THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal, Circuit Court Judge
The Honorable DeAndrea G. Benjamin, Circuit Court Judge
James P. Kelly, Arbitrator

Appellate Case No. 2017-000994
Civil Action No. 2014-CP-40-06017

Rajinder Parmar, ... Respondent,

v.

Balbir S. Minhas, Midlands Gastroenterology, PC, and Midlands Endoscopy Center, LLC, ...
..... Appellants.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

Respondent ("Parmar") filed a demand for arbitration as well as a declaratory judgment action in circuit court seeking an order compelling arbitration. Contemporaneously with the filing of the Declaratory Judgment Action, Parmar filed a Motion to Compel Arbitration. Appellants Midlands Gastroenterology, PC ("MG"), Midlands Endoscopy Center, LLC ("MEC"), and Balbir S. Minhas ("Minhas") asserted various counterclaims and moved to dismiss the declaratory judgment action on the sole ground that the arbitration agreement was terminated. Respondent disagreed and both parties briefed the issue.

On July 22, 2015, the circuit court referred Respondent's claims and Appellants' counterclaims to arbitration. The arbitrator issued an award in favor of most but not all of Respondent's claims and denied Appellants' counterclaims. Appellants moved to vacate or modify the award and Respondent moved to confirm the award. On March 2, 2017, the circuit court confirmed the arbitration award and entered judgment in favor of Respondent for the amount awarded plus post-award, pre-judgment interest from the date of the award through the date of the judgment.

FACTS

Dr. Parmar was a 50% shareholder of Midlands Gastroenterology, PC ("MG") and 50% member of Midlands Endoscopy Center, LLC ("MEC") as well as an employee of each entity. Parmar purchased his interests in MG and MEC on June 30, 2011. (R pp. 118-120; R. pp. 121-123) (Collectively the "2011 Purchase Agreements"). The purchase price did not include the existing A/R or the cash on hand in the operating accounts at the time of Parmar's acquisition. (R. p. 3). Indeed, Minhas received the benefit, use and distribution of the A/R and the cash on hand at the time of the acquisition. *Id.*

After working together for just under three years, the parties' relationship dissolved. On March 3, 2014, Minhas decided to buyout Parmar's interest in both MG and MEC. A dispute arose between Parmar and Minhas regarding their respective rights and obligations in MG and MEC. Both the MEC Operating Agreement and the MG Shareholder Agreement (collectively the "governing Agreements") mandate binding arbitration. (R. p. 71; R. p. 102).

At the time, the parties disagreed as to the amount Parmar was entitled to receive for the outstanding accounts receivable for 2011-2014, cash on hand in the bank accounts for both entities, his retirement amounts, a Nissan Murano automobile and other matters ("the Disputes"). (R. p. 32 at ¶13). In connection with the Disputes, Parmar asserted Minhas admitted in a number of emails from 2012-2014 that if he bought out Parmar's interests in the entities that Parmar would be entitled to his share of A/R and bank account balances at the time of the purchase of his interests. (R. pp. 30-36). This method of "buy-out" would equate to the method of "buy-in" in 2011 when Minhas received all of the benefit of the A/R and bank account balances existing at the time of "buy-in." *Id.*

After the issues between Parmar and Appellants ripened into the Disputes, the parties agreed that Parmar would sell his shareholder and member interests in the two entities back to Minhas and that all other matters in dispute would remain to be resolved in either "mediation or arbitration." (R. pp. 331-332). Contemporaneous with the closing, via email in direct response to the request that he affirm that the remaining Disputes would not be affected by the sale of Parmar's shares and member interests to Minhas, Edward White, the General Corporate Counsel for MG and MEC, confirmed the understanding that they agreed to first mediate and then arbitrate the Disputes per the terms of the Agreement. *Id.* The email was sent immediately prior to the closing

and Parmar's agreement to execute the transfer documents. Minhas's private counsel was copied on the email and did not object. *Id.*

In direct reliance on White's admissions made on behalf of MG, MEC and Minhas, Parmar sold his interests in MG and MEC on May 30, 2014 (R. pp. 134-135; R. pp. 137-138) (collectively the "2014 Agreements"), received the sale consideration, and left open the remaining Disputes to be mediated or arbitrated. (R. pp. 588-591). After the closing, Appellants directed the MG and MEC corporate accountant, Donny Burkett, to calculate the final A/R, bank account balances and the final accounting of Parmar's ownership in MG and MEC as of May 30, 2014.[1] (R. p. 331).

On June 2, 2014, Cory Manning, a litigation attorney for MG and MEC, sent an email stating he would be scheduling mediation in advance of any arbitration. (R. pp. 333-336). By letter dated July 15, 2016, Joel Collins, Minhas's private counsel, indicated that Minhas would rather arbitrate the disputes pursuant to Section 8.11 of the Shareholders Agreement instead of mediating. (R. p. 337). Collins finally agreed to mediate the Disputes on behalf of his clients, and a mediation date was set for September 29, 2014. However, on August 26, 2014, Collins abruptly cancelled the mediation. (R. p. 339).

After retaining new counsel and reneging on the agreement to mediate, Parmar was forced to file a Demand for Arbitration with the AHLA on September 16, 2014. (R. pp. 105-117). In his Demand, Parmar asserted causes of action for breach of contract and breach of fiduciary duties. *Id.* Parmar alleged that the payments under section 3.8(ii) represented payments for his ownership interest only and that upon that sale and separation of the owners, Parmar was entitled to his

[1] Despite requesting these calculations, Appellants later argued the Disputes were extinguished upon the May 30, 2014 closing. (R. pp. 331-332). At the arbitration hearing, Parmar asserted that Minhas' direction to the accountant to calculate final A/R and bank account balance was further evidence of Parmar's rights to 50% of those accounts. (R. p. 354, line 11-p. 358, line 17). In other words, there would be no need to calculate those amounts if Minhas retained 100%.

distributional share of any surplus cash and his outstanding accounts receivable as a part of his regular compensation as an employee as well as his production interests incidental to his performance as a physician in the entities. Parmar plead that failure to pay such amounts gave rise to breach of contract and breach of fiduciary duties. (R. pp. 105-117).

