STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

FOR THE SECOND JUDICIAL CIRCUIT

C/A No.: 2014-CP-02-00079

James Loftis,

Plaintiff,

Vs.

J. Brooks Financial, Inc.; Brooks Real Estate Holdings, LLC; High Street Securities, Inc.; Matson Money, Inc.; Equity Institutional, f/k/a Sterling Trust, A Division of Equity Trust Co.; and Jonathan Brooks,

Defendants.

ORDER

This matter comes before the Court upon Defendant Matson Money, Inc.'s Motion to Stay and Compel Arbitration. A hearing was held on September 29, 2014 at the Aiken County Courthouse. Appearing on behalf of Matson Money, Inc. was Curtis Lyman Ott, Esquire. Appearing on behalf of James Loftis was Tom Young, Jr., Esquire. After due deliberation and diligent review of the record, memoranda, case law, exhibits, and arguments of counsel, the Court DENIES the Motion to Stay and Compel Arbitration.

FACTS[1]

Defendant Matson Money, Inc. ("Matson") is an Ohio-based company. Plaintiff James Loftis is a resident of Aiken County, South Carolina. Plaintiff, Jonathan Brooks ("Brooks"), and Matson executed the Investment Management Agreement ("Agreement") in January 2011. In that Agreement, Matson and Brooks agreed to serve as co-advisers and to provide investment advice and services pursuant to Plaintiff's stated objectives. Similarly, Plaintiff agreed to invest

[1] The Court adopts these facts for purposes of this Order.

his retirement savings in a "moderate risk" portfolio with a goal of "capital preservation." Acting under the Agreement, Matson would provide "discretionary management services" for Plaintiff's retirement savings Brooks was to provide "relationship and suitability services."[2] The savings represented Plaintiff's entire retirement savings from over twenty-two (22) years of work at the Savannah River Site. The Agreement also gave Matson, through its Matrix Division, the power to invest and reinvest Plaintiff's savings and to act as Plaintiff's attorney in fact.[3]

The Agreement is thirty-nine (39) pages long and neither Matson nor Brooks discussed any specific provisions with the Plaintiff other than his investment strategy reflected in the Agreement as "moderate risk" with a goal of "capital preservation." Plaintiff was instructed to initial and sign the Agreement on various pages. None of these pages mentioned or referred to the Arbitration clause that applied to the Plaintiff. The Agreement was a standard form contract containing this Arbitration clause on page thirty-one (31):

> Account Owner agrees that any controversy arising from or relating to this Agreement (including any controversy between Matson Money, the Co-Advisor or your Co-Advisor Representative and Account Owner), arising from or relating to any account of or transaction with or for Account Owner or the construction, performance or breach of this or any other agreement between Account Owner and Matson Money, whether entered into before or after the date hereof, will be submitted to and settled by arbitration in accordance with the rules then in effect of the American Arbitration Association. Any arbitration shall be held in the County of Hamilton, State of Ohio. However, this paragraph does not constitute a waiver of any right by the Advisers Act, including the right to choose the forum, whether arbitration or adjudication in which to seek dispute resolution. The award of the arbitrators, or of the majority of them, will be final, and judgment on any award rendered by the arbitrators may be entered in any court having jurisdiction thereof.[4]

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[2] The Agreement as produced by Matson Money is attached to the Affidavit of Mark G. Hanchet, filed April 25, 2014, as Exhibit B; that Agreement is missing pages 1, 8-19, and 34; these relevant portions for this citation are at Matson Money 000013.

[3] *Id.* at Matson Money 000014.

[4] *Id.* at Matson Money 000022.

The above Arbitration clause is written in the same type and size of font as the rest of the Agreement. This page did not require Plaintiff's initials or signature. No conspicuous language existed elsewhere in the Agreement alerting Plaintiff to the existence of the Arbitration clause on page 31.

Plaintiff was not aware of the Arbitration clause until after all of the wrongful alleged acts and omissions which are the subject of this litigation took place. Plaintiff was not aware that the Agreement requires him to dispute any issue through binding arbitration in Hamilton County, Ohio even though the Agreement was executed in Brooks' office in Aiken, South Carolina. Plaintiff was not allowed to negotiate the Agreement or to propose changes and/or additional terms to the Agreement.

The Agreement also does not specifically disclose the costs to enter arbitration, hire the arbitrator(s), and then to conduct the arbitration. Rather, the Agreement's fine print says the arbitration will be "in accordance with the rules then in effect of the American Arbitration Association."[5] Plaintiff's counsel indicated in his Memorandum and oral arguments the excessive fees and costs of filing for arbitration under the American Arbitration Association (AAA) rules. This Court takes judicial notice of these costs which are published on the AAA website.[6]

While Brooks and Matson were co-advisers to Plaintiff, Plaintiff lost all of his retirement savings totaling over $500,000.00. Matson ceased to be a co-adviser for Plaintiff on December 25, 2012. Brooks' legal troubles began in late February 2013. This lawsuit was filed against multiple defendants and Matson seeks to compel arbitration as to Plaintiff's claims against only

[5] *Id.* at Matson Money 000022.

[6] The fees are in excess of $10,225 for a single arbitrator and $11,750 for a panel of three arbitrators just to get started. This does not include the fees to pay the arbitrators for their time or the fees to rent the hearing room, etc.. *See*, https://www.adr.org/aaa/ShowPDF?doc=ADRSTG_004102

Matson. Matson and Plaintiff agree that the record is complete for purposes of deciding the Arbitration issue.

LAW

The Agreement containing the Arbitration clause herein is governed by Ohio law.[7] An arbitration clause is generally "valid, irrevocable, and enforceable, except upon grounds that exist at law or in equity for the revocation of any contract." R.C. 2711.01(A), *Pinette v. Wynn's Extended Care, Inc.*, 9th Dist. No. 21478, 2003-Ohio-4636, 2003 WL 22047686, at ¶ 7; *see also*, 9 U.S.C § 2 (2013). Accordingly, the trial court must make a determination as to the validity of the arbitration clause. *Eagle v. Fred Martin Motor Co.*, 809 N.E.2d 1161, 157 Ohio App.3d 150, 2004-Ohio-829 (Ohio App. 9 Dist. 2004). In making this determination, trial courts should consider basic contract principles and defenses to ensure a meeting of the minds to arbitrate existed and that such an agreement was not unconscionable. *See, Taylor Bldg., Corp of Am. v. Benfield*, 117 Ohio St. 3d 352, 884 N.E.2d 12, ¶ 3.

