IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
NOV 03 2014
SC Court of Appeals

---

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

---

Eugene Griffith, Jr., Circuit Court Judge

---

Civil Action No.: 2012-CP-40-7874
Appellate Case No.: 2014-001625

---

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,.....Respondents,

v.

Greenlawn Funeral Home,.....Appellant.

---

# INITIAL BRIEF OF RESPONDENTS

---

C. Cantzon Foster, II
Bryan D. Caskey
FOSTER LAW OFFICE, LLC
3100 Devine Street
Columbia, SC 29205

ATTORNEYS FOR RESPONDENTS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

**CASES**



**STATUTES**



**RULES**



**MISCELLANEOUS**

## STATEMENT OF THE ISSUES ON APPEAL

I. Greenlawn's argument and supporting affidavit in regards to the FAA were not properly presented to the trial judge, and therefore are not preserved for appellate review.

   a. In both its motion and memorandum of support, Greenlawn conceded that the FAA did not apply.

   b. Tanya Brazier's affidavit was not appropriately filed with the motion or timely presented to the trial judge.

II. Even assuming that Tanya Brazier's affidavit had been properly served and considered, the trial judge correctly ruled that the purchase of a burial plot and services related thereto do not implicate interstate commerce.

## STATEMENT OF THE CASE

Respondents (hereinafter collectively referred to as "the Carlton Family") filed this action on November 28, 2012, after discovering that Appellant (hereinafter "Greenlawn") had (1) buried Helen Carlton in an incorrect burial plot in direct contravention of her express wishes to be buried directly next to her late husband; (2) excavated and dug up Helen Carlton's burial plot, casket, and remains without informing her family prior to doing so; and (3) leaving Helen Carlton's casket and remains exposed to the elements. [Summons and Complaint]. It is important to note that there is no dispute related to the grave marker or casket.

Greenlawn was served on February 19, 2013. In response, on April 11, 2013, Greenlawn filed a Motion to Dismiss, or in the Alternative, Motion to Compel Arbitration [First Motion to Dismiss]. In its motion, Greenlawn conceded "The Federal Arbitration Act (FAA) does not preempt the UAA because..." [First Motion to Dismiss, p. 2, ¶6]. No affidavit was attached to, referenced in, or filed concurrently with this motion.

Prior to a hearing being convened in connection with Greenlawn's first motion to dismiss, on November 22, 2013, a Consent Order was entered, authorizing the Carlton Family to amend the complaint and substitute parties [Consent Order]. An Amended Summons and Complaint was filed on October 14, 2013. [Amended Pleadings].

In response to the amended complaint, on or about November 4, 2013, Greenlawn filed a Motion to Dismiss, or in the alternative, To Compel Arbitration in Response to the Amended Complaint [Second Motion to Dismiss]. In its motion, Greenlawn conceded "The Federal Arbitration Act (FAA) does not preempt the UAA because..." [Second Motion to Dismiss, p. 2, ¶6]. No affidavit was attached to, referenced in, or filed concurrently with this motion.

On or about January 21, 2014, Greenlawn filed and served a Memorandum in Support of Defendant's Motion to Dismiss. [Greenlawn Memorandum]. Once again, no affidavit was attached to, referenced in, or served concurrently with this motion. [Greenlawn Memorandum].

In response, on or about January 27, 2014, the Carlton Family filed and served a Return and Memorandum of Law in Opposition to Defendant's Motion to Dismiss or in the alternative, To Compel Arbitration; and an Affidavit of Christopher Carlton. [Memorandum and Carlton Affidavit].

No further affidavits or documents whatsoever were subsequently filed or served by either party. The hearing on Greenlawn's motion was convened on March 4, 2014 before the Honorable Eugene Griffith, Jr. [Hearing Transcript]. At the conclusion of the hearing, proposed orders were requested from both parties. [Hearing Transcript].

One week after the hearing was concluded, in connection with its proposed order, Greenlawn e-mailed the affidavit of Tanya Brazier to the trial judge. [Riser e-mail]. In a reply e-mail, The Carlton Family objected to this untimely affidavit and asked that it be stricken and not considered. [Caskey e-mail].

Several days later, the Court issued its Order Denying Motion to Dismiss and Motion to Compel Arbitration, dated March 17, 2014 and filed on March 19, 2014, (hereinafter the "Order Denying Arbitration"). [March 19, 2014 Order].

