiffs are bound to the arbitration provisions contained within those agreements, as Plaintiffs cannot “rely on the contract when it works to [their] advantage, and repudiate it when it works to [their] disadvantage.” *Id.* (citation modified). The trial court’s contrary finding was simply incorrect.

II. The Trial Court Erred by Ruling on the Merits in Denying Broad River’s Motion to Compel Arbitration

Plaintiffs improperly raised, and the trial court improperly relied upon in denying Broad River’s motion, unproven and disputed facts concerning Broad River’s alleged “bad conduct” that went to the absolute core of the parties’ dispute. This was an impermissible merits finding, as this “bad conduct” was merely a parroting of Plaintiffs’ unproven allegations underlying their claims against Broad River.

Below, Plaintiffs argued “it would be inequitable to allow Broad River to benefit from its own bad conduct,” which they characterized as Broad River’s failure to “submit[] the bills to BCBSSC as required by the Provider Agreements” and instead “implementing its fraudulent billing scheme.” Pls.’ Resp. to BRPG MTCA at 9, 12. The trial court went on to conclude “it would be inequitable to allow Broad River to benefit from its conduct by requiring arbitration of Plaintiffs’ claim, where Plaintiffs would have been entitled by the [Plaintiffs’ separate policies with BCBSSC] to litigate any adverse coverage decision had Broad River *submitted bills to BCBSSC*.” MTCA Order at 7 (emphasis added).

Crucially, whether the Provider Agreements contractually obligated Broad River to “submit[] bills to BCBSSC” under these circumstances—the basis for the trial court’s “bad conduct” finding—or whether Broad River’s billing practices were justified, is the ultimate question in this case.¹ It is black letter law that “in deciding whether the parties have agreed to submit a particular grievance to arbitration, a court is not to rule on the potential merits of the underlying claims.” *Zabinski*, 346 S.C. at 596, 553 S.E.2d at 118; *see also AT&T Techs. v. Commc’ns Workers of Am.*, 475 U.S. 643, 649-50 (1986) (“Whether ‘arguable’ or not, indeed even if it appears to the court to be frivolous, the union’s claim that the employer has violated the [] agreement is to be decided, not by the court asked to order arbitration, but as the parties have agreed, by the arbitrator. The courts, therefore, have no business weighing the merits of the grievance, considering whether there is equity in a particular claim, or determining whether there is particular language in the written instrument which will support the claim.” (quotation marks

¹ Arbitration would be too easily avoided if a party could simply recast the substantive contentions underlying its claims as “bad conduct” warranting a judicial, rather than arbitral, forum. This result is especially troubling here, where—as detailed below—the arbitration provisions clearly and unmistakably leave that ultimate merits determination to the arbitrator, not the trial court.

omitted)). Yet, that is exactly what the trial court did by denying arbitration based on disputed, unproven allegations of “bad conduct,” which consisted simply of the allegations underlying Plaintiffs’ claims.

Finally—and relatedly—the trial court erred by ruling on Broad River’s alleged “bad conduct” as an issue of “equitable estoppel” separate from its “direct benefits estoppel” analysis. *See* MTCA Order at 6-7. In the context of motions to compel arbitration against non-signatories, these are not two distinct theories requiring two separate analyses. Rather, the “framework for invoking equitable estoppel” in the context of such motions *is* “the direct benefits test.” *Wilson*, 827 S.E.2d at 174. This is not a novel reading of *Wilson* and, in fact, this Court has previously read *Wilson* precisely this way. *See, e.g., Weaver v. Brookdale Senior Living, Inc.*, 431 S.C. 223, 230, 847 S.E.2d 268, 272 (Ct. App. 2020) (noting “equitable estoppel” is “known also as direct benefits estoppel in the arbitration realm” (citing *Wilson*, 426 S.C. at 340-44, 827 S.E.2d at 175-77)). The trial court erred by denying Broad River’s motion on an alternative basis using some equitable estoppel framework, when the direct benefits analysis was the proper framework.