On September 25, 2014, counsel for Minhas suddenly declined to arbitrate the matter and would not agree to accept service of the arbitration complaint (R. p. 34, ¶23). Parmar was forced to file a Declaratory Judgment Complaint[2] seeking arbitration and a contemporaneous Motion to Compel Arbitration. (R. pp. 30-36; R. pp. 140-141). On October 24, 2014, Appellants Answered the Complaint and asserted various counterclaims against Parmar. (R. p. 124).

In defending against the declaratory judgment action, Appellants argued there was no binding contractual provision that required arbitration of any dispute among the parties and that the parameters of the May 30, 2014 closing documents dealt with not only the sale of Parmar's interest in the two entities, but also all ancillary compensation matters contained in the Disputes.

On January 1, 2015, a hearing on Parmar's Motion to Compel Arbitration and on Appellants' Motion to Dismiss was held before the Honorable DeAndrea Benjamin. (R. p. 459). At the hearing, Parmar argued extensively that the MEC Operating Agreement and the MG Shareholders' Agreement contain valid arbitration provisions and that Appellants expressly agreed to arbitrate the Disputes before and after the May 30, 2014 closing (R. p. 462, line 25-p. 472, line 8). In addition, Parmar introduced the sworn affidavits of Edward White, Corey Manning, and Rajinder Parmar as evidence of Appellants' unequivocal agreement to arbitrate the Disputes.

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[2] In his Complaint, Parmar described the disputes between the parties in detail, alleging that "the parties disagreed as to the amount to be paid for Parmar's ownership interests and how much, if any, Parmar would be entitled to receive prior to the purchase date for outstanding accounts receivable…cash on hand in the bank accounts for both entities, his retirement account amounts a Nissan Murano automobile and other matters." (R. p. 30, ¶12).

(White Aff., R. p. 624; Manning Aff., R. p. 623; Parmar Aff., R. pp. 588-591). By order dated July 22, 2015, the Circuit Court granted Parmar's Motion to Compel Arbitration and referred issues in dispute referenced in the Demand for Arbitration as well as Appellants' counterclaims to binding arbitration. (R. pp. 27-29).

An arbitration hearing was held on December 8-9, 2015. Appellants never objected to the arbitrator's authority to consider the A/R and bank account issues at the hearing. The parties did not dispute that the Agreements define the buy-back price of Parmar's ownership interests in both MG and MEC as principal plus 4% interest. Rather, Parmar argued that the governing Agreements were ambiguous because they do not address or define other compensation aspects of the buyout, particularly how the accounts receivables and cash on hand in the operating accounts were to be divided (R. p. 354, line 11-p. 360, line 19). Parmar's claims for damages were detailed in a Pre-Hearing Brief, which outlined the basis for the claims and the source for such calculated amount. (R. pp. 266-274). The overwhelming extrinsic testimonial and documentary evidence submitted to the arbitrator supported Parmar's position as to the cash on hand, accounts receivable and MG production variance as well as the parties' intent as to Parmar's entitlement to these funds in connection with his separation from MG and MEC.

After the proceedings concluded, Appellants requested the decision be issued in the form of an unreasoned award. (R. p. 275). Ultimately, Parmar prevailed on the majority (but not all) of the Disputes and was awarded ½ of the accounts receivable, ½ the operating accounts and his production variance for 2013 and 2014. (R. pp. 25-26). Appellants' counterclaims were denied. *Id.*

ARGUMENT

I. The circuit court properly referred the Disputes to arbitration.

Determinations of arbitrability are subject to *de novo* review, but if any evidence reasonably supports the circuit court's factual findings, this court will not overrule those findings. *Simpson v. MSA of Myrtle Beach, Inc.*, 644 S.E.2d 663, 665, 373 S.C. 14 (2009); *McMillan v. Gold Kist, Inc.*, 353 S.C. 353, 577 S.E.2d 482 (Ct. App. 2003); *Evans v. Accent Manufactured Homes, Inc.*, 352 S.C. 544, 575 S.E.2d 74 (Ct. App. 2003); *Stokes v. Metro. Life Ins. Co.*, 351 S.C. 606, 609-10, 571 S.E.2d 711, 713 (Ct. App. 2002); *Liberty Builders, Inc. v. Horton*, 336 S.C. 658, 664-665, 521 S.E.2d 749, 753 (Ct. App. 1999).

To determine whether an arbitration clause applies to a dispute, the court must determine whether the factual allegations underlying the claim are within the scope of the arbitration clause. *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 597, 553 S.E.2d 110, 118 (2001) (citing *Hinson v. Jusco Co.*, 868 F.Supp. 145 (D.S.C. 1994); *S.C. Pub. Serv. Auth. v. Great W. Coal*, 312 S.C. 559, 437 S.E.2d 22 (1993)). The heavy presumption in favor of arbitrability requires that when the scope of the arbitration clause is open to question, a court must decide the question in favor of arbitration. *Landers v. Fed. Deposit Ins. Corp.*, 402 S.C. 100, 109, 739 S.E.2d 209, 213 (2013) (quoting *Am. Recovery Corp. v. Computerized Thermal Imaging, Inc.*, 96 F.3d 88, 94 (4th Cir. 1996) (quoting *Peoples Sec. Life Ins. Co. v. Monumental Life Ins. Co.*, 867 F.2d 809, 812 (4th Cir. 1989))).

A. The 2014 Agreements do not extinguish the parties' arbitration agreement.

The forum selection clauses in the 2014 Agreements do not invalidate or supersede the parties' arbitration agreement.

When determining the validity or existence of an arbitration agreement, South Carolina case law addressing contract formation applies. *Zabinski*, 346 S.C. at 596, 553 S.E.2d at 118

(Arbitration is a matter of contract). The arbitration clauses at issue are contained within the MG Shareholders' Agreement (R. pp. 82-104), which was executed contemporaneously with the 2011 Purchase Agreements, and the MEC Operating Agreement. (R. pp. 118-123; R. pp. 57-74; R. pp. 105-117). The MEC arbitration agreement contains a general obligation by the parties to subject any disagreement between them to arbitration:

> In the event of any controversy or claim ***arising out of or relating to this Agreement, or the breach, termination, or validity thereof***, the parties will attempt in good faith to resolve such controversy or claim. If the matter has not been resolved…the controversy shall be settled by binding arbitration which shall be conducted by a single arbitrator in accordance with the American Health Lawyers Association Alternative Dispute Resolution Rules for Arbitration ("AHLA Rules").

