STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Honorable Alison Renee Lee, Circuit Judge

Case No.: 2012-CP-40-7313

Cynthia Hall; Ronald R. Ballentine,

Respondents,

v.

Green Tree Servicing, LLC, f/k/a Green Tree Financial Servicing Corp.,

Appellant.

APPELLANT'S FINAL BRIEF

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B. Whether Respondents' Claims For Alleged Violation Of Claim And Delivery Proceedings And Violation Of Notification Provisions Are Claims "Arising Out Of Or Relating To" The Contract?

II. STATEMENT OF THE CASE

This appeal seeks to enforce the arbitration clause found in the *Retail Installment Contract, Security Agreement, Waiver of Trial by Jury and Agreement to Arbitration or Reference or Trial by Judge Alone* (the "Contract") executed by and between the Respondents, Cynthia Hall and Ronald R. Ballentine, and the Appellant, Green Tree Servicing, LLC f/k/a Green Tree Financial Servicing Corp. ("Green Tree"), on or about July 6, 1999. (R. p. 40-46). Pursuant to the terms of the Contract, Green Tree provided financing to the Respondents so they could purchase a 1999 Redman Manufactured Home, VIN # 14002562AB (the "Mobile Home"). (R. p. 25).

Later on, after the Respondents' defaulted, after Green Tree self-help repossessed the Mobile Home, and after Green Tree sold the Mobile Home after due notice, the Respondents sued Green Tree on or about October 30, 2012, alleging causes of action for (1) Breach of Contract, (2) Violation of Claim and Delivery Proceedings,[1] (3) Violation of Notification Provisions,[2] (4) and Unjust Enrichment. (R. p. 14-18, ¶¶ 31-64; 35-36).

In response to the Respondents' Complaint, Green Tree filed a Motion to Dismiss, or, in the Alternative, to Stay Pending Mandatory Arbitration (the "Motion") on November 29, 2012. (R. p. 20-24). The Respondents filed their opposition memorandum on January 22, 2013 (R. p. 25-34), and Green Tree filed its supporting memorandum on January 24, 2013. (R. p. 35-39). The Circuit Court heard the motion on January 30, 2013. (R. p. 3). By order dated May 31, 2013 (the "Order"), the Circuit Court granted Green Tree's motion in part and denied in part. (R. p. 2-8).

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1 S.C. Code Ann. § 15-69-10, *et seq.* (Thomson Reuters West 2012).

2 S.C. Code Ann. § 36-9-601, *et seq.* (Thomson Reuters West 2012).

Green Tree comprehensively briefed and argued the grounds upon which the Respondents causes of action should be compelled to mandatory arbitration at the hearing, and the Circuit Court ruled on all of Green Tree's grounds and arguments in its Order. (R. p. 35-39). The Circuit Court determined that the Respondents' claims for Breach of Contract and Unjust Enrichment were subject to mandatory arbitration since those causes of action arise out of or were related to the Contract. (R. p. 5). Conversely, the Circuit Court found the Respondents' claims for alleged Violation of Claim and Delivery Proceedings and Violation of Notification Provisions were not subject to mandatory arbitration since they were statutory claims. (R. p. 5). Furthermore, the Circuit Court concluded the Contract's arbitration clause was not unconscionable. (R. p. 8).[3]

III. STATEMENT OF THE FACTS

On or about July 6, 1999, Green Tree and the Respondents entered into the Contract through which the parties agreed Green Tree would finance the Respondents' purchase of the Mobile Home. (R. p. 35). The Respondents are related to one another - Ronald R. Ballentine is Cynthia Hall's father. (R. p. 10, ¶ 7). The Contract contains the following arbitration provision:

> **ARBITRATION OF DISPUTES AND WAIVER OF JURY TRIAL:**
>
> **a. Dispute Resolution.** Any controversy or claim between or among you and me or our assignees arising out of or relating to this Contract or any agreements or instruments relating to or delivered in connection with this Contract, including any claim based on or arising from an alleged tort, shall, if requested by either you or me, be determined by arbitration, reference, or trial by a judge as provided below. A controversy involving only a single claimant, or claimants who are related or asserting claims arising from a single transaction, shall be determined by arbitration as