Thereafter, Greenlawn filed and served a motion to reconsider, which was denied without oral argument by an Order filed on July 3, 2014. [Order denying Reconsideration]. The Affidavit of Tanya Brazier was considered in the context of Greenlawn's Motion to Reconsider, but was not found persuasive. [Footnote in Order denying Reconsideration]. This appeal follows.

## STATEMENT OF FACTS

The Carlton Family's Amended Complaint alleges that Helen Carlton's dying request to her children was to be buried at Greenlawn Cemetery next to her late husband. [Amended Complaint, ¶ 6]. To that end, she purchased the specific burial plot next to her late husband in 2006. [Amended Complaint ¶ 4].

After Helen's death in 2011, Christopher Carlton, personally, and on behalf of Helen's estate, contracted with Greenlawn Funeral Home to purchase funeral services for Helen's burial. [Amended Complaint ¶ 7]. Specifically, Helen was to be buried next to her late husband. [Amended Complaint ¶ 8].

Prior to Helen's burial, Christopher met with representatives of Greenlawn on two separate occasions to verify the proper burial location. [Amended Complaint ¶ 9]. Despite confirming the location on two separate occasions, Greenlawn buried Helen in an unmarked grave, away from her late husband. [Amended Complaint ¶ 10 and 11].

On or about June 13, 2012, while excavating the unmarked gravesite where Helen was incorrectly laid to rest, Greenlawn unearthed her casket and remains. [Amended Complaint ¶ 12]. Subsequently, without any prior notice to, much less permission from the Carlton Family, Greenlawn then excavated the gravesite where Helen was supposed to have been buried. [Amended Complaint ¶ 13]. For several days, Greenlawn left the excavated gravesite and casket with Helen's remains above ground and exposed to the elements. [Amended Complaint ¶14 and ¶15].

Being unable to otherwise resolve this matter with Greenlawn, the Carlton Family commenced an action on November 28, 2012. [Original Complaint]. After amending the complaint on October 14, 2013, Greenlawn moved to dismiss on the sole ground that the South Carolina Uniform Arbitration Act required arbitration of The Carlton Family's claims. [Second Motion to Dismiss].

Moreover, in this motion, Greenlawn affirmatively stated, "**The Federal Arbitration Act (FAA) does not preempt the UAA because the Contract does not involve interstate commerce**, as the

Defendant and Plaintiffs are domiciled in and locate their principle [sic] place of business in South Carolina" [Second Motion to Dismiss] (emphasis added).

Greenlawn's subsequent Memorandum of Law again restates the assertion: "Further, no interstate commerce is involved, and thus, the SC UAA applies rather than the Federal Arbitration Act". [Greenlawn Memorandum of Law, p. 5].

Admittedly, Greenlawn then follows up this assertion by saying that "the FAA applies". [Greenlawn Memorandum of Law, p. 5]. While Greenlawn is certainly permitted to argue alternative legal theories, they can't argue contradictory facts. Conceding that "no interstate commerce is involved" necessarily forecloses the position that interstate commerce **is** involved. Additionally, Greenlawn presented no facts to support its idea of interstate commerce being involved either in (1) Greenlawn's motion; (2) Greenlawn's Memorandum of Law; or (3) oral argument.

The first time any support was provided for the idea of interstate commerce being involved was one week after the hearing, when the affidavit of Tanya Brazier's was e-mailed to the trial judge along with a proposed order. In presenting the affidavit at such a late moment, Greenlawn did not give the Carlton Family any time in which to rebut any of the allegations therein.

Accordingly, in the Order Denying Arbitration, the Court did not consider the Affidavit of Tanya Brazier, as the Court specifically listed the documents it considered. [Order Denying Arbitration, p.2]. Conspicuously absent, is the Affidavit of Tanya Brazier. This is especially noteworthy, as it is the entire basis for Greenlawn's argument on appeal. Also noteworthy is that in a footnote of the Order Denying Reconsideration, the Court stated "The Affidavit was considered, at this Court's discretion, and was not found persuasive **with respect to Defendant's Motion for reconsideration**." [Order Denying Reconsideration] (emphasis added).

## STANDARD OF REVIEW

As a threshold issue, the untimely Affidavit of Tanya Brazier was not considered by the trial court in the Order Denying Arbitration. Rather, it was only considered with respect to Greenlawn's motion for reconsideration. By not listing the Affidavit of Tanya Brazier in the specific matters considered, it is clear that the Court, in its discretion, did not consider it with respect to the Order Denying Arbitration.