(R. p. 71). (emphasis added). The MG arbitration agreement contains similar language. (R. p. 102). These arbitration provisions mean the parties must arbitrate the Disputes if the arbitration agreement remains in force.

After their relationship deteriorated, Minhas decided to buy back Parmar's interest in both entities pursuant to section 3.8(ii) of the MG Shareholders' Agreement. On May 30, 2014, Parmar sold his Class A Units in MEC and his shares in MG back to Minhas. (R. pp. 134-135; R. pp. 137-138). Appellants contend the 2014 Agreements supersede the above-quoted agreement to arbitrate. Both the 2014 MEC Agreement and the 2014 MG Agreement contain identical forum selection clauses:

> This Agreement shall be interpreted, construed and enforced in accordance with the laws of South Carolina. Any dispute arising between any of the parties hereto ***regarding the subject matter of this Agreement*** shall be subject to the exclusive jurisdiction of the federal and state courts within the State of South Carolina.

Id. (emphasis added). The 2014 MG Agreement contains a merger clause that is equally narrow. The merger clause provides:

> This Agreement is the entire agreement among the parties hereto ***with respect to the transaction contemplated hereby*** and supersedes all other prior or contemporaneous agreements or understandings, whether written or oral, among the parties, or any of them, ***with respect to the subject matter hereof***.

(R. p. 135) (emphasis added). Notably, 2014 MEC Agreement does not contain a merger clause. (R. pp. 137-138).

Nothing in the plain language of the 2014 Agreements indicates an intention to substitute the MG Shareholders' Agreement or the MEC Operating Agreement and the arbitration provisions therein. *See, e.g., Hill v. Ricoh Ams. Corp.*, 603 F.3d 766, 778 (10th Cir. 2010) (holding that a subsequent agreement did not supersede a prior agreement where the former did "not explicitly state that [the prior agreement was] nullified"). In fact, the MG Shareholders' Agreement provides it may be terminated only by written agreement or bankruptcy of the corporation. (R. p. 101).

The parties never agreed to terminate either agreement.[3] Quite the opposite occurred when Appellants promised to arbitrate the Disputes immediately prior to the closing and Parmar agreeing to execute the transfer documents. In fact, Parmar rejected Appellants' initial proposal to include a global release of all claims in the 2014 Agreements and demanded that those issues be held open as a condition of the sale. (R. p. 159). Appellants ultimately agreed, and corporate counsel for MG and MEC confirmed the parties' agreement to arbitrate the disputes in an email:

> All other issues are still open between the parties. The Companies are willing to mediate this [sic] issues concerning additional compensation due to Dr. Parmar (after Donnie Burkett completes his accounting) and the issue of the amount of distributions payable to Dr. Parmar through May 30, 2014. Cory Manning in our firm will take the lead on mediation and, if necessary, the arbitration of these issues with me assisting as necessary.

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[3] Nevertheless, even if the parties agreed to terminate the Agreements, which Respondent disputes, Paragraph 12.6 of the MEC Agreement requires all controversies or claims arising out of the MEC Agreement, "or the breach, ***termination or validity thereof***" be decided by binding arbitration. (R. p. 71) (emphasis added).

(R. p. 331).

Nevertheless, to the extent the 2014 Agreements supersede the parties' arbitration agreement, which they do not, it is only to the extent they are in conflict. In other words, they are complementary to, and not destructive of, the agreement to arbitrate and do not void all prior, unrelated contractual arrangements. *See, e.g.*, *Bank Julius Baer & Co. v. Waxfield Ltd.*, 424 F.3d 278, 282 (2d Cir. 2005) (holding merger and forum selection clauses contained in new agreement did not invalidate or supersede prior arbitration agreement). If there is a reading of various agreements that permits the arbitration clause to remain in effect, the court must choose it.

Consistent with the parties' desire to hold the Disputes open after the closing, the forum selection clauses are intentionally narrow and apply only to the "subject matter of *this* Agreement." (R. p. 135; R. p. 138). Likewise, the 2014 MG Agreement represents the parties' entire agreement only "*with respect to the transaction contemplated* hereby." (R. p. 135) (emphasis added). The subject matter of the 2014 Agreements was limited to the sale of Parmar's ownership interest in MEC and MG and did not include the ancillary compensation matters related to Parmar's employment contained in the Disputes or any of the other rights and obligations in Shareholders and Operating Agreements.

Because the 2014 MEC Agreement contains no merger or integration clause, and because the forum selection clauses in the 2014 Agreements are limited in scope, the 2014 Agreements do not contradict or supersede the parties' agreement to arbitrate. Therefore, the parties' arbitration agreement remained valid after the 2014 closing. The overwhelming weight of the evidence supports the circuit court's finding that parties' arbitration agreement remained valid after the 2014 closing.

B. Appellants failed to timely raise and preserve for appellate review the issue regarding whether Disputes are within the scope of the arbitration agreement.

The issue is whether a party opposing arbitration, who files a Motion to for Temporary Injunction or to Stay Arbitration, waives the right to challenge the scope of the arbitration agreement if he fails to raise the issue to the court prior to the arbitration, awaits the outcome, and then later argues the arbitrator lacked authority to decide the matter in a Motion to Vacate.

"Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review." *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006). Imposing such a requirement on the Appellants "is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments." *I'On, L.L.C. v. Town of Mt. Pleasant,* 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000).

It is well-settled that an issue may not be raised for the first time on appeal. In order to preserve an issue for appellate review, the issue must be (1) raised and ruled upon by the lower court, (2) raised by the Appellants, (3) raised in a timely manner, and (4) raised to the lower court with sufficient specificity. *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 641 S.E.2d 903 (2007); *See also* Toal, Vafai, & Muckenfuss, *Appellate Practice in South Carolina 3rd ed.* at 185 (S.C. Bar 2016). The second element is missing in this case. *Tupper v. Dorchester Cnty.*, 326 S.C. 318, 487 S.E.2d 187 (1997); *State v. Ward*, 374 S.C. 606, 649 S.E.2d 145 (Ct. App. 2007) (To preserve the issue for appellate review, the objection in the trial court must have been made by the party seeking to raise the issue in the appellate court).