DISCUSSION

1. THE ARBITRATION CLAUSE IS UNCONSCIONABLE AND IS UNENFORCEABLE PURSUANT TO OHIO LAW

"Arbitration clauses are unconscionable where the 'clauses involved are so one-sided as to oppress or unfairly surprise [a] party'." *Eagle*, 809 N.E.2d 1161, 157 Ohio App.3d 150, 2004-Ohio-829 (Ohio App. 9 Dist. 2004) (citations omitted); *see also*, *Orlett v. Suburban Propane* (1989), 54 Ohio App.3d 127, 129, 561 N.E.2d 1066 (explaining that an unconscionable arbitration clause exists "[when with respect to the arbitration clause itself] one party has been misled as to the 'basis of the bargain,' where a severe imbalance in bargaining power exists, or where specific contractual terms are outrageous").

[7] Notably, under South Carolina law, the Arbitration clause herein is facially invalid because it is not rubber stamped or disclosed in conspicuous type on the first page of the document.

Ohio has enumerated a test[8] for determining whether an arbitration clause is unconscionable. *New Hope Cmty. Church v. Patriot Energy Partners, L.L.C.*, 2013 WL 6921490, at *4 (Ohio Ct. App. Dec. 20, 2013). For an arbitration clause to be deemed unconscionable, it must be both substantively and procedurally unconscionable. *Taylor Bldg. Corp. of Am.*, 117 Ohio St. 3d 352, at ¶ 42; *See also, Collins v. Click Camera & Video, Inc.* (1993), 86 Ohio App.3d 826, 834, 621 N.E.2d 1294 (finding that ""(1) unfair and unreasonable contract terms, i.e., 'substantive unconscionability,' and (2) individualized circumstances surrounding each of the parties to a contract such that no voluntary meeting of the minds was possible, i.e., 'procedural unconscionability[.]' ... create what is, in essence, a two-prong test of unconscionability.").

Based on the below analysis, I find the arbitration clause at issue here to be both substantively and procedurally unconscionable.

i. Substantive Unconscionability

Whether an arbitration clause is substantively unconscionable requires an analysis of the terms of the provision itself and a determination of whether those terms are commercially reasonable. *Hayes v. Oakridge Home*, 122 Ohio St.3d 63, 2009-Ohio-2054, 908 N.E.2d 408, ¶ 33. No bright-line test for determining substantive unconscionability has been adopted by the Ohio Supreme Court, therefore, much like South Carolina, determining substantive unconscionability is a case-by-case analysis and depends on the wording of the clause.

Some of the factors typically considered by Ohio courts to determine whether a clause is substantively unconscionable are: (1) the cost of arbitration; (2) the specificity of the provision,

[8] Although Ohio Law applies, the South Carolina test is similar to the Ohio test. In *Simpson v. MSA of Myrtle Beach, Inc.*, the Court explained that unconscionability is defined as "the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them. 373 S.C. 14, 24-25, 644 S.E.2d 663, 668 (2007), (*citing Carolina Care Plan, Inc. v. United Healthcare Servs.*, Inc., 361 S.C. 554, 606 S.E.2d 752, 757 (2004). The South Carolina test used similar factors to those specified in the Ohio Test.

e.g., whether the rules governing arbitration and any required fees are disclosed; (3) the relative prominence of the provision, e.g., whether the arbitration clause is set forth in fine print buried within a larger contract or is contained in a separate document; and (4) whether the obligation to arbitrate applies equally to all parties. See, e.g., *Taylor Bldg Corp. of Am.*, ¶ 54-60; *Peltz*, 77th Dist. No. 06 BE 11, ¶ 47-48; *Robbins v. Country Club Ret. Ctr. IV, Inc.*, 7th Dist. No. 04 BE 43, 2005-Ohio-1338, ¶ 37; *Wascovich v. Personacare of Ohio*, 190 Ohio App. 3d 619, 2010-Ohio-4563, 943 N.E.2d 1030, ¶ 43-54 (11th Dist.); *Eagle v. Fred Martin Motor Co.*, 57 Ohio App. 3d 150, 2004-Ohio-829, 809 N.E.2d 1161 (9th Dist.); *Vanyo v. Clear Channel Worldwide*, 156 Ohio App. 3d 706, 2004-Ohio-1793, 808 N.E.2d 482, ¶ 20 (8th Dist.).

Here, the arbitration clause is substantively unconscionable. First, it does not disclose the potentially prohibitive costs and fees required to arbitrate the case under the American Arbitration Association ("AAA") forum in Ohio. As to a court's review of prohibitive arbitration costs, the court in *Eagle v. Fred Martin Motor Co.*, noted that the United States Supreme Court adopted in *Green Tree Financial Corp.-Alabama v. Randolph*, 531 U.S. 79, 121 S.Ct. 513, 148 L.Ed.2d 373 (2000), a case-by-case approach to finding an arbitration clause unenforceable for not disclosing fees. *See Eagle*, 809 N.E.2d 1161, 157 Ohio App.3d 150, 2004-Ohio-829 (Ohio App. 9 Dist. 2004). In *Green Tree*, the court held that the party seeking to invalidate an arbitration agreement on the ground that arbitration would be prohibitively expensive bears the burden of showing the likelihood of incurring such costs. *Green Tree*, 531 U.S. at 91-92, 121 S.Ct. 513, 148 L.Ed.2d 373. For instance, in *Eagle*, the Court found that the Arbitration clause was substantively unconscionable when it reconciled the undisclosed arbitration costs of around $4,000 to $6,000 under the National Arbitration Forum with the Plaintiff's financial situation.