3 The Respondents have not cross-appealed the Circuit Court's rulings that (1) the Breach of Contract and Unjust Enrichment causes of action should be compelled to mandatory arbitration and (2) the arbitration clause of the Contract was not unconscionable. Consequently, those rulings are now the law of the case. *See, e.g.* Spriggs Grp., P.C. v. Slivka, 402 S.C. 42, 56, 738 S.E.2d 495, 503 (Ct. App. 2013).

described below. Any other controversy shall be determined by judicial reference of the controversy to a referee appointed by the court or, if the court where the controversy is venued lacks the power to appoint a referee, by trial by a judge without a jury, as described below. **YOU AND I AGREE AND UNDERSTAND THAT WE ARE GIVING UP THE RIGHT TO TRIAL BY JURY, AND THERE SHALL BE NO JURY WHETHER THE CONTROVERSY OR CLAIM IS DECIDED BY ARBITRATION, BY JUDICIAL REFERENCE, OR BY TRIAL BY A JUDGE.**

b. Arbitration. Since this Contract touches and concerns interstate commerce, an arbitration under this Contract shall be conducted in accordance with the *United States Arbitration Act* (Title 9, United States Code), notwithstanding any choice of law provision in this Contract. The *Commercial Rules of the American Arbitration Association* ("AAA") also shall apply. The arbitrator(s) shall follow the law and shall give effect to statutes of limitation in determining any claim. Any controversy concerning whether an issue is arbitrable shall be determined by the arbitrator(s). The award of the arbitrator(s) shall be in writing and include a statement of reasons for the award. The award shall be final. Judgment upon the award may be entered in any court having jurisdiction, and no challenge to entry of judgment upon the award shall be entertained except as provided by Section 10 of the *United States Arbitration Act* or upon a finding of manifest injustice.

c. Judicial Reference or Trial by a Judge. If requested by either you or me, any controversy or claim under subparagraph (a) that is not submitted to arbitration as provided in subparagraph (b) shall be determined by reference to a referee appointed by the court who, sitting alone and without jury, shall decide all questions of law and fact. You and I shall designate to the court a referee selected under the auspices of the AAA in the same manner as arbitrators are selected in AAA-sponsored proceedings. The referee shall be an active attorney or retired judge. If the court where the controversy is venued lacks the power to appoint a referee, the controversy instead shall be decided by trial by a judge without a jury.

d. Self-Help, Foreclosure, and Provisional Remedies. The provisions of this paragraph shall not limit any rights that you or I may have to exercise self-help remedies such as set-off or repossession, to foreclose by power of sale or judicially against or sell any collateral or security, or to obtain any provisional or ancillary remedies from a court of competent jurisdiction before, after or during the pendency of any arbitration under subparagraph (b) above. Neither the obtaining nor the exercise of any such remedy shall serve as a waiver of the right of either you or me to

> demand that the related or any other dispute or controversy be determined by arbitration as provided above.

(R. p. 35-36; 43-44) (Emphasis in original).

The Contract explicitly provides that it touches and concerns interstate commerce and, therefore, is governed by the *United States Arbitration Act*.[4] (R. p. 43). Subsequent to the formation of the Contract, the Respondents failed to make the monthly payments and defaulted under the Contract. (R. p. 36). On or about January 16, 2012, Green Tree sent written notice of the default in accordance with and conforming to state law. (R. p. 36). On or about May 16, 2012, Green Tree repossessed the Mobile Home, and, on or about May 17, 2012, Green Tree sent written notice of the repossession and Green Tree's plan to sell the Mobile Home more than 15 days from the date of the May 17, 2012, letter. (R. p. 36). On or about June 11, 2012, Green Tree sold the Mobile Home. (R. p. 36). On or about October 30, 2012, the Respondents brought this action against Green Tree. (R. p. 25; 37).

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4 See Federal Arbitration Act codified at 9 U.S.C. §§ 1, *et. seq.* (Thomson Reuters West 2010).