Both the validity and scope of an arbitration agreement are substantive arbitrability issues to be determined independently of the other by the circuit court. While the court ruled on both in

its Order Compelling Arbitration, Appellants objected only on the ground that the arbitration agreement terminated in 2014 (i.e. that it was not valid) (R. p. 473, line 15-p. 477, line 10). Appellants did not raise and failed to preserve the issue relating to its scope. *Id.* Knowing Parmar sought a determination of his interest in the bank accounts and outstanding A/R at arbitration, Appellants never moved to reconsider the Order on the basis that the Agreements unambiguously bar the requested relief.

A party may not use a post-trial motion to raise an issue that could have been raised at trial. *Patterson v. Reid*, 318 S.C. 183, 456 S.E.2d 436 (Ct. App. 1995); *Kiawah Prop. Owners Grp., Inc. v. Pub. Serv. Comm'n of S.C.*, 359 S.C. 105, 597 S.E.2d 145 (2004). Appellants are correct that it is for the court to decide when an issue or claim comes within an agreement to arbitrate. *MNBA Am. Bank N.A. v. Christianson*, 659 S.E.2d 209 (S.C. App. 2008). In *Christianson*, however, MBNA proceeded with arbitration in Christianson's absence after he refused without first obtaining a court order compelling arbitration. *Id.* Christianson disputed the validity of the arbitration agreement post-award. *Id.* Appellants can cite no case where a party who opposes arbitration, participates in a court proceeding to compel or stay arbitration and seeks a ruling on its own motion to dismiss may raise a new objection to arbitrability post-award.

There is no evidence in the Record that Appellants raised any objection to the court regarding the arbitrability of the ambiguity issue until Appellants moved to vacate the award, after the arbitration concluded unfavorably for them. (R. pp. 164-197). It was not raised as a defense in Appellants' Answer (R. pp. 124-133), Motion to Dismiss (R. pp. 142-147), or Motion for Temporary Injunction or to Stay Arbitration (R. pp. 148-156). In fact, Appellants do not and have never disputed the arbitrability of Appellants' own counterclaims, which were ultimately denied by the arbitrator. (R. pp. 1-24). This is incredible given that the first of Appellants' counterclaims

was for breach of the Shareholders' Agreement, the same agreement Appellants now contend is terminated. (R. pp. 124-133).

After finding a valid arbitration agreement exists, the court necessarily found the MG and MEC Agreements were ambiguous (i.e. that the Disputes are within the scope of the arbitration agreement) when it referred the Disputes to arbitration—a finding that remained uncontested until Appellants moved to vacate the award. It was clear from the Demand and Declaratory Judgment Complaint that Respondent sought an interest in the MG and MEC A/R and operating accounts. (R. pp. 30-36; R. pp. 105-117). Appellants had many opportunities to raise all arbitrability defenses to the circuit court before, during and after the hearing on Respondent's Motion to Compel Arbitration and declined to file a Motion to Alter or Amend. Appellants willingly and without reservation allowed the Disputes to be submitted to arbitration without arguing they exceeded the scope of the agreement to either the court or the arbitrator. South Carolina law does not permit Appellants to wait to object to arbitrability until after the arbitration proceedings have concluded.

The court was denied any opportunity to consider Appellants' position as to whether the relief sought was outside the scope of the arbitration agreement before referring the Disputes to arbitration. Appellants conceded that issue by failing to raise it. Indeed, allowing a party to raise the issue for the first time in a Motion to Vacate puts the court in the awkward position of deciding whether to overrule a prior ruling of another circuit court judge.

For these reasons, Appellants' argument that the Shareholders' Agreement is unambiguous and does not entitle to Parmar to any interest in the bank accounts or A/R of MG or MEC is an untimely objection to the scope of issues compelled to arbitration. Appellants' Issues I and II should be dismissed.

C. Notwithstanding Appellants' failure to raise the issue to the circuit court, the factual allegations underlying the Disputes are clearly within the scope of the Parties' arbitration agreement.

The Disputes the circuit court referred to arbitration are within the scope of the binding and enforceable arbitration provisions within the MEC Operating Agreement and the MG Shareholders' Agreement.

"Arbitration is a matter of contract, and the range of issues that can be arbitrated is restricted by the terms of the agreement." *Palmetto Homes, Inc. v. Bradley*, 357 S.C. 485, 492, 593 S.E.2d 480, 484 (Ct. App. 2004), *cert. denied* (July 8, 2005). Our supreme court has outlined the analytical framework for determining whether a particular claim is subject to arbitration. *Zabinski*, 346 S.C. at 597, 553 S.E.2d at 118-19. In *Zabinski*, the court stated:

> To decide whether an arbitration agreement encompasses a dispute, a court must determine whether the factual allegations underlying the claim are within the scope of the broad arbitration clause, regardless of the label assigned to the claim. *Hinson v. Jusco Co.*, 868 F.Supp. 145 (D.S.C. 1994); *S.C. Pub. Serv. Auth. v. Great W. Coal*, 312 S.C. 559, 437 S.E.2d 22 (1993). Any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration. *Towles, supra.* Furthermore, unless the court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered. *Great W. Coal*, 312 S.C. at 564, 437 S.E.2d at 25. A motion to compel arbitration made pursuant to an arbitration clause in a written contract should only be denied where the clause is not susceptible to any interpretation which would cover the asserted dispute. *Tritech, supra.*

Id. at 597, 553 S.E.2d at 118-19. The court further articulated that "[a] broadly-worded arbitration clause applies to disputes that do not arise under the governing contract when a 'significant relationship' exists between the asserted claims and the contract in which the arbitration clause is contained." *Id.* at 119, 553 S.E.2d at 598.

Here, the arbitration clauses in both the MEC and MG Agreements encompass "any controversy or claim arising out of or relating to" the Agreements, broadly embracing all disputes between the parties that have a relationship to the contract. (R. p. 71; R. p. 102). The parties' dispute as to the interpretation of the buyout terms of the Agreements clearly arises out of and relates to the Agreements themselves. Therefore, it cannot be said with "positive assurance" that the Disputes are outside the scope of the arbitration agreement.

At the very least, the MG Agreement is ambiguous in that it is silent as to how the compensation and distributional interests of a departing shareholder should be treated, and the arbitrator implied the missing terms to effectuate the intent of the parties. Consistent with the strong policy in South Carolina in favor of arbitration, any doubts concerning the scope of the arbitration agreement should be resolved in favor of arbitration.