Here, the trial court performed distinct “equitable estoppel” and “direct benefits estoppel” analyses to deny Broad River’s Motion to Compel Arbitration on (apparently) alternative bases. First, the trial court—applying no framework and simply ruling that the merits of Plaintiffs’ disputed allegations were, in fact, correct—ruled that arbitration could not be compelled under the concept of “equitable estoppel.” MTCA Order at 6-7. Then, the trial court separately—and, again, incorrectly, as explained above—analyzed whether direct benefits estoppel required arbitration of Plaintiffs’ claims. *Id.* at 8-11. As *Wilson* and *Weaver* make clear, however, *the* framework for equitable estoppel in the motion to compel arbitration context *is* the direct benefits analysis. The

trial court erred by applying some other framework and using that framework as an alternative basis to deny Broad River’s motion.

Accordingly, the trial court’s apparent alternative basis for denying Broad River’s Motion to Compel Arbitration cannot stand. It improperly decided that the equities weighed against Broad River by taking as true Plaintiffs’ unproven and disputed allegations of Broad River’s “bad conduct,” which constituted no more than simply the allegations underlying Plaintiffs’ substantive claims, and which was based on an “equitable estoppel” framework that simply does not apply in this context.

III. The Trial Court Erred by Failing to Address Broad River’s Delegation Argument and by Ruling on Issues Clearly and Unmistakably Reserved for the Arbitrator

A. The Provider Agreements Delegated Issues of Arbitrability to the Arbitrator

Although the trial court recognized that “[t]he question of arbitrability of a claim is an issue for judicial determination *unless the parties provide otherwise*,” MTCA Order at 2 (emphasis added), it nonetheless failed to even address Broad River’s delegation argument—either in its initial order or its order denying reconsideration. Indeed, because Plaintiffs are estopped from avoiding the arbitration provisions in the Provider Agreements underlying their claims, and because those agreements clearly and unmistakably delegated issues of arbitrability to the arbitrator, the trial court erred in ruling on the remaining issues—each of which concerns an issue of arbitrability.

“As long as the parties’ agreement delegates the arbitrability question to an arbitrator ‘by clear and unmistakable evidence,’ a court may not override the contract and decide the arbitrability question.” *Palmetto Wildlife Extractors, LLC v. Ludy*, 435 S.C. 690, 700, 869 S.E.2d 859, 864 (Ct. App. 2022) (quoting *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 72 (2019)); *see also Singh v. Anesthesia Assocs. of Rock Hill*, 2025 WL 1378693, at *7 (D.S.C. May 13, 2025)

(applying South Carolina law and finding, “[u]nder the AAA rules incorporated into the [contract], challenges to the scope and enforceability of an arbitration provision are expressly delegated to the arbitrator”); *Blanton v. Domino’s Pizza Franchising LLC*, 962 F.3d 842, 846 (6th Cir. 2020) (“[E]very one of our sister circuits to address the question—eleven out of twelve by our count—has found that the incorporation of the AAA Rules (or similarly worded arbitral rules) provides ‘clear and unmistakable’ evidence that the parties agreed to arbitrate ‘arbitrability.’”).

Here, it was undisputed below that the Provider Agreements’ arbitration provisions incorporated the AAA Commercial Arbitration Rules and provided that the AAA’s rules “shall apply in lieu of state or federal rules of civil procedure.” See BRPG MTCA Ex. 1 at 14; *id.*, Ex. 2 at 10; see generally, Pls’ MTCA Resp. Both the adoption of the AAA’s Commercial Arbitration Rules, as well as the express clarification that these rules apply in lieu of South Carolina’s rules of civil procedure, establish clear and unmistakable evidence that the Provider Agreements delegated issues of arbitrability to the arbitrator.² And Plaintiffs did not challenge below the validity of the delegation clauses themselves. See *Gibbs v. Haynes Invs., LLC*, 967 F.3d 332, 337 (4th Cir. 2020) (holding courts must enforce delegation clauses and leave issues of arbitrability to the arbitrator unless “the claimant specifically attacks the validity of the delegation clause itself”). Consequently, Plaintiffs cannot raise a challenge as to the delegation clauses on appeal. “It is well-