Like in *Eagle*, the fees associated with arbitration here under the AAA would be very high and a burden on the Plaintiff who has already lost all of his retirement savings due to the acts and omissions alleged in the pleadings.[9] It would be substantively unconscionable to require the Plaintiff, after losing all of his more than twenty-two years of retirement savings, to incur these fees when he could bring the same action in this Court for a filing fee of $150.00. Under the AAA, the initial standard filing fee in a commercial arbitration on a claim valued between $500,000.00 and $1,000,000.00 would be $6,200.00 and the final fee would be $2,500.00.[10] This does not include the fee to hire the arbitrators which requires a non-refundable fee of $3,050 for a three (3) panel board or a non-refundable fee of $1,525.00 for a single arbitrator. Further, the Arbitrators are then compensated at the hourly rate for their time.[11] These costs coupled with the travel costs Plaintiff would incur to arbitrate the claim in Ohio clearly meet the burden to find that the failure to disclose these costs renders this arbitration clause one-sided, oppressive, prohibitive and invalid. Plaintiff lost his entire retirement savings that he had accumulated over twenty two (22) years at the Savannah River Site. Therefore, this Court finds that requiring the Plaintiff to arbitrate this case in another forum, to pay all of the above mentioned costs, and then to have to litigate the same facts and allegations against the other named co-defendants here in Aiken, South Carolina would be an unequitable burden and is substantively unconscionable.

Second, the Arbitration clause is substantively unconscionable based on its location and the size of the type/font in the Agreement. As indicated herein, the clause is located on page thirty-one (31) of a thirty-nine (39) page contract. The type and size of the font is the same as

[9] Plaintiff's counsel represented this at the hearing and the Affidavit of James Loftis confirms that he lost all of his retirement savings in the alleged scheme which is the underlying basis for this lawsuit.
[10] The filing fee is split into two payments.
[11] Note that this does not include other fees such as renting a hearing room and or the cost to schedule a hearing.

the rest of the contract and there are no distinguishing factors. Further, there were no indications or disclosures anywhere in the contract that the Arbitration clause was included.[12] Notably, the Plaintiff had to sign and initial multiple places in the Agreement where he was disclosed certain information regarding his investment strategy and Matson's involvement; however, Plaintiff was not required to sign or to initial the arbitration clause or any other part of the Agreement that disclosed its existence.

Therefore, based on the nondisclosure of the costs, expense of arbitrating under the AAA, and the inconspicuous location of the clause, I find that this arbitration clause is substantively unconscionable.

ii. Procedural Unconscionability

Whether an arbitration clause is "[p]rocedural[ly] unconscionable[sic] concerns the formation of the agreement and occurs when no voluntary meeting of the minds is possible." *Ball v. Ohio State Home Servs., Inc.*, 168 Ohio App. 3d 622, 2006-Ohio-4464, 861 N.E.2d 553, ¶ 17. Hence, Courts must consider factors bearing on the relative bargaining position of the contracting parties. *Taylor Bldg. Corp. of Am.*, 117 Ohio St. 3d 352 at ¶ 44.

Such factors to consider include the parties' "respective ages, educational backgrounds, intelligence, business acumen and experiences, along with who drafted the contract, whether alterations in the printed terms were possible and whether there were alternative sources of supply for the services rendered." *Id.*

Here, the Arbitration clause is procedurally unconscionable. First, the Plaintiff entered into an Investment Management Agreement that was drafted by Matson and appears to be a

[12] The conspicuousness of an arbitration clause has been sufficiently bothersome to state and regulatory agencies that several now require disclosure of the clause either on the front of the document or directly above the signature line. See Financial Industry Regulatory Authority (FINRA) Rule 2268 (requiring that disclosure be in bold directly above the signature line), and S.C. Code § 15-48-10(B)(mandating that for an arbitration clause to be valid, disclosure must be rubber stamped on the first page or typed in UNDERLINED CAPITAL LETTERS).

standard adhesion contract that Matson gives to co-advisors like Brooks to use in signing up clients like Plaintiff. Plaintiff did not have an opportunity to negotiate any of the Agreement's terms. The contract was presented in a "take it or leave it" manner by Brooks and Plaintiff was merely directed where to sign by Brooks.

Second, although Plaintiff was sixty-two (62) years old at the time he entered the contract, he had never contracted with an investment company before doing so with Brooks and Matson. According to counsel at oral argument, Plaintiff's IRA was originally managed by his employer, which was set up when he began working at the Savannah River Site twenty-two (22) years ago. Matson agreed to serve as Plaintiff's attorney in fact and co-adviser and had a fiduciary relationship. Plaintiff was inexperienced in entering into investment agreements.

Finally, Brooks nor Matson took the time to go over the Agreement beyond confirming Plaintiff's investment strategy. The Arbitration clause was never disclosed to the Plaintiff and there was no meeting of the minds as to this provision. A knowing and voluntary waiver of the right to a jury trial and committing to binding arbitration is a significant provision of any agreement and requires specific disclosure to be valid. *See Morrison v. Circuit City Stores, Inc.*, 317 F.3d 646 (6th Cir. 2003) (en banc)[13]. The adhesion contract could very easily have required the provision to be initialed or signed, as it did with multiple other provisions in the Agreement. As indicated herein, Plaintiff was not aware of the Arbitration clause nor was it ever brought to his attention before he filed this suit. Plaintiff met with Brooks who confirmed Plaintiff's investment strategy and then requested that Plaintiff sign the documents necessary for Brooks and Matson to serve a co-advisers of Plaintiff's account with Matson providing the investment

[13] In determining whether an employee "knowingly and voluntarily" waived the right to sue in court, the court considers: "(1) plaintiff's experience, background, and education; (2) the amount of time the plaintiff had to consider whether to sign the waiver, including whether the employee had an opportunity to consult with a lawyer; (3) the clarity of the waiver; (4) consideration for the waiver; as well as (5) the totality of the circumstances." *Morrison v. Circuit City Stores, Inc.*, 317 F.3d 646 (6th Cir. 2003) (en banc). Note that these factors track almost identically with the factors necessary to prove unconscionability.

MKE #9

management services and Brooks providing the relationship services. There was no voluntary and knowing waiver of Plaintiff's right to sue in court and to his right to a jury trial.