II. The arbitrator did not exceed his powers under S.C. Code Ann. § 15-48-13(a)(3).

"South Carolina has a strong policy favoring resolution of disputes through alternative dispute resolution, including arbitration." *C-Sculptures, LLC v. Brown*, 403 S.C. 53, 56, 742 S.E.2d 359 (2013). "Generally, an arbitration award is conclusive and courts will refuse to review the merits of the award." *Id.* The South Carolina Uniform Arbitration Act enumerates the exclusive grounds upon which an award may be vacated. Appellants contend the award should be vacated on the ground that "the arbitrators exceeded their powers." S.C. Code Ann. §15-48-130(a)(3).

While "exceeded their powers" is not defined in the Act, South Carolina courts have consistently held "the question of whether arbitrators have exceeded their powers relates to the arbitrability of the issue they have attempted to resolve." *Pittman Mortg. Co. v. Edwards*, 327 S.C. 72, 488 S.E.2d 335 (1997). Where an arbitrator resolves the very issue presented to him, he has not exceeded his powers, even assuming factual and legal errors. *Id.* at 77; *see also Harris v. Bennett*, 332 S.C. 238, 503 S.E.2d 782 (Ct. App. 1998).

A. The arbitrator did not exceed his powers by awarding Respondent his interest in the MG and MEC accounts receivable and bank accounts.

The arbitrator did not exceed his authority when he decided the exact issues that were referred to him by the court. Appellants' argument that the arbitrator "exceeded his authority" because Appellants disagree the relief awarded is authorized by the parties' agreement is misplaced. App. Initial Brief at p. 8. The Act explicitly precludes the court from vacating the award on exactly that basis: "***the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.***" S.C. Code Ann. §15-48-130(a) (emphasis added).

Notwithstanding §15-48-130(a), Appellants' argument fails because the sole issue as it relates to §15-48-130(a)(3) (exceeding authority) is whether the Disputes before the arbitrator were subject to arbitration, not whether relief was authorized by contract or applicable law. A party may not attempt to relitigate the merits of the arbitrator's resolution of the arbitrable issues under the guise of questioning the arbitrators' power. *Trident Technical College v. Lucas & Stubbs, Ltd.*, 286 S.C. 98, 107, 333 S.E.2d 781 (1985). While Appellants disagree with the arbitrator's application of the law in this case, it is improper to challenge the arbitrator's power to resolve arbitrable issues on that basis.

Appellants do not dispute the issues decided by the arbitrator were the exact issues the court referred to him. (R. pp. 27-29). In both his Demand and Declaratory Judgment Complaint, Parmar alleges Appellants' failure to compensate him for his outstanding accounts receivable, production variances and distributional share of the operating accounts gave rise to a breach of contract and breach of fiduciary duties. (R. pp. 105-117; R. pp. 30-36). Appellants never argued to the court prior to the arbitration that referral was improper because the Agreements do not give the arbitrator authority to grant the relief sought (R. pp. 459-480). Therefore, the court referred the

Disputes remaining between the parties after the May 31, 2014 purchase by Minhas of Parmar's interest in MG and MEC and "currently pending before the American Health Lawyers Association in case number 2648" to arbitration.[4] (R. p. 29).

This is not an instance where the arbitrator issued an award wholly unrelated to the governing Agreements. Indeed, the foundation of Parmar's Complaint and the primary issue before the arbitrator was whether Parmar was entitled to a portion of the bank accounts and accounts receivable and the MG production variance under the terms of the MEC and MG Agreements. (R. p. 32, ¶ 12). The parties vigorously debated the issues before the arbitrator at a two-day hearing on the merits and in numerous briefs. Multiple witnesses testified that while the agreements address the sale of ownership (shares and membership interest), the agreements were silent and ambiguous as to compensation and particularly as to the issue of accounts receivable and cash on hand. (R. pp. 340-360). In fact, Appellants filed a Motion to Correct the Award on the basis that Parmar was not entitled to any interest in the bank accounts and accounts receivable but never argued to the arbitrator that he lacked authority to decide the issue. (R. pp. 279-293). After a hearing, the arbitrator denied Appellants' Motion. (R. p. 300).

There are simply no facts in the record to support a finding that S.C. Code Ann. §15-48-130(a)(3) requires the award be vacated. The arbitrator could not have exceeded his authority by deciding the very issues presented to him. Appellants ignore established South Carolina precedent and instead urge this court to adopt less burdensome standard applied in foreign jurisdictions that have broader statutory authority to vacate arbitration awards. App. Initial Brief at p. 8. Acknowledging no South Carolina case law exists affirming this point, Appellants argue an

[4] AHLA case number 2648 referenced in the Order corresponds with the case number assigned to Parmar's Demand for Arbitration. (R. p. 29; R. p. 140).

arbitrator exceeds his authority under S.C. Code Ann. §15-48-130(a)(3) if he grants an award "that is not based on a plausible interpretation of the agreement and/or reaches an irrational result." *Id.* Appellants cite two federal circuit court opinions decided pursuant to the FAA and one Supreme Court of Rhode Island opinion decided pursuant to the Rhode Island state law as their only authority. App. Initial Brief at p. 8 (*citing Nappa Constr. Mgmt., LLC v. Flynn*, 152 A.3d 1128, 1132-1135 (R.I. 2017); *Patten v. Signator Ins. Agency, Inc.*, 441 F.3d 230, 235-237 (4th Cir. 2006); *Missouri River Servs. v. Omaha Tribe of Nebraska*, 267 F.3d 848, 854-855 (8th Cir. 2001)).

However, those cases are misleading because the statutory grounds for vacating an arbitration award under the FAA and Rhode Island state law differ from South Carolina in an important way--both require an award be vacated if the arbitrator exceeded his powers "*or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.*" *See* R. I. Gen. Laws § 28-9-18(2); 9 U.S.C.S. §10(a) (emphasis added).[5] The legislative purpose of that language is to authorize more judicial scrutiny over arbitration awards, which contradicts South Carolina law. It is through that lens that courts applying the FAA and laws like it adopted the analysis embraced by Appellants. The absence of "imperfect execution" from S.C. Code §15-48-130(a)(3) demonstrates a legislative intent that is just the opposite.