² The South Carolina Supreme Court’s recent decision in *315 Corley CW LLC v. Palmetto Bluff Development, LLC*, 448 S.C. 149, 932 S.E.2d 335 (2026), does not change this result. There, the South Carolina Supreme Court held that while a contract adopting the AAA’s rules was “some evidence of an intent to delegate” issues of arbitrability, other areas of the contract clearly indicated “the parties’ intent to apply the procedural law of South Carolina to the arbitration provision,” including South Carolina procedural rules that “require the court to determine arbitrability issues.” *Id.* at 154-156, 932 S.E.2d at 338-39. Here, the arbitration provisions in the Provider Agreements communicate clearly and unmistakably that arbitrability issues are to be decided by the arbitrator and not the court, as the Provider Agreements *both* adopt the AAA’s rules *and* expressly state these rules “shall apply in lieu of” South Carolina’s procedural law. See BRPG MTCA Ex. 1 at 14; *id.*, Ex. 2 at 10.

settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review.” *Pratt v. Morris Roofing, Inc.*, 353 S.C. 339, 352, 577 S.E.2d 475, 481 (Ct. App. 2003). Incorporating the AAA Commercial Arbitration Rules and further specifying that these rules shall govern in lieu of South Carolina’s procedural rules constitute clear and unmistakable evidence that questions of arbitrability in this matter are reserved for the arbitrator.

Yet, as detailed below, the trial court went on to determine the merits of issues of arbitrability for which it lacked authority to decide. Notwithstanding that the trial court’s ruling on these issues was also incorrect, the trial court plainly exceeded its authority by considering two issues of arbitrability that were reserved for the arbitrator. First, the trial court (incorrectly) determined two challenges to the scope of the arbitration provisions in the Provider Agreements, finding both that the arbitration provisions did not apply to “coverage disputes”—which this case does not concern—and did not reach the claims of “Associate Plan” members—including by reference to the status of non-party putative class members. Second, the trial court erred by finding that Broad River’s mere consent to Medlytix’s removal of this case to federal court constituted a knowing waiver of its right to seek arbitration of this dispute, even though waiver is an issue of arbitrability. As a result, the trial court erred by addressing these delegated issues of arbitrability.

B. The Trial Court Erred by Ruling on Whether the Scope of the Arbitration Provisions Covers Plaintiffs’ Claims, as this Issue was Delegated to the Arbitrator

As explained above, the Provider Agreements delegated issues of arbitrability to the arbitrator by incorporating the AAA Commercial Rules and by clarifying that these rules apply in lieu of South Carolina’s procedural rules. Rule 7(a) of the AAA’s Commercial Rules specifically gives the arbitrator authority to rule on the scope of an arbitration provision: “The arbitrator shall

have the power to rule on his or her own jurisdiction, including any objections with respect to the . . . *scope* . . . of the arbitration agreement or to the arbitrability of any claim or counterclaim, without any need to refer such matters first to a court.” BRPG MTCA Reply, Ex. C. at 14 (emphasis added); *see also, e.g., Singh*, 2025 WL 1378693, at *7 (“Under the AAA rules incorporated into the [contract], challenges to the scope and enforceability of an arbitration provision are expressly delegated to the arbitrator.”); *Palmetto Wildlife Extractors, LLC*, 435 S.C. at 704, 869 S.E.2d at 866 (holding, because the agreement delegated issues of arbitrability, claims were required to proceed to arbitration “for a determination of whether such claims fall within the scope of the arbitration agreement,” even though plaintiffs argued their claims fell outside the scope of the arbitration provision); *Masters v. KOL, Inc.*, 431 S.C. 28, 40-41, 846 S.E.2d 893, 899 (Ct. App. 2020) (“While it is the default procedure for the court to decide . . . whether the specific dispute falls within the agreement’s scope, the parties may delegate this determination to an arbitrator if the parties clearly and unmistakably agree to do so in their arbitration agreement.” (citation modified)).