Based on the above, this Court finds the arbitration clause procedurally unconscionable.

iii. Matson's Authority is Distinguishable

Defendant Matson has relied on two Ohio cases, *ABM Farms, Inc. v. Woods*, 81 Ohio St. 3d 498, 692 N.E.2d 575 (1998) and *New Hope Cmty. Church v. Patriot Energy Partners*, L.L.C., 2013-Ohio-5882, to support its argument that the clause is a valid agreement to arbitrate and is not unconscionable.

In *ABM Farms,* the Court upheld an arbitration clause that was disclosed conspicuously in **bold type** directly above the contracting party's signature. *ABM Farms, Inc.*, 81 Ohio St. 3d at 499, 692 N.E.2d at 578-79. Further, *New Hope Cmty. Church* involved an arbitration clause that was in a lease where proposed amendments and the benefit of the bargain could occur in an arm's length transaction. *New Hope Cmty. Church,* 2013-Ohio-5882. There was evidence presented to the Court that amendments were proposed and bargained for. *Id.*

Here, unlike in *ABM Farms*, there was no bold disclosure statement above the signature line, no conspicuous type anywhere in the document to draw attention to the clause, and the clause was on page thirty-one (31) of a thirty-nine (39) page standard form contract. Further, unlike in *New Hope Cmty. Church*, the Agreement here was one of adhesion and there was no opportunity to bargain or negotiate for different terms. Plaintiff had to sign and initial multiple pages, none of which contained a conspicuous disclosure statement indicating that an arbitration clause was contained in the Agreement. There was no arm's length transaction, no meeting of the minds on anything except the investment strategy and the bargaining power was unequal.

MKE #10

Therefore, I do not find these cases persuasive and I find them to be distinguishable from the case at issue here.

iv. Conclusion

In sum, the Arbitration clause at issue is both substantively and procedurally unconscionable and Matson has not provided any authority to refute this finding; therefore, Defendant Matson's Motion to Stay and Compel Arbitration is DENIED.

2. JUDICIAL ECONOMY MERITS EQUITABLE RELIEF

Not only is the Arbitration clause invalid as a matter of law, as indicated above, I also find it invalid and unenforceable based on equity. This case involves a scheme that was facilitated by Brooks, as agent, co-advisor, and co-fiduciary with Matson and other Defendants, while Brooks was operating in Aiken, South Carolina. Defendant Matson is not the only defendant in this action. As indicated by the above caption, there are multiple parties which are before this Court. Bifurcating this case into two separate proceedings would be inefficient, prohibitively expensive and against judicial economy. Further, requiring the Plaintiff, who lost his entire life savings, to litigate on two fronts with different parties for the same losses would be inequitable.

The Ohio code of laws provides for equitable relief under these facts. The arbitration provision of the Ohio Revised Code provides:

> Revised Code § 2711.01(A) :A provision in any written contract, except as provided in division (B) of this section, to settle by arbitration a controversy that subsequently arises out of the contract, ... shall be valid, irrevocable, and enforceable, **except upon grounds that exist at law or in equity for the revocation of any contract.** (emphasis added).

Therefore, this court finds the Arbitration clause at issue unenforceable and invalid based on equity. It will be unfair, unduly burdensome, and a waste of judicial economy to require

Plaintiff to arbitrate his claims with Matson while litigating his claims in a different forum against the other Defendants.

Based on all of the above, I hereby **DENY** Defendant Matson Money, Inc.'s Motion to Stay and Compel Arbitration.

IT IS SO ORDERED.

The Honorable Doyet A. Early, III
Presiding Judge
Second Judicial Circuit

October 17, 2014
Bamberg, SC

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

FOR THE SECOND JUDICIAL CIRCUIT

C/A No.: 2014-CP-02-00079

James Loftis,

Plaintiff,

Vs.

J. Brooks Financial, Inc.; Brooks Real Estate Holdings, LLC; High Street Securities, Inc.; Matson Money, Inc.; Equity Institutional, f/k/a Sterling Trust, A Division of Equity Trust Co.; and Jonathan Brooks,

Defendants.

ORDER

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Lei Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this 16th day of March, 2015.
Lei Godard, C.C.C.P.&G.S.
Deputy Clerk

FILED March 16 2015
Lei Godard
C.C.C.P.&G.S.
Deputy Clerk
12:50 pm

This matter comes before the Court upon Defendant Matson Money, Inc.'s Rule 59(e) Motion for Reconsideration. A hearing was held on December 15, 2014 at the Barnwell County Courthouse. Appearing on behalf of Matson Money, Inc. was John T. Lay, Jr., Esquire. Appearing on behalf of James Loftis was Tom Young, Jr., Esquire. After considering the issues raised by Defendant Matson Money in its Rule 59(e) Motion, and diligent review of the record, memoranda, case law, exhibits, and arguments of counsel, I deny Defendant Matson Money's Motion to Reconsider and uphold my denial of Defendant Matson Money's Motion to Stay and Compel Arbitration.

FACTS[1]

Defendant Matson Money, Inc. ("Matson") is an Ohio-based company. Plaintiff James Loftis is a resident of Aiken County, South Carolina. Plaintiff, Jonathan Brooks ("Brooks"), and Matson executed the Investment Management Agreement ("Agreement") in January 2011. In

[1] The Court adopts these facts for purposes of this Order.

that Agreement, Matson and Brooks agreed to serve as co-advisers and to provide investment advice and services pursuant to Plaintiff's stated objectives. Similarly, Plaintiff agreed to invest his retirement savings in a "moderate risk" portfolio with a goal of "capital preservation." Acting under the Agreement, Matson would provide "discretionary management services" for Plaintiff's retirement savings Brooks was to provide "relationship and suitability services."[2] The retirement savings represented Plaintiff's entire retirement savings from over twenty-two (22) years of work at the Savannah River Site. The Agreement also gave Matson, through its Matrix Division, the power to invest and reinvest Plaintiff's savings and to act as Plaintiff's attorney in fact.[3]

The Agreement is thirty-nine (39) pages long and neither Matson nor Brooks discussed any specific provisions with the Plaintiff other than his investment strategy reflected in the Agreement as "moderate risk" with a goal of "capital preservation." Plaintiff was instructed to initial and sign the Agreement on various pages. None of these pages mentioned or referred to the Arbitration clause that applied to the Plaintiff. The Agreement was a standard form contract containing this Arbitration clause on page thirty-one (31):