When affidavits are not filed in a timely manner, it is within the trial court's discretion to exclude them. *Smith v. Hastie*, 367 S.C. 410, 626 S.E.2d 13 (Ct. App. 2005) (the trial court has the discretion to reject an untimely affidavit in a summary judgment motion); *Jernigan v. King*, 312 S.C. 331, 440 S.E.2d 379 (Ct. App. 1993) (it was within the trial court's discretion to reject an untimely affidavit).

The South Carolina Supreme Court has ruled that the trial court may, in its discretion, "refuse to consider materials that were not timely served such that the opposing party had no time to prepare a response." *Black v. Lexington Sch. Dist. No. 2*, 327 S.C. 55, 60, 488 S.E.2d 327, 329 (1997). Specifically, the *Black* court held the trial court did not abuse its discretion in refusing to consider an affidavit filed on the date of the hearing. *Id.* Accordingly, on the issue of whether the trial court explicitly failed to consider the Affidavit of Tanya Brazier, with respect to the Order Denying Arbitration, the appropriate standard of review is whether the trial court abused its discretion to do so.

As to the issue of arbitration, arbitrability determinations are subject to *de novo* review. *Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 453, 730 S.E.2d 312, 315 (2012). Nevertheless, a circuit court's factual findings will not be reversed on appeal if any evidence reasonably supports the findings. *Id.* at 453, 730 S.E.2d at 315. In the instant case, even if the issue of interstate was preserved, the evidence reasonably supports the findings of the trial judge.

Moreover, the issue of error preservation precludes litigants from trying the case on one theory, and then attacking the result by presenting another theory on appeal. *Butler v. Town of Edgefield*, 328 S.C. 238, 493 S.E.2d 838 (1997); *Gurganious v. City of Beaufort*, 317 S.C. 481, 454 S.E.2d 912 (Ct. App. 1995). An

issue is not preserved for appellate consideration if it has been conceded in the trial court. *State v. Benton*, 338 S.C. 151, 526 S.E.2d 228 (2000); *TNS Mills, Inc. v. South Carolina Dept' of Revenue*, 331 S.C. 611, 503 S.E.2d 471 (1998) (an issue conceded in the trial court cannot be argued on appeal). Additionally, a party may not use a post-trial motion, such as a motion to reconsider, to raise an issue or present facts that could have been raised at trial. *Patterson v. Reid*, 318 S.C. 183, 456 S.E.2d 436 (Ct. App. 1995).

## ARGUMENT

### I. Greenlawn's argument and supporting affidavit in regards to the FAA were both conceded and not properly presented to the trial judge, and therefore are not preserved for appellate review.

The issue of whether the FAA applies is not properly preserved for appellate review, as Greenlawn waived this argument to the lower court when it conceded that interstate commerce was not involved in both their motion and supporting memorandum. Additionally, only after the conclusion of the hearing did Greenlawn present an untimely affidavit to support its contention that interstate commerce was involved. Accordingly, the issue of application of the FAA is not properly before this Court.

#### a. In both its motion and memorandum in support, Greenlawn conceded that the FAA did not apply.

"A party may not argue one ground at trial and an alternate ground on appeal." *Kennedy v. S.C. Retirement Sys.*, 349 S.C. 531, 532-33, 564 S.E.2d 322, 323 (2001) ("'Preserving issues for appellate review is a fundamental component of appellate practice. South Carolina appellate courts do not recognize the plain error rule.'" (quoting Jean H. Toal, Shahin Vafai & Robert Muckenfuss, *Appellate Practice in South Carolina* 55 (1999)). Generally, claims or defenses not presented in the pleadings will not be considered on appeal. *See McNeely v. South Carolina Farm Bureau Mt. Ins Co.*, 259 S.C. 39, 190 S.E.2d 499 (1972).

"It is well settled that parties are judicially bound by their pleadings unless withdrawn, altered or stricken by amendment or otherwise. The allegations, statements, or admissions contained in a pleading are conclusive as against the pleader and a party cannot subsequently take a position contradictory of, or inconsistent with, his pleadings and the facts which are admitted by the pleadings are taken as true against the pleader for the purpose of the action." *Skull Creek Club Ltd. Partnership v. Cook and Book, Inc.*, 313 S.C. 283, 437 S.E.2d 163 (Ct. App. 1993) (citing *Elrod v. All,* 243 S.C. 425, 134 S.E.2d 410 (1964)).