The trial court denied Broad River’s Motion to Compel Arbitration after finding that “Plaintiffs’ claims present coverage disputes between themselves and Broad River,” and that the Provider Agreements’ arbitration provisions did not extend to coverage disputes. MTCA Order at 4. But even if that finding were correct (which it is not, as explained below), the trial court erred by entertaining and ruling on a challenge to the scope of the arbitration provisions—an issue of arbitrability clearly and unmistakably delegated to the arbitrator. *See, e.g., Singh*, 2025 WL 1378693, at *7.

Even assuming it could rule on scope, the trial court incorrectly characterized this case as a “coverage dispute” falling under the Utilization Management Program (“UMP”) under the

Provider Agreements, which is excepted from the arbitration provisions. As even the Plaintiffs admit, the Provider Agreements provide that the UMP “is a series of activities carried out by BCBSSC to ensure that the Covered Services that are provided to Members are Medically Necessary,” and allows patients to participate in this process and appeal coverage decisions by BCBSSC *if claims are submitted to BCBSSC*. Pls’ Resp. to BRPG MTCA at 11. But Plaintiffs’ claims, and the parties’ dispute at the motion to compel arbitration stage, do not concern the process by which non-party BCBSSC determines whether covered services were medically necessary or any adverse claims decisions by BCBSSC *once such claims are submitted*.

Instead, the core question in this case is whether the Provider Agreements obligated Broad River to even *submit* claims to BCBSSC under the circumstances here. In other words, Plaintiffs’ claims relate to alleged pre-UMP conduct based on a purported contractual obligation lying outside the UMP process. *See, e.g., id.* at 12 (“[I]f Broad River had appropriately filed Plaintiffs’ claims for coverage under their benefits policies, ***as required by the Provider Agreements . . .***” (emphasis added)). And as Plaintiffs recognized, only the UMP process itself—not the pre-UMP decision of whether to even submit a claim—is excluded from the arbitration provision in the Provider Agreements. *Id.* Properly understood, then, this case concerns purported obligations under the Provider Agreements as to Broad River’s billing practices. This is not a coverage dispute and does not implicate the UMP, which concerns claims processing *if claims are submitted to BCBSSC*. Therefore, notwithstanding the lack of authority for the trial court to rule on the scope of the arbitration provisions, its ruling on this issue of arbitrability was incorrect.

C. Whether Associate Plan Members Must Arbitrate Concerns the Scope of the Arbitration Provision, a Question Also Reserved for the Arbitrator

For this same reason, the trial court erred by resolving a challenge as to the scope of the Provider Agreements’ arbitration provisions as they pertain to “Associate Plan” members. MTCA

Order at 5-6 (finding claims by Associate Plan members “fall outside the scope of the arbitration provision”). To the extent the scope of the arbitration provisions in the Provider Agreements can be fairly challenged as to Associate Plan members, that issue of arbitrability must be decided by the arbitrator, not the courts. *Singh*, 2025 WL 1378693, at *7.

Moreover, the trial court erred in considering the status of putative class members as members of Associate Plans purportedly excluded from arbitration under the Provider Agreements. MTCA Order at 5-6. The putative class members are not parties to this dispute, Plaintiffs cannot rely upon the purported status of non-parties in their attempt to evade arbitration, and Broad River is not presently trying to compel such non-party putative class members to arbitrate their claims. *See, e.g., Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588, 593 (2013) (“[A] nonnamed class member is [not] a party to the class-action litigation before the class is certified.” (alterations in original) (quoting *Smith v. Bayer Corp.*, 564 U.S. 299, 313 (2011))).³ Again, notwithstanding the trial court’s lack of authority to even reach this issue of arbitrability, its conclusion was incorrect.