IV. ARGUMENT AND CITATION OF AUTHORITY

Standard Of Review

An "[a]ppeal from the denial of a motion to compel arbitration is subject to *de novo* review."[5] However, "a [C]ircuit [C]ourt's factual findings will not be reversed on appeal if any evidence reasonably supports the findings."[6]

A. THE RESPONDENTS' CAUSES OF ACTION FOR VIOLATION OF CLAIM AND DELIVERY PROCEEDINGS AND VIOLATION OF NOTIFICATION PROVISIONS ARE SUBJECT TO MANDATORY ARBITRATION UNDER THE CONTRACT BETWEEN THE PARTIES BECAUSE THEY ARISE OUT OF OR RELATE TO THE PARTIES' CONTRACT AND ARE ASSERTED BY CLAIMANTS WHO ARE RELATED TO ONE ANOTHER OR WHO ARE ASSERTING CLAIMS ARISING FROM A SINGLE TRANSACTION.

Based on the express language of the arbitration clause in the Contract, the Respondents' remaining two causes of action, which are based on South Carolina statutes, are subject to mandatory arbitration.

1. All of the Respondents' Causes of Action Are Claims "Arising Out of or Relating to" the Contract.

The Contract provides, in pertinent part, as follows:

> Any controversy or claim between or among you and me or our assignees *arising out of or relating to this Contract* . . . including any claim based on or arising from an alleged tort, shall, if requested by either you or me, be determined by arbitration, reference, or trial by a judge as provided below. A controversy involving only a single claimant, or claimants who are related or asserting claims arising from a single transaction, shall be determined by arbitration.

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5 New Hope Missionary Baptist Church v. Paragon Builders, 379 S.C. 620, 625, 667 S.E.2d 1, 3 (Ct. App. 2008).

6 New Hope Missionary Baptist Church v. Paragon Builders, 379 S.C. 620, 625, 667 S.E.2d 1, 3 (Ct. App. 2008).

(R. p. 43) (Emphasis added). Furthermore, the Contract, by its very wording, explicitly "touches and concerns interstate commerce" (R. p. 43), and, therefore, is subject to the *Federal Arbitration Act* (the "FAA"). (R. p. 43).

The South Carolina Supreme Court has held that "[i]t is the policy of this state and federal law to favor arbitration and 'any doubts concerning the scope of arbitrable issues should be resolved in favor or arbitration.'"[7] Furthermore, the "heavy presumption" in favor of arbitration of claims requires that whenever the scope of an arbitration clause is open to question, that question be decided in favor or arbitrating the claim.[8] "Therefore, 'unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute,' arbitration must generally be ordered."[9]

Specifically with regard to broad arbitration clauses such as the one in this case, the Supreme Court has held that arbitration clauses that cover any claim or dispute "arising out of or relating to the contract" are to be construed broadly and are "capable of an expansive reach."[10] Moreover, it is clear that

> "[b]oth the Fourth Circuit Court of Appeals and [the South Carolina Supreme Court] have held that the sweeping language of broad arbitration clauses applies to disputes in which a significant relationship exists between the asserted claims and the contract in which the arbitration clause is contained. . . . In applying this standard, this [Supreme] Court 'must determine whether the factual allegations underlying the claim are within the scope of the

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7 Landers v. FDIC, 402 S.C. 100, 109, 739 S.E.2d 209, 213 (2013) (*quoting* Am. Recovery Corp. v. Computerized Thermal Imaging, Inc., 96 F.3d 88, 92 (4th Cir. 1996)).

8 Landers v. FDIC, 402 S.C. 100, 109, 739 S.E.2d 209, 213 (*quoting* Am. Recovery Corp. v. Computerized Thermal Imaging, Inc., 96 F.3d 88, 92).

9 Landers v. FDIC, 402 S.C. 100, 109, 739 S.E.2d 209, 213 (*quoting* Am. Recovery Corp. v. Computerized Thermal Imaging, Inc., 96 F.3d 88, 92).

10 Landers v. FDIC, 402 S.C. 100, 109, 739 S.E.2d 209, 214 (*quoting* Am. Recovery Corp. v. Computerized Thermal Imaging, Inc., 96 F.3d 88, 92).