Greenlawn's Motion to Dismiss, which is their only responsive pleading, states that the South Carolina Uniform Arbitration Act is its **sole ground** for the relief requested. Specifically, first paragraph,

Greenlawn's motion states, "South Carolina Code Annotated § 15-48-10 et seq." as the basis for the relief sought. [Motion to Dismiss]. Additionally, the motion states, "The arbitration agreement requires arbitration of this dispute to be held in Richland County, South Carolina pursuant to the South Carolina Uniform Arbitration Act (UAA), Section 15-48-10 et seq. [Motion to Dismiss].

However, not being satisfied with merely making the assertion that only the UAA applies[1], Greenlawn goes on to affirmatively and formally admit and concede that the Federal Arbitration Act (FAA) does not apply because no interstate commerce is involved:

> "The Federal Arbitration Act (FAA) does not preempt the UAA because **the contract does not involve interstate commerce**, as the Defendant and Plaintiffs are domiciled in and locate their principle [sic] place of business in South Carolina." [Motion to Dismiss]

Moreover, in its subsequently filed memorandum of law, Greenlawn again concedes: "Further, no interstate commerce is involved." [Memorandum of Law, p. 5].

The admission and concession contained in Greenlawn's written motion effectively precludes it from arguing otherwise at the appellate level, as an issue is not preserved for appellate consideration if it has been conceded in the trial court. *State v. Benton*, 338 S.C. 151, 526 S.E.2d 228 (2000); *TNS Mills, Inc. v. South Carolina Dept' of Revenue*, 331 S.C. 611, 503 S.E.2d 471 (1998) (an issue conceded in the trial court cannot be argued on appeal).

However, even if this court determines that the issue was not conceded in writing, (which it was) the practice of orally raising issues not formally pled is not to be condoned. Our Supreme Court has specifically disapproved of the practice of arguing unpleaded defenses at oral argument. "We disapprove of the practice of orally raising unpled issues for the first time at a summary judgment motion." *Resolution Trust Corp. v. Eagle Lake and Golf Condominiums*, 310 S.C. 473, 427 S.E.2d 646 (1993). In the instant case, this is exactly what happened, with the compounding fact that the orally argued (but unpled) defense was

[1] Greenlawn's brief to this Court now concedes the UAA does not apply. In not appealing this matter, this argument is abandoned on appeal. *See First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994).

specifically admitted and conceded in Greenlawn's formal pleading of record and the memorandum of support. [Motion to Dismiss] [Memorandum in Support]. Accordingly, this Court should refuse to allow Greenlawn to present an issue and argument to this Court that were formally conceded.

**b. Tanya Brazier's affidavit was neither timely filed not timely presented to the trial judge.**

"When a motion is to be supported by affidavit, the affidavit shall be served with the motion...additional or opposing affidavits may be served not later than two days before the hearing unless the court permits them to be served at some other time. The moving party may serve reply affidavits at any time before the hearing commences." Rule 6(d), SCRCP.

There is no discretion for the Court to allow anything other than a simultaneous filing for the moving party, or for a reply affidavit to be served prior to the hearing. *See* Rule 6(d), SCRCP. In the instant case, the affidavit of Tanya Brazier was not served with the motion. It was not served with the supporting memorandum. It was not served before the hearing commenced. It was served afterwards, with a proposed order. [Riser E-mail] As such, the affidavit was not part of what the trial judge considered in the Order Denying Arbitration. [Order Denying Arbitration], and therefore cannot be considered on appeal.

When viewed in the context of Greenlawn's motion, is makes logical sense that Greenlawn would not procure or serve an affidavit that directly contradicted statements in its motion. Further, the affidavit was not served with Greenlawn's memorandum of law. Again, this makes logical sense, as Greenlawn continued to concede that interstate commerce was not implicated in its memorandum of law.

The affidavit was not served at the commencement of the hearing, nor was the affidavit served prior to the conclusion of the hearing. [Hearing Transcript]. Specifically, the affidavit was served one full week following the conclusion of the hearing, when it was simultaneously sent to both the trial judge and the undersigned. [Riser E-mail]. This untimely submission did not allow for consideration by the Court, nor did it afford the Carlton Family appropriate opportunity for a rebuttal. Our Supreme Court has

reversed a judgment where the trial court's order deprived a party of time to submit opposing affidavits. *Dedes v. Strickland*, 307 S.C. 152, 414 S.E.2d 132 (1992).