D. Whether Broad River’s Mere Consent to Removal Constituted a Knowing Waiver of its Right to Compel Arbitration is a Question Reserved for the Arbitrator

The trial court erred by ruling on Plaintiffs’ argument that Broad River knowingly waived its right to seek arbitration of Plaintiffs’ claims, as waiver is an issue of arbitrability that was clearly and unmistakably delegated to the arbitrator. *See, e.g., Bennett*, 908 S.E.2d at 123 (noting “courts presume that the parties intend arbitrators” to decide procedural matters, including “claims of

³ To be clear, as argued below, and as Plaintiffs did not dispute, to the extent this Court remands for the trial court to enter an order compelling arbitration, individual, not class, arbitration is required. *See* BRPG MTCA at 5-7. The Provider Agreements are silent as to the issue of class arbitration. *See id.*, Exs. 1, 2. But for class arbitration to be available, parties must affirmatively consent, and this consent cannot be inferred from an agreement’s silence on that issue. *See Stolt-Nielsen S.A. v. AnimalFeeds Int’l Corp.*, 559 U.S. 662, 684 (2010); *Grant v. Chevrolet*, 431 S.C. 279, 284-85, 847 S.E.2d 806, 809 (Ct. App. 2020).

waiver, delay, or a like defense to arbitrability” (quoting *BG Grp., PLC v. Repub. of Argentina*, 572 U.S. 25, 34-35 (2014)); *Caci Premier Tech., Inc. v. Faraci*, 464 F. Supp. 2d 527, 533 (E.D. Va. 2006) (concluding “arbitrability questions include . . . ‘waiver, delay, or a like defense to arbitrability’” (quoting *Howsam v. Dean Witter Reynolds*, 537 U.S. 79, 84 (2002))).

In addition to this overstep, the trial court further erred by concluding on the merits that Broad River knowingly waived its right to arbitrate by “remov[ing] a case to federal district court without at the same time asking the district court for an order compelling arbitration.” MTCA Order at 12. This finding was both factually and legally incorrect.

As a factual matter, Broad River did not remove this action to federal court. Medlytix did. *See Honeycutt, et al. v. Broad River Physicians Group, LLC, et al.*, 2:24-cv-5922, Doc. 1 (D.S.C. Oct. 16, 2024). Broad River’s only affirmative conduct—consenting to removal—came after this action had already been removed to federal court and pending the federal court’s ruling on Plaintiffs’ motion to remand. BRPG MTCA Reply, Ex. D; *see also Honeycutt, et al. v. Broad River Physicians Group, LLC, et al.*, 2:24-cv-5922, Doc. 7 (D.S.C. Nov. 20, 2024).

As a legal matter, the trial court’s ruling represents a fundamental misunderstanding of both its own and the federal court’s jurisdiction upon Medlytix’s notice of removal and Plaintiffs’ motion to remand. After Medlytix filed its notice of removal, neither court had jurisdiction to entertain a motion to compel arbitration until *after* the federal court ruled on Plaintiffs’ motion to remand. First, upon removal, the state court was divested completely of jurisdiction over this case. *Lovett v. Deutsche Bank Nat’l Tr. Co.*, 2013 WL 841679, at *4 (D.S.C. Feb. 12, 2013) (“Because the state court is required to stop all proceedings unless and until the case is remanded, any action it takes after the filing of the removal notice is void *ab initio*, even if the case is subsequently remanded because the initial removal was improper.” (quotation marks omitted)); *Bryan v.*

BellSouth Comm'cs, Inc., 492 F.3d 231, 240 (4th Cir. 2007) (“[W]ithout a remand order, the state court lacked jurisdiction, because removal deprives a state court of jurisdiction and requires the state court to cease all actions in the case.”). Second, until the federal court determined whether this case was properly before it, the federal court was unable to rule on a motion to compel arbitration. See *Leone-Larose v. Health Care Partners of S.C., Inc.*, 2010 WL 11553028, at *2 (D.S.C. Mar. 2, 2010) (“If remand is proper, the Court lacks jurisdiction to enter an order compelling arbitration.”). Because the federal court was obligated to first rule on Plaintiffs’ motion to remand, and because it ultimately determined that remand was required, it lacked jurisdiction to rule on a motion to compel arbitration from Broad River. See *Ness v. Dean Witter Reynolds, Inc.*, 677 F. Supp. 861, 865 (D.S.C. 1987) (finding that, because remand was required, “the court must decline to rule on defendants’ pending motion to dismiss, to compel arbitration, to stay proceedings, and for protective order”); *Fernandes v. D.R. Horton, Inc.*, 777 F. Supp. 3d 533, 538 n.2 (D.S.C. 2025) (“Because the court ultimately grants the motion to remand, the motions to compel arbitration and stay are rendered moot.”); *Weener Plastics, Inc. v. HNH Packaging, LLC*, 2009 WL 2591291, at *4 (E.D.N.C. Aug. 19, 2009) (“The court will turn first to the motion to remand. Its resolution will determine whether this court . . . is a proper forum to resolve defendants’ motion for arbitration.”).

