

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP4007874

Christopher Carlton

Greenlawn Funeral Home

John Thomas Carlton

PLAINTIFF(S)

DEFENDANT(S)

RECEIVED
JUL -9 PM 5:35
RICHLAND COUNTY

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 9 July 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Charles Cantzon Foster II

Drew Hamilton Butler

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. McBride

RECEIVED

SCANNED

JUL 25 2014

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Christopher Carlton as Personal Representative of the Estate of Helen Tucker Carlton, Christopher Carlton John Thomas Carlton and Christopher Carlton as the Personal Representative of the Estate of Kimberly Carlton Baker,

Plaintiffs,

vs.

Greenlawn Funeral Home,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

C/A No.: 2012-CP-40-7874

ORDER

2014 JUL -3 PM 1:20
JEANETTE W. ANDERSON
C.S.P. & C.J.
RICHLAND COUNTY

This matter is before the Court on Defendant Greenlawn Funeral Home's ("Greenlawn") Motion for Reconsideration pursuant to Rules 52 and 59(e), SCRCF, for reconsideration of this Court's March 17, 2014 Order denying Greenlawn's Motion to Compel Arbitration. Greenlawn argued this Court erred in (1) finding the Federal Arbitration Act ("FAA") did not apply to the contracts between the parties; (2) that the 2006 Contract between Helen Carlton and Greenlawn was not subject to arbitration; and (3) that the 2011 contract between Christopher Carlton and Greenlawn was not subject to arbitration. After careful consideration and review of Greenlawn's Memorandum in Support of Reconsideration, as well as the other pleadings and Affidavits associated with the Motion to Dismiss¹, this Court denies Greenlawn's Motion for Reconsideration.

¹ At the hearing, this Court specifically questioned counsel for Defendant as to the implications of interstate commerce and counsel for Defendants made reference to the possibility that the goods and services provided by the contracts at issue may be made out of state. Counsel for Defendant stated that such information would need to be verified by his client. Subsequent to the hearing, Defendants submitted a supplemental Affidavit of Tanya Brazier who stated that some of the products provided pursuant to the contracts were produced out of state and shipped to South Carolina. The Affidavit was considered, at this Court's discretion, and was not found persuasive with respect to Defendant's Motion for Reconsideration.

JAM


SCANNED

As stated in the March 17, 2014, Order, this Court finds the arbitration clauses in the 2006 and 2011 contracts do not comply with Uniform Arbitration Act (UAA), codified at S.C. Code Ann. § 15-48-10 *et seq.* S.C. Code Ann. § 15-48-10 requires notices of arbitration to be typed, in underlined capital letters, and on the first page of the contract. The 2006 contracts and 2011 contracts do not fully comply with the above requirements.

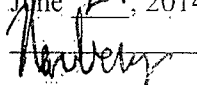
With regard to the Federal Arbitration Act's applicability to this matter, it remains this Court's ruling that the Federal Arbitration Act does not preempt the UAA and arbitration may not be compelled in this matter. Specifically, this Court is not satisfied that the 2006 and 2011 contracts implicated interstate commerce. It is implausible to this Court that a contract for the burial of South Carolina residents in South Carolina can implicate interstate commerce. Accordingly, this Court's original Order of March 17, 2014, requires no reconsideration and stands.

Defendant's Motion for Reconsideration is DENIED.

IT IS SO ORDERED.



Eugene C. Griffith, Jr.
Presiding Judge, Fifth Judicial Circuit

June 24, 2014
 South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP4007874

Christopher Carlton

Greenlawn Funeral Home

John Thomas Carlton

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 21 March 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Charles Cantzon Foster II

Drew Hamilton Butler

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Christopher Carlton as the Personal)
Representative of the Estate of Helen)
Tucker Carlton; Christopher Carlton;)
John Thomas Carlton; and Christopher)
Carlton as the Personal Representative of)
the Estate of Kimberly Carlton Baker,)

C/A No.: 12-CP-40-7874

ORDER DENYING MOTION TO
DISMISS AND MOTION
TO COMPEL ARBITRATION

Plaintiffs,

vs.

Greenlawn Funeral Home,

Defendant.