Parties are not without recourse if an arbitrator awards relief that was not authorized by contract or applicable law. Such an award may be vacated only upon "the rarely applied non-statutory ground of 'manifest disregard or perverse misconstruction of the law.'" *Swentor v. Swentor*, 336 S.C. 472, 520 S.E.2d 330 (Ct. App. 1999) (*quoting Trident Tech. College v. Lucas*

[5] Moreover, there is no statutory equivalent of S.C. Code Ann. 15-48-30 in Rhode Island or the FAA, which forecloses a court from vacating an award on the ground that the relief awarded could not or would not be awarded in a court of law or equity.

& Stubbs, Ltd., 286 S.C. 98, 108, 333 S.E.2d 781 (1985)); *see also C-Sculptures v. Brown*, 403 S.C. 53, 742 S.E.2d 359 (2013) (a manifest disregard of the law occurs when an arbitrator knows of a governing legal principle yet refuses to apply it); *Gissel v. Hart*, 382 S.C. 235, 241-42, 676 S.E.2d 320, 323-24 (2009) ("The focus is on the conduct of the arbitrator and presupposes something beyond mere error in construing or applying the law...[f]actual and legal errors by arbitrators do not constitute an abuse of powers"); *Lauro v. Vinap*uu, 351 S.C. 507, 519, 570 S.E.2d 551 (Ct. App. 2002) ("Even a clearly erroneous interpretation of [a] contract cannot be disturbed).

Importantly, however, Appellants do not raise the common law "manifest disregard of the law" ground as a basis for vacating the award. *See infra* Section III. Nevertheless, while Rhode Island and FAA jurisdictions recognize it, the non-statutory ground is not applied uniformly in every jurisdiction. The threshold is much higher in South Carolina because this state is more deferential to the arbitration process as a matter of policy. Appellants' attempt to conflate the statutory ground of excess of authority with the statutory and common law of foreign jurisdictions that contradict South Carolina law is inappropriate because it undermines the legislature's clear objective to limit judicial interference with the arbitration process and the finality of awards.

For these reasons, the arbitrator did not exceed his authority when he awarded Parmar his interest in the A/R and bank accounts.[6]

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[6] Appellants' issue IV raises a similar argument with regard to arbitrator's award of variances. Appellants confuse the issues by asserting common law and statutory grounds for *vacating* an award as a basis for *modifying* the award and reducing the amount awarded for variances. App. Initial Brief at p. 10. Specifically, Appellants argue "[b]y awarding a double recovery, the arbitrator manifestly exceeded his power under S.C. Code Ann. § 15-48-130(a)(3), AHLA Rule 7.5, the common law rule that an arbitrator cannot act in manifest disregard of the law, and in violation of South Carolina public policy." *Id.* To the extent that sentence may be construed as an argument that the award must be *vacated* on any ground (statutory or non-statutory) because of the amount of variances awarded, that argument is not preserved for appellate review and nevertheless fails for the same reasons set forth in Section II(A) herein.

B. The arbitrator's failure to issue a timely award is not fatal to the enforceability of the award.

The arbitrator's failure to issue the award within 30 days of the arbitration hearing is not fatal to the enforceability of the award because (1) untimeliness is not a permissible basis to vacate an award pursuant to S.C. Code Ann. § 15-48-130 and (2) Appellants waived any objection that the award was untimely.

It is well settled in South Carolina that "the question of whether the arbitrators have exceeded their powers relates to the arbitrability of the issues they have attempted to resolve. Arbitrators exceed their powers only if the issue resolved by them is not within the scope of the agreement to arbitrate." *Batten v. Howell*, 300 S.C. 545, 548, 389 S.E.2d 170 (Ct. App. 1990). Appellants argue the arbitrator "exceeded his authority" when he issued the award more than 30 days after arbitration hearing in violation of AHLA Rule 7.1. Procedural untimeliness of an award does not relate to the arbitrability of the issues before the arbitrator; therefore, the issuance of an untimely award is not an excess of power within the meaning of S.C. Code Ann. § 15-48-130(a)(3).

Even assuming a statutory basis to vacate an untimely award exists, which there is not, Appellants waived any right to contest the timeliness of the award. The South Carolina Uniform Arbitration Act contains the additional requirement that a party must object to the timeliness of the award prior to the delivery of the award or the objection is waived:

> An award shall be made within the time fixed therefore[e] by the agreement, or, if not so fixed, within the time as the court order on application of a party. The parties may extend the time in wiring either before or after the expiration thereof. ***A party waives the objection that an award was not made within the time required unless he notifies the arbitrators of his objection prior to the delivery of the award to him.***

S.C. Code Ann. § 15-48-90(b) (emphasis added).

The award was issued on May 17, 2016. (R. pp. 25-26). Appellants acknowledged that they did not object to the untimeliness of the award until June 27, 2016, after it was issued.[7] As such, Appellants waived any right to contest the timeliness of the award and cannot now assert it as a basis to vacate it. *See e.g.*, *Success Vill. Apts., Inc. v. Amalgamated Local 376 Int'l Union UAW*, 380 F.Supp. 2d 95 (D. Conn. 2005) (holding that despite a set of set of state regulations requiring issuance of arbitration awards on a specific timetable, there was no basis to set aside an arbitration award where plaintiff did not object to the delay prior to the issuance of the award); s*ee also* Samuel Estreicher & Steven C. Bennett, *Untimely Arbitration Awards*, 235 N. J. L. J. 59 (2006) ("[T]he weight of modern authority is that untimeliness of an award is typically not fatal to enforceability of an award).

Grant v. Magnolia Manor-Greenwood, Inc., 383 S.C. 125, 678 S.E.2d 435 (2009), offers no guidance in regard to the timeliness issue before the Court. In *Grant*, the Court refused to enforce an otherwise valid arbitration agreement because the parties' *designated arbitrator* was unavailable *and* the designation of that particular arbitrator was integral to the agreement. *See Grant*, 383 S.C. at 131–32, 678 S.E.2d at 439. *Grant* does not require strict adherence to the AHLA *Rules* chosen by the parties. Nor does it hold that procedural rules of a designated arbitration forum preempt S.C. Code Ann. § 15-48-90(b). *Id.*

To accept a standard of strict adherence would require the court to vacate every arbitration award issued by an arbitrator who failed to comply with any number of procedural rules that govern

[7] Appellants filed a Motion to Correct the Award on June 1, 2016, in which Appellants failed to assert the issue regarding the timeliness of the award. (R. pp. 279-293). Appellants' Motion to Correct was denied by Order dated June 21, 2016. (R. p. 300). On June 27, 2016, six days after Appellants' Motion to Correct was denied and more than one month after the award was delivered, Appellants filed an Objection to the May 17, 2016 Order, raising the timeliness issue for the first time. (R. pp. 301-304).

the arbitration proceedings, no matter how harmless or insignificant.[8] That result would open the door to endless appeals and attempts by litigants to avoid unfavorable arbitration determinations, as the Appellants seek to do here, and it runs afoul of the longstanding policy in South Carolina favoring arbitration and limiting judicial review.