> Account Owner agrees that any controversy arising from or relating to this Agreement (including any controversy between Matson Money, the Co-Advisor or your Co-Advisor Representative and Account Owner), arising from or relating to any account of or transaction with or for Account Owner or the construction, performance or breach of this or any other agreement between Account Owner and Matson Money, whether entered into before or after the date hereof, will be submitted to and settled by arbitration in accordance with the rules then in effect of the American Arbitration Association. Any arbitration shall be held in the County of Hamilton, State of Ohio. However, this paragraph does not constitute a waiver of any right by the Advisers Act, including the right to choose the forum, whether arbitration or adjudication in which to seek dispute resolution. The award of the arbitrators, or of the majority of them, will be final, and judgment on any

[2] The Agreement as produced by Matson Money is attached to the Affidavit of Mark G. Hanchet, filed April 25, 2014, as Exhibit B; that Agreement is missing pages 1, 8-19, and 34; these relevant portions for this citation are at Matson Money 000013.

[3] *Id.* at Matson Money 000014.

award rendered by the arbitrators may be entered in any court having jurisdiction thereof.[4]

The above Arbitration clause is written in the same type and size of font as the rest of the Agreement. This page did not require Plaintiff's initials or signature. No conspicuous language existed elsewhere in the Agreement alerting Plaintiff to the existence of the Arbitration clause on page 31.

Plaintiff was not aware of the Arbitration clause until after all of the wrongful alleged acts and omissions which are the subject of this litigation took place.[5] Plaintiff was not aware that the Agreement requires him to dispute any issue through binding arbitration in Hamilton County, Ohio even though the Agreement was executed in Brooks' office in Aiken, South Carolina. Plaintiff was not allowed to negotiate the Agreement or to propose changes and/or additional terms to the Agreement.

The Agreement also does not specifically disclose the costs to enter arbitration, hire the arbitrator(s), and then to conduct the arbitration. Rather, the Agreement's fine print says the arbitration will be "in accordance with the rules then in effect of the American Arbitration Association."[6] Plaintiff's counsel indicated in his Memorandum and oral arguments the excessive fees and costs of filing for arbitration under the American Arbitration Association

[4] *Id.* at Matson Money 000022.

[5] As to the arbitration issue herein, this Court ruled otherwise in a similar case captioned *Schrader v. Brooks*, et al., (2014-CP-02-0206) by Order entered March 9, 2015. Notably, in *Schrader*, the Plaintiffs did not file any affidavits to oppose Matson Money's Motion to Compel Arbitration because Plaintiffs "had read the arbitration clause before signing the Agreement." See Order, March 9, 2015, p. 2. The *Schrader* plaintiffs also did not sue other non-Brooks defendants. Further, the *Schrader* plaintiffs never objected to the terms of the arbitration clause despite knowing of its existence. Order, March 9, 2015, p. 4.

[6] *Id.* at Matson Money 000022.

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(AAA) rules. This Court takes judicial notice of these costs which are published on the AAA website.[7]

While Brooks and Matson were co-advisers to Plaintiff, Plaintiff lost all of his retirement savings totaling over $500,000.00. Matson ceased to be a co-adviser for Plaintiff on December 25, 2012. Brooks' legal troubles began in late February 2013. This lawsuit was filed against multiple defendants and Matson seeks to compel arbitration as to Plaintiff's claims against only Matson. Matson and Plaintiff agree that the record is complete for purposes of deciding the Arbitration issue.

LAW

The Agreement containing the Arbitration clause herein is governed by Ohio law.[8] An arbitration clause is generally "valid, irrevocable, and enforceable, except upon grounds that exist at law or in equity for the revocation of any contract." R.C. 2711.01(A), *Pinette v. Wynn's Extended Care, Inc.*, 9th Dist. No. 21478, 2003-Ohio-4636, 2003 WL 22047686, at ¶ 7; *see also*, 9 U.S.C § 2 (2013). Accordingly, the trial court must make a determination as to the validity of the arbitration clause. *Eagle v. Fred Martin Motor Co.*, 809 N.E.2d 1161, 157 Ohio App.3d 150, 2004-Ohio-829 (Ohio App. 9 Dist. 2004). In making this determination, trial courts should consider basic contract principles and defenses to ensure a meeting of the minds to arbitrate existed and that such an agreement was not unconscionable. *See, Taylor Bldg., Corp of Am. v. Benfield*, 117 Ohio St. 3d 352, 884 N.E.2d 12, ¶ 3.

[7] The fees are in excess of $10,225 for a single arbitrator and $11,750 for a panel of three arbitrators just to get started. This does not include the fees to pay the arbitrators for their time or the fees to rent the hearing room, etc.. *See*, https://www.adr.org/aaa/ShowPDF?doc=ADRSTG_004102

[8] Notably, under South Carolina law, the Arbitration clause herein is facially invalid because it is not rubber stamped or disclosed in conspicuous type on the first page of the document.

DISCUSSION

I. UNCONSCIONABILITY IS A GENERAL CONTRACT DEFENSE AND ITS APPLICATION HERE DOES NOT VIOLATE THE FAA.

Defendant Matson Money, Inc. ("Matson Money") has argued that the FAA applies to invalidate or preempt the application of unconscionability as a defense in the present case. This argument is misplaced. The FAA and the Ohio arbitration statutes are identical and the general contract defense that this Court used in denying Matson Money's Motion to Compel and Stay Arbitration is appropriate.[9] In *Jamison v. LDA Builders, Inc.*, 2013 Ohio 2037 (Ohio App., 2013), the court, in holding that the FAA did not preempt the plaintiff from using unconscionability as a defense, wrote as follows:

> We note that "[i]n determining whether the parties formed a valid arbitration agreement, 'state law may be applied if that law arose to govern issues concerning the validity, revocability, and enforceability of contracts generally, although the [Federal Arbitration Act] preempts "state laws applicable to only arbitration provisions."' Great Earth Cos. v. Simons, 288 F.3d 878, 889 (6th Cir. 2002) (quoting Doctor's Assocs., Inc. v. Casarotto, 517 U.S. 681, 686-87, * * * (1996)). 'State law governs "generally applicable contract defenses (to an arbitration clause), such as fraud, duress, or unconscionability."' *Id.* at 889 (quoting *Casarotto, supra,* 517 U.S. at 687)." *Price v. Taylor*, 575 F.Supp.2d 845, 851 (N.D.Ohio 2008). {¶67} *Accordingly, since the Jamisons raised the contract defense of unconscionability, the trial court did not err in applying Ohio law to determine whether the arbitration clause at issue was unconscionable, both substantively and procedurally. Jamison*, 2013 Ohio 2037 at ¶¶66-67. (emphasis added.)