> arbitration clause, regardless of the legal label assigned to the claim.'"[11]

In addition, also in *Landers v. FDIC*, the South Carolina Supreme Court has previously held that the "heavy presumption of arbitrability . . . is strengthened when an arbitration clause is broadly written."[12]

Furthermore, in *Landers v. FDIC*, the South Carolina Supreme Court held that the plaintiff's claims of slander and intentional infliction of emotional distress against his former employer were subject to mandatory arbitration under the broad language of the arbitration clause in the parties' employment agreement.[13] The *Landers* plaintiff argued that the tortious conduct and defamatory statements allegedly made by his former employer regarding the plaintiff's inability to perform his job were not significantly related to the employment contract's arbitration clause because his claims did not require reference to or construction of the employment contract.[14] The Supreme Court disagreed and reasoned that "under the expansive reach of the *FAA* a tort claim need not raise an issue that requires reference to or the construction of some portion of the contract in order to be encompassed by a broadly-worded arbitration clause.[15]

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11 Landers v. FDIC, 402 S.C. 100, 109-110, 739 S.E.2d 209, 214 (*quoting* J.J. Ryan & Sons, Inc. v. Rhone Poulenc Textile, S.A., 863 F.2d 315, 319 (4th Cir. 1988); Zabinski v. Bright Acres Assocs., 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001)).

12 Landers v. FDIC, 402 S.C. 100, 109, 739 S.E.2d 209, 213 (*citing* AT&T Tech., Inc. v. Commc'ns Workers of Am., 475 U.S. 643, 650 (1986)).

13 Landers v. FDIC, 402 S.C. 100, 110, 739 S.E.2d 209, 214.

14 Landers v. FDIC, 402 S.C. 100, 110, 739 S.E.2d 209, 214.

15 Landers v. FDIC, 402 S.C. 100, 111, 739 S.E.2d 209, 214.

The Supreme Court held that a significant relationship existed between the plaintiff's slander and intentional infliction of emotional distress claims and the employment agreement.[16] The Supreme Court reasoned that because the employment agreement at issue in *Landers v. FDIC*, articulated the employee's duties and obligations and required the employee to diligently follow and implement all of the employer's policies and decisions, and because the allegedly tortious statements made by a representative of the plaintiff's former employer were regarding the plaintiff's perceived inability to perform his job, a significant relationship existed between these claims and the employment agreement.[17] Consequently, the Supreme Court held that the expansive reach of the employment agreement's broad arbitration clause covered and necessarily included the plaintiff's ostensibly ancillary claims of slander and intentional infliction of emotional distress.[18]

In addition, in *Landers v. FDIC*, the Supreme Court also separately analyzed the plaintiff's claims for illegal proxy solicitation[19] and for wrongful expulsion as director.[20] In analyzing whether the plaintiff's claim for illegal proxy solicitation under the applicable state statute was subject to arbitration under the employment agreement's broad arbitration clause, the Supreme Court found that the illegal proxy solicitation claim was subject to arbitration because:

> (1) the employment agreement provided the plaintiff with the option to purchase additional shares of common stock in the employer;
>
> (2) the broad language of the arbitration clause included language mandating arbitration of "any controversy or claim arising out of or relating to th[e] contract, or the

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16 Landers v. FDIC, 402 S.C. 100, 111-112, 739 S.E.2d 209, 215.

17 Landers v. FDIC, 402 S.C. 100, 111-112, 739 S.E.2d 209, 215.

18 Landers v. FDIC, 402 S.C. 100, 115-116, 739 S.E.2d 209, 216.

19 *See* S.C. Code Ann. § 33-7-220(i) (Thomson Reuters West Supp. 2011).

20 Landers v. FDIC, 402 S.C. 100, 112-113, 739 S.E.2d 209, 215.

breach thereof" and this particular cause of action related to the plaintiffs alleged breach of the employment agreement; and

(3) since the Supreme Court could not say with positive assurance that the illegal solicitation claim was beyond the scope of the arbitration clause it had no choice but to hold that the claim was subject to arbitration.[21]

Also significantly, the fact that the plaintiff was pursuing a statutory cause of action under *S.C. Code Ann.* § 33-7-220(i) (Supp. 2011), played no role in its analysis of the arbitration issue.[22] In fact, the Supreme Court stated previous to its review of this cause of action that it "must determine whether the factual allegations underlying the claim are within the scope of the arbitration clause, regardless of the legal label assigned to the claim."[23] The message from the Court was that whether the cause of action arose under common law or statutory law is simply not relevant to the issue of arbitrability of the claim.