FILED
2014 MAR 19 AM 9:41
C.C.P. & G.S.

A hearing was held before this Court on March 4, 2014, at the Richland County Courthouse on the Defendant's Motion to Dismiss, or in the Alternative, to Compel Arbitration. Present at the hearing were Plaintiff's counsel, Bryan D. Caskey; and Defendant's counsel, Caleb M. Riser.

By its motion, the Defendant moved to dismiss, or alternatively, compel arbitration on the ground that the contracts at issue in this matter were subject to South Carolina Uniform Arbitration Act ("UAA") and therefore, arbitration should be compelled, as this Court had no subject matter jurisdiction. Alternatively, the Defendant argued that the Federal Arbitration Act ("FAA") preempted state law, and that if the Court did not find that the UAA applied, the Court should nevertheless compel arbitration based on the FAA.

The Plaintiff's opposed the Defendant's motion on the grounds that neither of the contracts complied with the specific statutory requirements of the UAA. Further the Plaintiff's asserted that

neither of the contracts are subject to the FAA, as the nature of the contracts did not involve interstate commerce.

After reviewing the pleadings of record, the memorandums of law provided by counsel, the exhibits attached thereto, the affidavit of the Plaintiff, and hearing argument of counsel, the Court makes the following conclusions of law:

CONCLUSIONS OF LAW

(Neither Contract Involves Interstate Commerce)

1. "To ascertain whether a transaction involves commerce within the meaning of the FAA, the court must examine the agreement, the complaint, and the surrounding facts." *Zabinski vs. Bright Acres Assocs.*, 346 S.C. 580, 553 S.E.2d 110 (2001). As an initial matter, the Court finds that all parties are South Carolina residents or had South Carolina as a principal place of business. The nature of the two contracts was for the Defendant to provide side-by-side burial plots of land in South Carolina, with all services incident to the burials to be performed in South Carolina. The Plaintiff's Complaint alleges that the Helen Carlton was not properly buried adjacent to her late husband as provided for in the contracts.
2. In assessing these allegations and considering the nature of these contracts, the Court finds that the FAA does not apply to either of the contracts at issue in this case, as the Court finds no facts to implicate federal law through interstate commerce. As a result, no arbitration may be compelled under the FAA. Therefore, the Court's analysis turns to whether arbitration may be compelled under the UAA.

(Neither Contract Complies With the Requirements of the UAA)

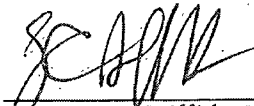
3. The Court finds that the 2006 contract, executed by Helen Carlton and the Defendant does not comply with the requirements of the UAA, as set forth in S.C. Code §15-48-10(a) in the following specifics:

- a. The Court finds that the notice of arbitration did not reference the code section of the UAA;
 - b. The Court finds that the notice of arbitration was not underlined;
 - c. The Court finds that the notice of arbitration was not on the first page.
4. Accordingly, the Court finds that as a matter of law, the 2006 contract between Helen Carlton and the Defendant is not subject to arbitration.
5. The Court finds that the 2011 contract, executed by Christopher Carlton and the Defendant does not comply with the requirements of the UAA as set forth in S.C. Code §15-48-10(a) in the following specifics:
- a. The Court finds that the notice of arbitration did not reference the code section of the UAA;
 - b. The Court finds that the notice of arbitration was not underlined;
 - c. The Court finds the notice of arbitration was not capitalized;
 - d. The Court finds that the notice of arbitration was not on the first page.
6. Accordingly, the Court finds that as a matter of law, the 2011 contract between Christopher Carlton and the Defendant is not subject to arbitration.

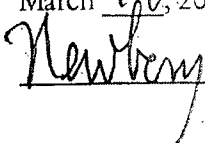
IT IS THEREFORE ORDERED that the Defendant's motion to dismiss, or in the alternative, to compel arbitration is denied;

IT IS FURTHER ORDERED, that this matter shall proceed to the discovery phase in preparation for a trial by jury as to all issues so triable.

IT IS SO ORDERED.



Eugene C. Griffith, Jr.
Presiding Judge – Fifth Judicial Circuit

March ^{14th} 2014

_____, South Carolina