The FAA preempts state arbitration-specific laws that are inconsistent with the FAA and the liberal federal policy favoring arbitration agreements. However, if there is a valid defense to an arbitration clause, such as unconscionability, that is generally applied to all contracts, then a trial court may invalidate the clause without being in violation of the FAA. See 9 U.S.C. § 2, *see also, Sonic-Calabasas A., Inc. v. Moreno*, 57 Cal. 4th 1109, 1142, 311 P.3d 184, 201 (Cal., 2013) (providing a comprehensive analysis on why unconscionability is still a valid defense that does

[9] The Investment Management agreement requires the application of Ohio law.

not violate the FAA after the *Concepcion* case). Here, Plaintiff has alleged the general contract defense of unconscionability and not a state arbitration-specific rule of law. I find that the FAA does not operate to preempt the use of the generally applicable contract defense of unconscionability under these facts.

II. MATSON MONEY'S RELIANCE ON *CONCEPCION* IS MISPLACED

In its argument for reconsideration, Matson Money cites *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740 (2011) for support that the FAA should preempt Ohio law. I find that *Concepcion* is distinguishable from the case herein as follows:

In *Concepcion*, the arbitration clause required arbitration of all disputes and prohibited any party from bringing such claims in a representative capacity. The Concepcions attacked the arbitration clause by alleging that the class-action waiver provision was unconscionable based on a California common law rule known as the *Discover Bank* rule.[10] After the lower courts ruled with the Concepcions, the United States Supreme Court ruled that the California common law *Discover Bank* rule interfered with arbitration in violation of the FAA. *Id.* at 1755.

Here, unlike as in *Concepcion*, Plaintiff is not asserting a specific state law or rule to invalidate this clause. Rather, Plaintiff asserts the general contract defense of unconscionability which is allowed under both the plain language of the FAA and the Ohio arbitration law. Therefore, while the FAA preempts the California specific common law rule in *Concepcion*, the FAA here does not preempt the general contract defense of unconscionability.[11]

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[10] The question of law in the Concepcion case was "whether §2 preempts California's rule classifying most collective-arbitration waivers in consumer contracts as unconscionable." *Concepcion*, 131 S. Ct. 1740, 1748, 179 L. Ed. 2d 742, 750.

[11] Plaintiff has analyzed the arbitration clause under Ohio case law; however, that cannot be a basis for finding the defense of unconscionability to be an arbitration-specific defense. Plaintiff has only analyzed the clause under Ohio law because of the choice of law provision in the overall agreement.

III. THE ARBITRATION CLAUSE IS UNCONSCIONABLE

"Arbitration clauses are unconscionable where the 'clauses involved are so one-sided as to oppress or unfairly surprise [a] party'." *Eagle*, 809 N.E.2d 1161, 157 Ohio App.3d 150, 2004-Ohio-829 (Ohio App. 9 Dist. 2004) (citations omitted); *see also*, *Orlett v. Suburban Propane* (1989), 54 Ohio App.3d 127, 129, 561 N.E.2d 1066 (explaining that an unconscionable arbitration clause exists "[when with respect to the arbitration clause itself] one party has been misled as to the 'basis of the bargain,' where a severe imbalance in bargaining power exists, or where specific contractual terms are outrageous").

Ohio has enumerated a test[12] for determining whether an arbitration clause is unconscionable. *New Hope Cmty. Church v. Patriot Energy Partners, L.L.C.*, 2013 WL 6921490, at *4 (Ohio Ct. App. Dec. 20, 2013). For an arbitration clause to be deemed unconscionable, it must be both substantively and procedurally unconscionable. *Taylor Bldg. Corp. of Am.*, 117 Ohio St. 3d 352, at ¶ 42; *See also*, *Collins v. Click Camera & Video, Inc.* (1993), 86 Ohio App.3d 826, 834, 621 N.E.2d 1294 (finding that ""(1) unfair and unreasonable contract terms, i.e., 'substantive unconscionability,' and (2) individualized circumstances surrounding each of the parties to a contract such that no voluntary meeting of the minds was possible, i.e., 'procedural unconscionability[.]' ... create what is, in essence, a two-prong test of unconscionability.").

Based on the below analysis, I find the arbitration clause at issue here to be both substantively and procedurally unconscionable.

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[12] Although Ohio Law applies, the South Carolina test is similar to the Ohio test. In *Simpson v. MSA of Myrtle Beach, Inc.*, the Court explained that unconscionability is defined as "the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them. 373 S.C. 14, 24-25, 644 S.E.2d 663, 668 (2007), (*citing Carolina Care Plan, Inc. v. United Healthcare Servs.*, Inc., 361 S.C. 554, 606 S.E.2d 752, 757 (2004). The South Carolina test used similar factors to those specified in the Ohio Test.

A. Substantive Unconscionability

Whether an arbitration clause is substantively unconscionable requires an analysis of the terms of the provision itself and a determination of whether those terms are commercially reasonable. *Hayes v. Oakridge Home*, 122 Ohio St.3d 63, 2009-Ohio-2054, 908 N.E.2d 408, ¶ 33. Ohio has not adopted a bright-line test for determining substantive unconscionability, therefore, much like South Carolina, determining substantive unconscionability is a case-by-case analysis and depends on the wording of the clause.