Appellants were not prejudiced by the delay, and Respondent contributed nothing to its cause. While Appellants may be willing to incur the cost of a second arbitration for the chance to obtain a more favorable outcome, the law allows this extreme remedy only in a few, narrowly defined circumstances that do not apply in this case. For these reasons, the Circuit Court's Order confirming the award must be affirmed.

C. To the extent the arbitrator violated AHLA Rule 7.5, which he did not, such a violation is not an excess of power and is not fatal to the enforceability of the award.

Appellants contend the award was issued in violation of AHLA Rule 7.5 because the relief awarded was not authorized by contract or applicable law.[9] (R. pp. 9-10). For that reason, Appellants argue the award should be vacated because a violation of AHLA Rule 7.5 is an excess of power pursuant to S.C. Code Ann. §15-48-130(a). *Id.* Citing *Grant* as their only authority, Appellants invite this Court to interpret the AHLA Rules of Procedure for Arbitration and to vacate any award if it is found that any number of the AHLA rules were violated.

As explained above, Appellants' interpretation of *Grant* is misguided. *Grant* speaks only to the validity of an arbitration agreement where the parties' designated arbitrator is unavailable. *Grant*, 678 S.E.2d 435, 439 (S.C. 2009). It does not authorize judicial enforcement of the

[8] Appellants raised the timeliness matter to the AHLA Review Board after the award was issued, which the Review Board ultimately denied. (R. pp. 305-310; R. pp. 311-312).

[9] AHLA Rule 7.5 "Scope of Relief" provides "[a]n arbitrator may award any relief authorized by contract or applicable law that appears to be fair under the circumstances, including specific performance of a contract." (R. p. 224).

procedural rules of the parties' designated forum, invalidating all arbitration agreements where the court decides the rules were not "strictly followed." *Id.*

The application and enforcement of the AHLA Rules is not a matter for this court, that is for the governing body of the arbitration forum itself. Indeed, after the award was issued, Appellants' petitioned the AHLA Review Board to remove and replace the arbitrator on the basis that the award violated AHLA Rule 7.5. (R. pp. 305-310). The AHLA Review Panel denied Appellants' petition. (R. pp. 311-312). Assuming the arbitrator violated the AHLA Rules, which he did not, *Grant* does not render the award invalid.[10] Moreover, it is not a ground for vacating or refusing to confirm the award even if "the relief was such that it could not or would not be granted by a court of law or equity." S.C. Code Ann. §15-48-130(a).

III. Appellants did not properly preserve for appellate review the argument that arbitrator acted in "manifest disregard of the law."

Appellants never raised, which counsel for Appellants confirmed to the court on the record, that the award should be vacated pursuant to the rarely applied common law ground that the arbitrator acted "in manifest disregard of the law." (R. p. 15, n.6). Therefore, whether or not the award of "variances" was in manifest disregard of the law or in violation "South Carolina public policy" is not an issue preserved for appellate review. App. Initial Brief at p. 10.

An issue is not preserved for appellate review if it has been conceded in the trial court. *State v. Bowman*, 338 S.C. 151, 526 S.E.2d 228 (2000); *State v. Hill*, 359 S.C. 301, 597 S.E.2d 822 (Ct. App. 2004), *rev'd on other grounds*, 368 S.C. 649, 630 S.E.2d 274 (2006). When a party expressly abandons an issue on the record, even if previously raised, the trial court is entitled to

[10] For the same reasons explained in Sections I(C) and II(A) above, the arbitrator did not exceed his powers because the relief awarded was authorized by the contract and applicable law and was therefore issued in accordance with AHLA Rule 7.5. *See supra* pp 13-18.

rely on that party's representation that the issue is no longer before it, and the issue is unpreserved for appeal.

At the hearing on Appellants' Motion to Vacate on November 29, 2016, Appellants abandoned any argument that the common law ground of "manifest disregard of the law" applies as a basis to vacate the award:

> Now, South Carolina has recognized one common-law ground which is a manifest disregard of the law, which was the case I actually argued in front of the *C-Sculptures vs. Brown* case. ***[Appellants are] not arguing that there was a manifest disregard of the law,*** but I would proffer to you that courts around the country have state that where an arbitrator engages in what the Nevada court in one case has described as a manifest disregard of the agreement, that court can view that as an arbitrator acting with either undue means or outside their authority. The idea is that what the arbitrator did here was fashion a remedy that rewrote the parties' agreement, and ***we believe that under those circumstances, we fall within the purview of 15-48-130(a)(i) and 15-48-130(a)(iii).***

(R. p. 488, lines 3-17; R. p. 15, n.6) (emphasis added). Instead, Appellants clarified that they are basing their Motion to Vacate only on the statutory grounds set forth in S.C. Code Ann. § 15-48-130. Therefore, that issue must be dismissed as it is not preserved for appellate review.[11]

IV. Appellants failed to preserve for appellate review any argument that grounds other than those set forth in § 15-48-140 support modification of the award; nevertheless, the variance amounts should not be modified, and there is no evidence in the Record those amounts were included in the bank accounts and accounts receivable awarded.

Appellants never raised S.C. Code Ann. § 15-48-130(a)(3) or manifest disregard of the law, which are only grounds for vacating an award, to the circuit court as grounds in support of their motion to modify or correct the award. Therefore, those issues must be dismissed because

[11] To the extent the Court is inclined to find this issue is preserved, which it is not, the arbitrator did not act in manifest disregard of the law for the reasons set forth in the Order Confirming the Award, which Respondent incorporates herein. (R. pp.14-16).

they are not preserved for appellate review.[12] Notwithstanding Appellants' failure to preserve the issue, modification of the variance amounts awarded is not appropriate.

The court may correct or modify an award *only* in accordance with the provisions of S.C. Code Ann. § 15-48-140:

> (a) Upon application made within ninety days after delivery of a copy of the award to the applicant, the court shall modify or correct the award where:
>
> > (1) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;
> >
> > (2) The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or
> >
> > (3) The award is imperfect in a matter of form, not affecting the merits of the controversy.