Based on the Supreme Court's reasoning in *Landers v. FDIC*, the Respondents' causes of action for Violation of Claim and Delivery Proceedings and Violation of Notification Provisions should be subject to mandatory arbitration under the parties' Contract. In *Landers v. FDIC*, the Supreme Court ruled that the plaintiff's claims for slander and intentional infliction of emotional distress were subject to mandatory arbitration and held that a significant relationship to the employment agreement existed because the allegedly tortious statements related to the plaintiff's ability to perform his job and the employment agreement discussed the employee's

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21 Landers v. FDIC, 402 S.C. 100, 112, 739 S.E.2d 209, 215.

22 *See* S.C. Code Ann. § 33-7-220(i).

23 Landers v. FDIC, 402 S.C. 100, 110, 739 S.E.2d 209, 214 (*quoting* J.J. Ryan & Sons, Inc. v. Rhone Poulenc Textile, S.A., 863 F.2d 315, 319; Zabinski v. Bright Acres Assocs., 346 S.C. 580, 596, 553 S.E.2d 110, 118).

various obligations and duties and, equally importantly, required the employee to diligently follow and implement all the employer's policies and decisions.[24]

Much like the employment agreement in *Landers v. FDIC*, the Contract at issue in this case not only provides for Green Tree's lending the Respondents the funds to purchase the Mobile Home, the Respondents' agreed repayment terms, and Green Tree's security interest in the Mobile Home, but also contained paragraphs which specifically provided for the parties' respective duties and obligations regarding any notice of default, as well as the parties' agreement as to Green Tree's remedies upon default, including self-help repossession of the Mobile Home. (R. p. 43).

Moreover, a significant relationship exists between the Respondents' causes of action for Violation of Claim and Delivery Proceedings and Violation of Notification Provisions and the Contract because:

(1) the Respondents' allegations in their Violation of Claim and Delivery Proceedings and Violation of Notification Provisions causes of actions are significantly related to the Respondents' default of their duties and obligations under the Contract;

(2) the Contract expressly provided for the parties' respective duties and obligations regarding notice of a default and remedies upon default; and

(3) the facts which form the basis of the Respondents' allegations occurred only as a direct consequence of the Respondents' default under the Contract.

Had the Respondents not defaulted under the Contract, Green Tree would not have repossessed and sold the Mobile Home. Consequently, the Respondents' causes of action for Violation of Claim and Delivery Proceedings and Violation of Notification Provisions

24 Landers v. FDIC, 402 S.C. 100, 111-112, 739 S.E.2d 209, 215.

necessarily arose out of and were related to the Contract. Moreover, those causes of action clearly bear a significant relationship to the Contract.

This Court of Appeals should reverse the Circuit Court's decision and require the Respondents' remaining two causes of action to be sent to arbitration.

2. The Trial Court Incorrectly Concluded An Arbitration Agreement Must Expressly State That It Applies To Statutory Claims

The Circuit Court reasoned that the Respondents' claims for Violation of Claim and Delivery Proceedings and Violation of Notification Provisions were not subject to arbitration because (a) those claims were statutory claims and (b) the arbitration clause does not expressly provide for the arbitration of statutory claims. (R. p. 5). The Circuit Court's decision was flawed and must be reversed insofar as it denies Green Tree's Motion to Compel Arbitration of all claims in the Complaint.

The United States Supreme Court, in *CompuCredit v. Greenwood*,[25] has noted that the policy favoring arbitration agreements requires courts to enforce agreements to arbitrate according to their terms, even when the claims at issue are statutory claims.[26] Furthermore, "[the Court has] held that federal statutory claims may be the subject of arbitration agreements enforceable under the *FAA* because the agreement only determines the choice of forum. In these cases [the Court] recognized that by agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral, rather than a judicial, forum. (R. p. 5).[27]

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25 CompuCredit Corp. v. Greenwood, 565 U.S.___, 132 S. Ct. 665 (2012).