Some of the factors typically considered by Ohio courts to determine whether a clause is substantively unconscionable are: (1) the cost of arbitration; (2) the specificity of the provision, e.g., whether the rules governing arbitration and any required fees are disclosed; (3) the relative prominence of the provision, e.g., whether the arbitration clause is set forth in fine print buried within a larger contract or is contained in a separate document; and (4) whether the obligation to arbitrate applies equally to all parties. See, e.g., *Taylor Bldg Corp. of Am.*, ¶ 54-60; *Peltz*, 77th Dist. No. 06 BE 11, ¶ 47-48; *Robbins v. Country Club Ret. Ctr. IV, Inc.*, 7th Dist. No. 04 BE 43, 2005-Ohio-1338, ¶ 37; *Wascovich v. Personacare of Ohio*, 190 Ohio App. 3d 619, 2010-Ohio-4563, 943 N.E.2d 1030, ¶ 43-54 (11th Dist.); *Eagle v. Fred Martin Motor Co.*, 57 Ohio App. 3d 150, 2004-Ohio-829, 809 N.E.2d 1161 (9th Dist.); *Vanyo v. Clear Channel Worldwide*, 156 Ohio App. 3d 706, 2004-Ohio-1793, 808 N.E.2d 482, ¶ 20 (8th Dist.).

Matson Money argues that Plaintiff's arguments and this Court's previous holding that the arbitration clause is substantively unconscionable under Ohio law are erroneous. (See Defendant Matson Money's Supplemental Brief, December 30, 2014, pp. 6 – 12). I find that this argument is flawed based on the above factors and the following:

DOOE A-6

Here, the arbitration clause is substantively unconscionable. First, it does not disclose the prohibitive costs and fees required to arbitrate the case under the American Arbitration Association ("AAA") forum in Ohio. As to a court's review of prohibitive arbitration costs, the court in *Eagle v. Fred Martin Motor Co.*, noted that the United States Supreme Court adopted in *Green Tree Financial Corp.-Alabama v. Randolph*, 531 U.S. 79, 121 S.Ct. 513, 148 L.Ed.2d 373 (2000), a case-by-case approach to finding an arbitration clause unenforceable for not disclosing fees. *See Eagle*, 809 N.E.2d 1161, 157 Ohio App.3d 150, 2004-Ohio-829 (Ohio App. 9 Dist. 2004). In *Green Tree*, the court held that the party seeking to invalidate an arbitration agreement on the ground that arbitration would be prohibitively expensive bears the burden of showing the likelihood of incurring such costs. *Green Tree*, 531 U.S. at 91-92, 121 S.Ct. 513, 148 L.Ed.2d 373. For instance, in *Eagle*, the Court found that the Arbitration clause was substantively unconscionable when it reconciled the undisclosed arbitration costs of around $4,000 to $6,000 under the National Arbitration Forum with the Plaintiff's financial situation.

Like in *Eagle*, the fees associated with arbitration here under the AAA would be very high and a burden on the Plaintiff who has already lost all of his retirement savings due to the acts and omissions alleged in the pleadings.[13] It would be substantively unconscionable to require the Plaintiff, after losing all of his more than twenty-two years of retirement savings, to incur these fees when he could bring the same action in this Court for a filing fee of $150.00. Under the AAA, the initial standard filing fee in a commercial arbitration on a claim valued between $500,000.00 and $1,000,000.00 would be $6,200.00 and the final fee would be $2,500.00.[14] This does not include the fee to hire the arbitrators which requires a non-refundable fee of $3,050 for a three (3) panel board or a non-refundable fee of $1,525.00 for a single

[13] Plaintiff's counsel represented this at the hearing and the Affidavit of James Loftis confirms that he lost all of his retirement savings in the alleged scheme which is the underlying basis for this lawsuit.
[14] The filing fee is split into two payments.

arbitrator. Further, the Arbitrators are then compensated at the hourly rate for their time.[15] These costs coupled with the travel costs Plaintiff would incur to arbitrate the claim in Ohio clearly meet the burden to find that the failure to disclose these costs renders this arbitration clause one-sided, oppressive, prohibitive and invalid. Plaintiff lost his entire retirement savings that he had accumulated over twenty two (22) years at the Savannah River Site. Therefore, this Court finds that requiring the Plaintiff to arbitrate this case in another forum, to pay all of the above mentioned costs, and then to have to litigate the same facts and allegations against the other named co-defendants here in Aiken, South Carolina would be an unequitable burden and is substantively unconscionable.

Second, the arbitration clause is substantively unconscionable based on its location and the size of the type/font in the Investment Agreement. The clause is located on page thirty-one (31) of a thirty-nine (39) page contract. The type and size of the font is the same as the rest of the contract and there are no distinguishing factors. Further, there were no indications or disclosures anywhere in the contract that the Arbitration clause was included.[16] Notably, the Plaintiff had to sign and initial multiple places in the Agreement where he was disclosed certain information regarding his investment strategy and Matson Money's involvement; however, Plaintiff was not required to sign or to initial the arbitration clause or any other part of the Agreement that disclosed its existence.

Third, industry standards indicated that this arbitrations clause was substantively unconscionable. The Financial Industry Regulatory Authority is the main authority in the financial industry. Therefore, any rule promulgated by FINRA is indicative of the financial

[15] Note that this does not include other fees such as renting a hearing room and or the cost to schedule a hearing.
[16] The conspicuousness of an arbitration clause has been sufficiently bothersome to state and regulatory agencies that several now require disclosure of the clause either on the front of the document or directly above the signature line. See Financial Industry Regulatory Authority (FINRA) Rule 2268 (requiring that disclosure be in bold directly above the signature line), and S.C. Code § 15-48-10(B)(mandating that for an arbitration clause to be valid, disclosure must be rubber stamped on the first page or typed in UNDERLINED CAPITAL LETTERS).

industry and what standards are considered commercially reasonable. The fact the FINRA requires disclosure of the arbitration agreement in bold directly above the signature line is telling and is substantial evidence of the substantive unconscionability of this arbitration clause.

Therefore, based on the above, I find Matson Money's arguments for reconsideration unpersuasive and uphold my original ruling that the arbitration clause is substantively unconscionable.

B. Procedural Unconscionability

Whether an arbitration clause is "[p]rocedural[ly] unconscionable[sic] concerns the formation of the agreement and occurs when no voluntary meeting of the minds is possible." *Ball v. Ohio State Home Servs., Inc.*, 168 Ohio App. 3d 622, 2006-Ohio-4464, 861 N.E.2d 553, ¶ 17. Hence, Courts must consider factors bearing on the relative bargaining position of the contracting parties. *Taylor Bldg. Corp. of Am.*, 117 Ohio St. 3d 352 at ¶ 44.