Appropriately, the trial judge did not consider Tanya Brazier's untimely affidavit in connection with the Order Denying Arbitration. [Order Denying Arbitration]. Only in the Order Denying Reconsideration is the Affidavit of Tanya Brazier mentioned. [Order Denying Reconsideration]. In that context, the trial judge specifically states that it was considered, but was not found persuasive with respect to Defendant's Motion for Reconsideration. [Order Denying Reconsideration]. Clearly, this the affidavit was not persuasive because the trial judge applied the well-settled rule that a party may not use a motion to reconsider to raise an issue or present facts that could have been raised at trial. *Patterson v. Reid*, 318 S.C. 183, 456 S.E.2d 436 (Ct. App. 1995).

In this instance, the affidavit was not presented at the hearing, and therefore could not be persuasive to the trial judge in the context of the motion to reconsider. As the untimely affidavit was only presented to the trial judge in the context of a motion to reconsider, this Court should not consider the untimely affidavit on appeal. *See Commercial Credit Loans, Inc. v. Riddle*, 334 S.C. 176, 512 S.E.2d 123 (Ct. App. 1999) (where it appeared that party presented an issue for the first time in its Rule 59(e) motion for reconsideration, the issue was not properly preserved for appellate review). Based upon the foregoing, this Court should affirm the ruling of the trial judge, and not address unpreserved issues.

## II. Even assuming that the affidavit of Tanya Brazier had been properly served, and considered, the trial court correctly ruled that the purchase of a burial plot and services related thereto do not implicate interstate commerce.

Although the issue of interstate commerce is not properly before this Court, an additional sustaining ground for affirming the trial judge's ruling is that the purchase of a burial plot and related services do not implicate interstate commerce.

Our Supreme Court has held that interstate commerce under the FAA is to be interpreted consistently with the Commerce Clause of the United States Constitution. *Mathews v. Fluor Corp.*, 312 S.C.

404, 440 S.E.2d 880 (1994); *see also, Lackey v. Green Tree Financial Corp.*, 330 S.C. 388, 498 S.E.2d 898 (Ct. App. 1998).

However, rather than simply assuming that all commercial transactions affect interstate commerce, our Supreme Court still performs a detailed analysis to determine if interstate commerce exists. *See Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 730 S.E.2d 312 (2012). (court examined terms of the contract, the complaint, and the surrounding facts, including affidavits as well as financial documentation).

In Greenlawn's brief to this Court, Greenlawn argues that this Court should essentially discard the analysis in *Bradley* and adopt reasoning from an Alabama case that would hold "all economic activity" to be within the reach of Congress' power under the Commerce Clause. [Greenlawn's Initial Brief]. To discard this analysis would set new precedent in South Carolina law.

The law in South Carolina, as set forth in *Zabinski* and subsequently applied in additional cases is clear. In *Zabinski*, our Supreme Court held that "Despite this expansive interpretation of the FAA, the FAA does not reflect a congressional intent to occupy the entire field of arbitration". *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 591, 553 S.E.2d at 110, 115–16 (2001). "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." *Id.* at 594, 553 S.E.2d at 117. "Our courts consistently look to the essential character of the contract when applying the FAA." *Thornton v. Trident Med. Ctr., LLC*, 357 S.C. 91, 96, 592 S.E.2d 50, 52 (Ct. App. 2003).

In the instant case, in examining the agreement, complaint, and surrounding facts, it is evident that the dispute arises out of the fact that Helen Carlton was buried in the wrong plot of land, against her specific wishes, and then subsequently exhumed without permission and left exposed to the elements in a disrespectful manner.

Helen Carlton's specific dying wish was to be buried next to her late husband, but Greenlawn failed to ensure this happened. Although Greenlawn attempts to distract the Court by making much of the issue of the casket and grave marker, the casket and the grave marker are entirely irrelevant to the dispute. The casket and grave markers are merely tangential to the core matter of what Helen Carlton contracted for and what Greenlawn failed to provide – burial in the proper location.

As for the burial plot, the plot of earth located next to Helen Carlton's late husband is clearly not an instrumentality of interstate commerce. Rather, the plot of land Helen Carlton contracted for, but was not provided, is the quintessential ideal of an intrastate matter. Although no South Carolina court has specifically ruled upon burial plots in the context of interstate commerce and the FAA, our courts have performed the analysis in a similar context – the purchase and sale of real estate.

In looking at the analysis of the purchase and sale of real estate, it is clear that South Carolina law has historically it as having an intrastate character. The comparison of real estate sales and the purchase of burial plots is appropriate, as burial plots essentially grant limited easements, which is a type of real property right. *See* S.C. Code Ann. § 27-43-10, *et seq.* (Supp. 2007).