26 CompuCredit Corp. v. Greenwood, 565 U.S.___, ___, 132 S. Ct. 665, 669.

27 The Circuit Court was citing to E.E.O.C. v. Waffle House, Inc., 534 U.S. 279, 296 n.10 (*quoting* Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 628 (1985); Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 26 (1991)).

While the Circuit Court acknowledged these United States Supreme Court decisions in its Order, the Circuit Court then took the further step and determined that, in order to address the Respondents' remaining claims, the arbitration agreement had to expressly state that the parties agreed to arbitrate statutory claims. (R. p. 5). The Circuit Court stated "there [wa]s no provision in the arbitration agreement that indicate[d] Plaintiffs agreed to arbitrate statutory claims. Therefore, Plaintiffs' Violation of Claim and Delivery Proceedings and Violation of Notification Provisions claims [were] not subject to arbitration." (R. p. 5). This reasoning is directly at odds with established case law in this area.

In *Gilmer v. Interstate/Johnson Lane Corp.*,[28] the United States Supreme Court reviewed the applicability of an arbitration provision which stated that the parties agreed to arbitrate any dispute, claim, or controversy arising between the parties.[29] Moreover, there was no specific mention of statutory claims in that particular arbitration clause[30] and the Supreme Court held that the plaintiff's statutory claim brought under the *Age Discrimination in Employment Act* was subject to compulsory arbitration.[31]

In addition, in *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*,[32] the United States Supreme Court again reviewed an arbitration clause where no specific mention of statutory claims was made.[33] The arbitration agreement in that case generally stated that "all disputes, controversies or differences which may arise between Mitsubishi and Soler out of or in relation to Articles I-B through V of this Agreement or for the breach thereof, shall be finally

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28 Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20 (1991).

29 Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 23.

30 Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 23.

31 Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 35.

32 Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614 (1985).

33 Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 617.

settled by arbitration in Japan in accordance with the rules and regulations of the Japan Commercial Arbitration Association."[34] Like *Gilmer v. Interstate/Johnson Lane Corp.*, the Supreme Court again held that the plaintiff's statutory causes of action were subject to arbitration, despite the fact that the arbitration clause did not expressly mention statutory claims.[35]

Therefore, the cases the Circuit Court cited to in its Order denying arbitration as to the Respondents' two remaining statutory claims on the grounds that the arbitration clause did not explicitly state that statutory claims were subject to arbitration were inapposite. The fact that the Contract's arbitration clause does not explicitly provide for the arbitration of statutory claims does not prevent these claims from being arbitrated.

In this vein, the United States Supreme Court has stated that "[t]he *[Federal] Arbitration Act* [has] establishe[d] a 'federal policy favoring arbitration,' requiring that 'we rigorously enforce agreements to arbitrate.' This duty to enforce arbitration agreements is not diminished when a party bound by an agreement raises a claim founded on statutory rights."[36] In these cases, the Supreme Court has determined that arbitration agreements cover statutory claims, unless the legislature's intent in the statutory scheme required a judicial forum for the resolution of such claims.[37]

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34 Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 617.

35 Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 617.

36 Shearson/Am. Express, Inc. v. McMahon, 482 U.S. 220, 226 (1987) (*quoting* Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24 (1983); Dean Witter Reynolds Inc. v. Byrd, 470 U.S. 213, 221 (1985)).

37 Shearson/Am. Express, Inc. v. McMahon, 482 U.S. 220, 227 (*quoting* Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24; Dean Witter Reynolds Inc. v. Byrd, 470 U.S. 213, 221; Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 26; Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614, 628.

As with the situations in the several United States Supreme Court's cases, the statutory schemes applicable to the Respondents' claims for Violation of Claim and Delivery Proceedings and Violation of Notification Provisions do not indicate any legislative intent requiring claims under those provision to be decided in a judicial forum. Consequently, since the legislation is silent as to the issue of arbitrability of claims under these enactments, the express language of the Contract encompasses "all" claims, and both South Carolina and the *FAA* have enunciated a policy of favoring arbitration, the Respondents' statutory claims should be subject to mandatory arbitration under the arbitration clause in the Contract.