As a result, the trial court erred by faulting Broad River for failing to file a motion to compel arbitration sooner, where no court would have had jurisdiction to address such a motion. But simply that Broad River consented to removal to indicate it wished the federal court to address this issue was not an act inconsistent with the continued assertion of its right to seek arbitration, nor was it an intentional relinquishment of that right. And because the federal court lacked jurisdiction to even entertain a motion to compel arbitration, Broad River’s conduct certainly did

not enable it to “test the water before taking the swim.” MTCA Order at 11 (quoting *Liberty Builders, Inc. v. Horton*, 336 S.C. 658, 666, 521 S.E.2d 749, 753 (Ct. App. 1999) (finding waiver where *the plaintiff* who brought the suit “delay[ed] in demanding arbitration until the litigation was nearly complete,” including by seeking assistance from the court “on approximately forty occasions” over two years)). Because of the absence of jurisdiction in either state or federal court to rule on a motion to compel arbitration, the trial court was simply wrong to find that Broad River “intentionally s[at] on its right to request arbitration until after the federal court foreclosed its ability to resolve this case in a federal judicial forum.” MTCA Order at 13. To the contrary, Broad River’s only option was to await the federal court’s ruling on Plaintiffs’ motion to remand before moving to compel arbitration in whatever jurisdiction the federal court determined was proper. Importantly, although left out of the trial court’s analysis, Plaintiffs consented to a motion to stay Broad River’s response deadline upon removal to federal court, which the federal court granted. *See Honeycutt, et al. v. Broad River Physicians Group, LLC, et al.*, 2:24-cv-5922, Doc. 9 (D.S.C. Nov. 22, 2024); *id.*, Doc. 12 (D.S.C. Dec. 4, 2024). In other words, with consent of Plaintiffs, the federal court stayed Broad River’s deadline to seek to compel arbitration pending the federal court’s ruling on Plaintiffs’ motion to remand.

Moreover, the trial court erred by finding that Broad River’s mere consent to removal constituted waiver of its right to seek to compel arbitration because it “voluntarily avail[ed] itself of the federal judicial forum.” MTCA Order at 12. To be clear, waiver requires “the intentional relinquishment or abandonment of a known right.” *Morgan v. Sundance, Inc.*, 596 U.S. 411, 418 (2022) (quotation marks omitted). Courts commonly decline to find that parties intentionally waived their right to compel arbitration, even where those parties “voluntarily avail[ed]” themselves of a judicial forum far more than by simply consenting to removal. “[T]here is a

presumption against finding a party has waived its right to compel arbitration.” *Dean* 408 S.C. at 408, 759 S.E.2d at 736 (finding no waiver where the parties engaged in settlement talks and limited discovery before arbitration was sought); *see also Rich v. Walsh*, 357 S.C. 64, 71, 590 S.E.2d 506, 510 (Ct. App. 2003) (finding right to arbitration had not been waived, even where defendant delayed 13 months in seeking to compel arbitration, answered the complaint and raised a counterclaim, served interrogatories and requests for admission, took a deposition, and filed a motion to compel discovery responses); *Am. Heart Disease Prevention Found. v. Hughey*, 1997 WL 42714, at *3 (4th Cir. Feb. 4, 1997) (“Because [defendant] had the right to seek a transfer before it pleaded the arbitration defense, doing so was not inconsistent with a desire to arbitrate.”); *Oyekan v. Educ. Corp. of Am.*, 2019 WL 978865, at *5 (D.S.C. Feb. 28, 2019) (finding despite removal and the filing of interrogatory answers, the right to compel arbitration was not waived because “the parties have not engaged in substantial litigation”). If a party who avails itself of a judicial forum can file an answer, counterclaim, discovery responses, and motions to compel discovery responses without intentionally waiving its right to seek arbitration, then Broad River’s simple consent following its co-defendant’s notice of removal did not constitute waiver.