Such factors to consider include the parties' "respective ages, educational backgrounds, intelligence, business acumen and experiences, along with who drafted the contract, whether alterations in the printed terms were possible and whether there were alternative sources of supply for the services rendered." *Id.*

Here, the Arbitration clause is procedurally unconscionable. First, the Plaintiff entered into an Investment Management Agreement that was drafted by Matson and appears to be a standard adhesion contract that Matson gives to co-advisors like Brooks to use in signing up clients like Plaintiff. Plaintiff did not have an opportunity to negotiate any of the Agreement's terms. The contract was presented in a "take it or leave it" manner by Brooks and Plaintiff was merely directed where to sign by Brooks.

Second, although Plaintiff was sixty-two (62) years old at the time he entered the contract, he had never contracted with an investment company before doing so with Brooks and Matson. According to counsel at oral argument, Plaintiff's IRA was originally managed by his employer, which was set up when he began working at the Savannah River Site twenty-two (22) years ago. Matson agreed to serve as Plaintiff's attorney in fact and co-adviser and had a fiduciary relationship. Plaintiff was inexperienced in entering into investment agreements.

Third, Brooks nor Matson took the time to go over the Agreement beyond confirming Plaintiff's investment strategy. Although Matson Money alleges that Plaintiff had a week to review the agreement before signing it, (Matson Money Brief, p. 14.), this alleged fact is not in the record and is not accurate. The record indicates that Plaintiff met with Brooks on December 28, 2010 to discuss Brooks' becoming his financial advisor; however, he was not provided a copy of the Matson Money agreement. Loftis was never presented the investment agreement until January 4, 2011 when neither Matson Money nor Brooks indicated to him that there was an arbitration clause in the agreement. *See* Loftis Aff., Sept. 24, 2014.

Finally, a knowing and voluntary waiver of the right to a jury trial and committing to binding arbitration is a significant provision of any agreement and requires specific disclosure to be valid. *See Morrison v. Circuit City Stores, Inc.*, 317 F.3d 646 (6th Cir. 2003) (en banc)[17]. The adhesion contract could very easily have required the provision to be initialed or signed, as it did with multiple other provisions in the Agreement. As indicated herein, Plaintiff was not aware of the Arbitration clause nor was it ever brought to his attention before he filed this suit. There was no voluntary and knowing waiver of Plaintiff's right to sue in court and to his right to a jury trial.

[17] In determining whether an employee "knowingly and voluntarily" waived the right to sue in court, the court considers: "(1) plaintiff's experience, background, and education; (2) the amount of time the plaintiff had to consider whether to sign the waiver, including whether the employee had an opportunity to consult with a lawyer; (3) the clarity of the waiver; (4) consideration for the waiver; as well as (5) the totality of the circumstances." *Morrison v. Circuit City Stores, Inc.*, 317 F.3d 646 (6th Cir. 2003) (en banc). Note that these factors track almost identically with the factors necessary to prove unconscionability.

In their Rule 59(e) motion, Matson Money cites *Peltz v. Moyer*, 2007 Ohio 4998 (Ohio App., 2007) in support of its contention that the arbitration clause is not procedurally unconscionable. This law is distinguishable because the Ohio court upheld the *Peltz* arbitration clause after it explicitly found that the "contract *sufficiently highlighted* the arbitration clause and placed Appellees on notice of the governing rules." *Id.* (emphasis added). That did not take place here as indicated above.

Therefore, I find Matson Money's arguments for reconsideration unpersuasive and uphold my original ruling that the arbitration clause is procedurally unconscionable.

IV. JUDICIAL ECONOMY MERITS EQUITABLE RELIEF

Not only is the Arbitration clause invalid as a matter of law, as indicated above, I also find it invalid and unenforceable based on equity. This case involves a scheme that was facilitated by Brooks, as agent, co-advisor, and co-fiduciary with Matson and other Defendants, while Brooks was operating in Aiken, South Carolina. Defendant Matson is not the only defendant in this action. As indicated by the above caption, there are multiple parties which are before this Court. Bifurcating this case into two separate proceedings would be inefficient, prohibitively expensive and against judicial economy. Further, requiring the Plaintiff, who lost his entire life savings, to litigate on two fronts with different parties for the same losses would be inequitable.

The Ohio code of laws provides for equitable relief under these facts. The arbitration provision of the Ohio Revised Code provides:

> Revised Code § 2711.01(A) :A provision in any written contract, except as provided in division (B) of this section, to settle by arbitration a controversy that subsequently arises out of the contract, ... shall be valid, irrevocable, and enforceable, **except upon grounds that exist at law or in equity for the revocation of any contract.** (emphasis added).

Therefore, this court finds the Arbitration clause at issue unenforceable and invalid based on equity. It will be unfair, unduly burdensome, and not a wise use of judicial economy to require Plaintiff to arbitrate his claims with Matson while litigating his claims in a different forum against the other Defendants.

Based on all of the above, I hereby **DENY** Defendant Matson Money, Inc.'s Rule 59(e) Motion for Reconsideration.[18]

IT IS SO ORDERED.

The Honorable Doyet A. Early, III
Presiding Judge
Second Judicial Circuit

March 20, 2015
Bamberg, SC

[18] I also rely upon my original Order denying the Defendant Matson Money's Motion to Stay and Compel Arbitration.

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP0200079

James Loftis	J Brooks Financial Inc Brooks Real Estate Holdings Llc High Street Securities Inc Matson Money Inc Equity Institutional Sterling Trust Equity Trust Co
PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ 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. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ 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 JUDGMENT 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 (List amount(s) below)

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.**

FILED March 26 2015
Liz Godard
C.C.C.P.&G.S.
Clerk
12:50pm

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

Circuit Court Judge **Judge Code** **Date**

For Clerk of Court Office Use Only

This judgment was entered on **3-26-2015**, and a copy mailed first class or placed in the appropriate attorney's box on **3-26-2015**, to attorneys of record or to parties (when appearing pro se) as follows:

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Liz Godard by Lisa Comeaux

Court Reporter **Liz Godard - Clerk of Court**

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.