The Circuit Court's order to the contrary must be reversed in all respects insofar as it denies Green Tree's Motion to Compel Arbitration the Respondents' two remaining claims/causes of action. Moreover, this Court of Appeals should remand this matter to the Circuit Court with directions to have the parties arbitrate all of the Respondents' claims.

B. SOUTH CAROLINA LAW PROVIDES THAT ALL QUESTIONS REGARDING THE SCOPE OF ARBITRATION CLAUSES SHOULD BE RESOLVED IN FAVOR OF ARBITRATION OF THE DISPUTE.

As noted in *Landers v. FDIC*, the South Carolina Supreme Court stated that "the heavy presumption of arbitrability requires that when the scope of the arbitration clause is open to question, a court must decide the question in favor of arbitration" and "such a presumption is strengthened when an arbitration clause is broadly written."[38] In addition, "a motion to compel arbitration made pursuant to an arbitration clause in a written contract should only be denied

38 Landers v. FDIC, 402 S.C. 100, 109, 739 S.E.2d 209, 213 (*quoting* Am. Recovery Corp. v. Computerized Thermal Imaging, Inc., 96 F.3d 88, 94; AT&T Tech., Inc. v. Commc'ns Workers of Am., 475 U.S. 643, 650).

where the clause is not susceptible to any interpretation which would cover the asserted dispute."[39]

In this case, the language of the Contract's arbitration clause is nearly identical to the language of the arbitration clause interpreted in *Landers v. FDIC*. Consequently, this Court of Appeals should also reasonably construe the broad language of the arbitration clause at issue herein to conclude that a significant relationship exists between the Contract and Respondents' claims for Violation of Claim and Delivery Proceedings and Violation of Notification Proceedings. Moreover, since the Contract explicitly sets forth the duties and obligations related to notice of default and remedies upon default, the arbitrability of all of the Respondents' remaining causes of action is not legitimately open to question. Furthermore, even if the arbitrability of those claims were open to question, this Court of Appeals must still decide this question in favor of their arbitrability.

V. CONCLUSION

Based upon the foregoing arguments and citation of authority, the Appellant, Green Tree Servicing, LLC f/k/a Green Tree Financial Servicing Corp., respectfully requests that the order of the Circuit Court be reversed insofar as it denies Green Tree's Motion to Compel Arbitration of all claims in the Complaint, and the Respondents' causes of action alleging Violation of Claim and Delivery Proceedings and Violation of Notification Provisions be ordered to mandatory arbitration along with the Respondents' other causes of action.

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39 Zabinski v. Bright Acres Assocs., 346 S.C. 580, 597, 553 S.E.2d 110, 118-119.

Respectfully submitted:

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March 17, 2014

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from the Richland County
Court of Common Pleas

Honorable Alison Renee Lee, Circuit Judge

Case No. 2012-CP-40-7313

Cynthia Hall; Ronald R. Ballentine,

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Green Tree Servicing, LLC, f/k/a Green Tree Financial Servicing Corp., Appellant,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Appellant's Final Brief complies with Rule 211(b), SCAR.

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March 14, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Honorable Alison Renee Lee, Circuit Judge

Case No.: 2012-CP-40-7313

RECEIVED
MAR 17 2014
SC Court of Appeals

Cynthia Hall; Ronald R. Ballentine,

Respondents,

v.

Green Tree Servicing, LLC, f/k/a Green Tree Financial Servicing Corp.,

Appellant.

PROOF OF SERVICE

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I, Kyle Brannon, hereby certify that on March 17, 2014, I served one copy of the ***Final Reply Brief of Appellant*** submitted by the Appellant, Green Tree Servicing, LLC f/k/a Green Tree Financial Servicing Corp., on counsel for the Respondents, Cynthia Hall and Ronald R. Ballentine, via electronic mail and United States Mail, postage pre-paid, and addressed as follows:

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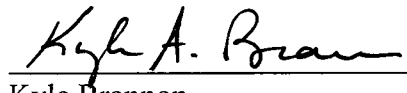

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