In 1994, the Supreme Court explained the unique nature of real estate transactions in the context of the FAA, when it issued its decision in *Mathews v. Fluor Corp.*, 312 S.C. 404, 440 S.E.2d 880 (1994), overruled on other grounds by *Munoz v. Green Tree Financial Corp.*, 343 S.C. 531, 539 n. 3, 542 S.E.2d 360, 363 n. 3 (2001) (overruling *Mathews* "to the extent it considered whether the parties contemplated interstate commerce as a factor in determining if the FAA applied").

In *Mathews*, the Supreme Court held that interstate commerce was not involved in a sale of a commercial building located in South Carolina to out-of-state parties, despite the fact that the parties utilized the services of a North Carolina engineer and procured financing from a Pennsylvania lender. *Id.* at 407, 440 S.E.2d at 881.

In other matters involving of real estate, our Supreme Court has continued to view the application of the FAA with a skeptical eye. This is most clearly highlighted in *Bradley*, where the Supreme Court looked to the core nature of the purchase of real estate. *Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447 (2012).

In *Bradley*, Court held that neither the inclusion of a national warranty, nor the use of out-of-state financing implicated interstate commerce, as these were "tangential" to the core of the agreement. In so holding, the Court found it significant that neither the national warranty company nor the out-of-state lender were named as parties to the suit, holding that these matters were "tangential" to the core performance of the agreement, and did not negate the purely intrastate nature of the transaction.

Similarly, in the case at bar, neither the party that manufactured the casket nor the party that manufactured the grave marker are named as parties. Further, the Carlton family contracted directly with Greenlawn for these completed items – not the construction of them.

Further, and perhaps most tellingly in *Bradley*, the Supreme Court went on to state:

> Finally, if the utilization of out-of-state financing or a national warranty was sufficient to constitute interstate commerce, then every transaction that involved these ancillary factors would be subject to the FAA. We believe that a decision to this effect would eviscerate the well-established real estate exception to the FAA. *Id.*

It is clear from this language that our Supreme Court intends to jealously guard the intrastate nature of real estate in South Carolina from reach of the FAA. While Greenlawn belatedly now asserts that the elements of a casket and a headstone were "integral" to the agreements, the Carlton Family would respectfully disagree, and take the position that the "integral" issue is the fact that Helen Carlton specifically wanted to be buried in the plot of land next to her husband, but was not.

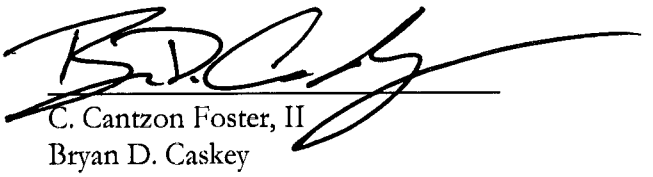
Ultimately, the core issue of this case is that Helen Carlton desired to purchase the right to have her final resting place be in the plot of land next to her late husband. No amount of tangential issues can negate this. Accordingly, this Court should find, as an additional sustaining ground, that the purchase of

a burial plot is inherently an intrastate transaction, which is not negated by the existence of tangential matters not relevant to the dispute.

## CONCLUSION

Based upon the foregoing, the Carlton Family respectfully requests this Court affirm the court's order denying the Motion to Compel Arbitration and remand this matter to the circuit court for trial.

Respectfully Submitted,



C. Cantzon Foster, II
Bryan D. Caskey
FOSTER LAW OFFICE, LLC
3100 Devine Street
Columbia, SC 29205

ATTORNEYS FOR RESPONDENTS

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
NOV 03 2014
SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Eugene Griffith, Jr., Circuit Court Judge

Civil Action No.: 2012-CP-40-7874
Appellate Case No.: 2014-001625

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,.....Respondents,

v.

Greenlawn Funeral Home,..... .....Appellant.

## CERTIFICATE OF SERVICE

I, Bryan D. Caskey, hereby certify that I caused the **Initial Brief of Respondents** and **Respondents' Designation of Matter to be Included in the Record on Appeal** to be served on the persons below by hand-delivery on the date set forth below:

Drew Hamilton Butler, Esquire
Caleb Riser, Esquire
Sheila Marlouvon Bias, Esquire
RICHARDSON PLOWDEN & ROBINSON, P.A.
1900 Barnwell Street
Columbia, SC 29202

Dated at Columbia, South Carolina this 3rd day of November, 2014.

Bryan D. Caskey
FOSTER LAW OFFICE, LLC
3100 Devine Street
Columbia, South Carolina 29205
(803) 400-1921
(803) 400-1951 Facsimile
COUNSEL FOR RESPONDENTS