There is no common law basis for correcting or modifying an award in South Carolina.

Appellants contend the award must be modified because the total $82,000 variance award amounts to an "impermissible double recovery," but Appellants fail to cite any provision of S.C. Code Ann. § 15-48-140 or argue that modification is appropriate pursuant to any ground enumerated therein. Instead, Appellants argue S.C. Code Ann. § 15-48-130(a)(3) and the common law rule that an arbitrator cannot act in manifest disregard of the law applies, which are grounds for *vacating* an award. App. Initial Brief at p. 10.[13] Appellants can cite no law that authorizes the

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[12] Appellants try to get around the preservation issue by suggesting that the rule against a party receiving a double recovery may be raised at any time and applies in this case. App. Initial Brief at p. 10. This is not an "election of remedies" issue as it was in the case cited by Appellants, *Inman v. Imperial Chrysler-Plymouth, Inc.*, 397 S.E.2d 774, 776-777 (S.C. App. 1990). Appellants' characterization of the award as a "double recovery" is merely an objection to the arbitrator's ruling on the merits of the controversy.

[13] It is also unclear whether Appellants contend the award was issued in violation of AHLA Rule

court to modify an award pursuant to S.C. Code Ann. § 15-48-130 in lieu of vacating it. Therefore, this argument may be dismissed for the obvious reason that the grounds for vacating (§ 15-48-130) and modifying (§ 15-48-140) an award are not the same.

Even assuming this issue is preserved, which it is not, any modification must have a basis in the Record. Appellants ask this court to assume the variance amounts were already included in the accounts receivable and bank accounts awarded to Parmar. There is simply no evidence in the Record as to what monies made up the accounts receivable and the bank accounts, and the Court is not required to take Appellants' word for it. Indeed, Appellants raised this very issue to the arbitrator in a Motion to Correct, which the arbitrator considered and denied based on the evidence presented at the arbitration hearing. (R. p. 296; R. p. 300). In that Motion, Appellants conceded to the arbitrator that a denial of the Motion to Correct "demonstrates the arbitrator's calculations and ultimate disposition was the product of intentional decision making and free of computational error." (R. p. 296).

For these reasons, and because there is no evidence the award of variances was an evident miscalculation of figures, modification or correction of the award is inappropriate.[14]

V. The circuit court properly awarded Respondent post-award, pre-judgment interest.

As a matter of law, Respondent is entitled to post-award, pre-judgment interest on the arbitrator's award in the statutory allowable amount from the date of the arbitration award until the Circuit Court's entry of a judgment confirming the award; therefore, the Circuit Court properly

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7.5 and South Carolina public policy as an independent basis to modify or correct the award. *Id.* Those arguments likewise fail because they are not grounds for modifying an award under S.C. Code Ann. § 15-48-140 and are nevertheless unpreserved for appellate review.

[14] To the extent the Court finds this issue is not abandoned on appeal, Appellants further incorporate the reasons denying Appellants' Motion to Correct that are set forth in the Order Confirming the Arbitration Award. (R. pp. 20-23).

awarded Respondent pre-judgment interest from the date of the award through the date of the Circuit Court's Order Confirming the Arbitration Award.

Appellants argue that Respondent is not entitled to pre-judgment interest accrued post-award because the award denies Respondent pre-judgment interest that accrued prior to the issuance of the award. App. Initial Brief at pp. 10-11. That is an incorrect application of the law in South Carolina. Moreover, Appellants ignore *Fitigues, Inc. v. Varat Enterprises, Inc.*, 813 F. Supp. 1336 (N.D. Ill. 1992), a case directly on point which applies South Carolina law, and instead urge this Court to adopt the law of North Carolina.

Appellants do not dispute the law of South Carolina applies in this case. Under South Carolina law, "in all cases where any sum...of money shall be ascertained and, being due, shall draw interest according to law, the legal interest shall be at the rate of eight and three-fourths percent per annum." S.C. Code Ann. § 34-31-20. In other words, "[t]he law allows prejudgment interest on obligations to pay money from the time when, either by agreement of the parties or operation of law, the payment is demandable, if the sum is certain or capable of being reduced to certainty." *Babb v. Rothrock*, 310 S.C. 350, 353, 426 S.E.2d 789, 791 (1993). By virtue of the arbitrator's award, Appellants became obligated to pay Parmar $339,568.49, which is capable to being reduced a certainty and is demandable by operation of law. *See Fitigues, Inc. v. Varat Enterprises, Inc.*, 813 F. Supp. 1336 (N.D. Ill. 1992) (applying South Carolina law) (upholding the lower court's award of post-award, pre-judgment interest even though the arbitrator did not award pre-judgment interest).

Not only was the Circuit Court's award of post-award, pre-judgment interest in the amount of $22,385.94 appropriate, it was required. Indeed, just as the court held in *Fitigues*, the arbitrator, whose scope was limited to the propriety of pre-judgment interest up until the time of the arbitration award,

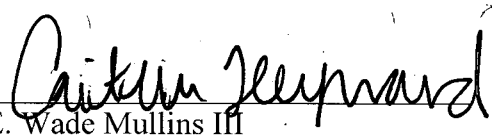
lacked the authority to decide the entirely separate question of the propriety of post-award, pre-judgment interest. The authority to award post-award, pre-judgment interest was vested in and properly exercised by the Circuit Court in the Order Confirming Arbitration Award. *Id.* at 1340, n. 1. For these reasons, this Court must affirm the Circuit Court's award of pre-judgment interest to Respondent.

CONCLUSION

For the foregoing reasons, the circuit court's Orders Compelling Arbitration and its Order Confirming the Award and Denying Motion to Vacate must be affirmed.

Respectfully submitted,

BRUNER, POWELL, WALL & MULLINS, LLC



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August 21, 2018
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal, Circuit Court Judge
The Honorable DeAndrea G. Benjamin, Circuit Court Judge
James P. Kelly, Arbitrator

Appellate Case No. 2017-000994
Civil Action No. 2014-CP-40-06017

Rajinder Parmar, ...Respondent,

v.

Balbir S. Minhas, Midlands Gastroenterology, PC, and Midlands Endoscopy Center, LLC, ...
.....Appellants.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCAR.

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