In reaching the opposite conclusion, the trial court relied on a non-binding decision from the Seventh Circuit, *Cabinetree of Wisconsin, Inc. v. Kraftmaid Cabinetry, Inc.*, 50 F.3d 388, 390 (7th Cir. 1995). MTCA Order at 13. There, the party seeking to compel arbitration had initiated the removal to federal court, propounded discovery requests, received over 2,000 documents in response, “dragged its heels in responding to [plaintiff’s] discovery demands,” and waited over a year after the case was filed—and only five months before trial was set to begin—before seeking to compel arbitration. *Cabinetree of Wisc.*, 50 F.3d at 389. Those are not the facts here. Moreover, even if the trial court’s reliance on Seventh Circuit authority was justified, the Seventh Circuit

later clarified that “although this Court has considered removal in determining whether there was implicit waiver of an arbitration clause, it has not found waiver ***where removal was the only action taken by the party against whom the waiver was to be enforced.***” *Halim v. Great Gatsby’s Auction Gallery, Inc.*, 516 F.3d 557, 562 (7th Cir. 2008) (emphasis added) (“Absent any other action, removal alone did not amount to implicit waiver of its right to arbitrate.”), *overruled on other grounds*, *Moore v. Club Exploria, LLC*, — F.4th —, 2026 WL 2409841 (7th Cir. Aug. 18, 2026); *see also Cooper v. Asset Acceptance, LLC*, 532 F. App’x 639, 641 (7th Cir. 2013) (declining to find waiver, noting “[w]hile Asset did remove the case to federal court, its participation in discovery was not as extensive as that of the defendant in *Cabinetree*”).⁴

Oddly, the trial court also cited *Hyload, Inc. v. Pre-Engineered Products, Inc.*, 308 S.C. 277, 280, 417 S.E.2d 622, 624 (Ct. App. 1992), a decision finding that a *plaintiff* waived its right to compel arbitration by filing a lawsuit in court. But Broad River did not initiate this dispute in a judicial forum; Plaintiffs did. Broad River did not initiate removal to federal court; its co-defendant did. Neither case the trial court relied upon can stand for the proposition that simply consenting to another party’s removal constitutes an intentional waiver of the right to seek arbitration, and the South Carolina caselaw collected above indicates clearly that a party can engage in far greater and more extensive actions in a judicial forum without intentionally waiving that right.

⁴ To the extent this Court finds it necessary to turn to federal or other state’s caselaw, the Seventh Circuit’s position is not an outlier. *See, e.g., In re Mercury Const. Corp.*, 656 F.2d 933, 940 (4th Cir. 1981) (holding “it is clear that the removal of a state action is not to be deemed a ‘default’ or ‘waiver’” of one’s right to compel arbitration); *Dantz v. Am. Apple Grp., LLC*, 123 F. App’x 702, 707 (6th Cir. 2005) (“[M]ere removal of a case to federal court, and nothing more, does not constitute waiver of a defendant’s right to arbitration.”); *Hoover v. Am. Income Life Ins. Co.*, 142 Cal. Rptr. 3d 312, 322 (Cal. Ct. App. 2012) (“A defendant’s removal of a case filed in state court to federal court does not by itself constitute an implicit waiver of the right to compel arbitration.”).

As is clear from these cases, and notwithstanding the trial court's lack of authority to even reach this issue, it nonetheless erred in concluding that Broad River's mere consent to removal constituted a knowing waiver of its right to compel arbitration.

CONCLUSION

For the reasons stated, this Court should vacate the trial court's denial of Broad River's Motion to Compel Arbitration and remand with instructions for the trial court to enter an order compelling individual arbitration of Plaintiffs claims.

Respectfully submitted,

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