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BRIEF OF APPELLANT

THE REPUBLIC STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Diane S. Goodstein, Circuit Court Judge

Case No. 2016CP1801678

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Wilmington Savings Fund Society FSB as Trustee of Stanwich M, Respondent,

v.

Nelson L. Bruce, et al., Appellant.

BRIEF OF APPELLANT

Nelson L. Bruce, Propria Persona, Sui Juris
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I. STATEMENT OF ISSUES ON APPEAL.

1) Does the nation and this state not have a liberal Policy Favoring Arbitration which is based largely upon the specific language of the "arbitration agreement" but also based upon the overall federal policy supporting arbitration?

2) Does the referenced Agreement/Contract and Addendum (**Exhibits/Evidence – J**) not have an "Arbitration Clause" to which the respondents were aware of which delegates all disputes, claims and controversies to the arbitration tribunal?

3) Has there not been an arbitral Issue present in this matter before the lower court where an agreement/contract exists and an Arbitration Clause/Provision exists which the court possesses no power to decide the arbitral question when that is delated which must be arbitrated according to the contract, Supreme Court and the **Federal Arbitration Act**?

4) Did the Respondents respond to the referenced presentment **(Exhibits/Evidence – J –K)** in the timeframe provided evidencing non-acceptance/non-consent creating their tacit acquiescence and estoppel?

5) Does section **241(a)** of the SCACR not state that as a general rule once a "notice of Appeal" is filed, there is an automatic stay which all related issues are affected by this stay?

6) Is the Dorchester County Common Pleas Court not required to notify all the parties appearing on record of any changes of Judges of record before making any judgments/orders/decisions?

7) Does the **Federal Arbitration Act (FAA) as codified under 9 U.S.C. § 2** not State that an agreement in writing which involves commerce shall be valid, irrevocable and enforceable?

8) Does the Respondent and Appellant not have a preexisting relationship and a duty to respond to each other?

9) Did the judge of record in the Court of Common Pleas (Diane S. Goodstein) follow proper court rules/procedures when providing their opinion in the form of a letter in regards to a Presentment/Petition/Motion which that letter directed the clerk to enter a statement of judgment/order by the court denying Appellants Presentment to Compel Arbitration/Motion to Stay Proceedings and Proposed Order?

II. APPELLANTS' OPENING STATEMENT OF THE CASE

10) I **Nelson L. Bruce** a natural citizen as defined in statute and **article 1 section 8 of the United States of America Constitution,** of the age of the majority, am over the age of 18, hereby present this Appeal Brief as such is based on firsthand knowledge of the facts, as true and wholly accurate in the form of reintroduction of evidence, motions, presentments, declarations, exhibits originally presented in the Court of Common Pleas for review by this body and are hereby incorporated by reference in its entirety with this Appeal Brief.

11) On or about **January 8, 2019** Appellant presented the Respondent in this case and other parties with an agreement in writing referenced as **"Conditional Acceptance for the Value/Agreement/Counter Offer to Acceptance of Offer"** which has a contract number of **2019-0108BRUCWSFCM–S12389981– 5577899811©** which incorporates within it an **"arbitration clause"** allowing the respondents **10 calendar days** to respond to the Proof of Claim and Averments within this presentment and had the option of receiving an additional **10 calendar days** to respond if requested by the respondents which they have not exercised which this agreement/contract provides an Alternative means to resolve any and all disputes, claims, and controversies through arbitration which is highly favored by the State of South Carolina and the Nation which is only available upon default of the parties (the respondents).

12) On or about **January 30, 2019** Appellant presented the respondents to the referenced agreement with an Addendum in the form of the original agreement notifying all parties to the original agreement that certain respondents are being removed from the agreement/contract and certain parties are being added to the original agreement/contract

and with consideration to these additions to the contract, all parties were provided with an additional **3 days (72 hours)** to respond to any and all proof of claims and averments.

13) On or about **February 5th through the 25th of 2019**, Appellant presented all respondents to the referenced agreement/contract and addendum with Notice of Fault/Notice of Default opportunity to cure allowing the respondents **3 days (72 hours)** to provide proof that they did not receive a copy of the original contract communication and or the original addendum to contract in the form of the original contract communication, and were not aware of its existence. All respondents to the referenced agreement/contract and addendum again failed to respond and have defaulted and were notified that the Appellant would proceed to get an judgment against them based off their admittance through default as specified in that written agreement/contract and addendum. All respondents continued to ignore these notifications by refusing to respond and have therefore admitted to the Proof of Claims, Averments and have consented **(see sections 10290, 10293 and 10296 of the contract)** to all the terms and provisions of the referenced agreement/contract and addendum by tacit acquiescence as provided in the written agreement/contract and addendum referenced above and have therefore consented to arbitration being the exclusive remedy to resolve any and all claims, disputes and controversies presented in referenced agreement.

14) Shortly after respondents made no effort to proceed through arbitration (refused to arbitrate), Appellant filed his **presentment to compel arbitration/motion to stay proceedings** in Dorchester County Common Pleas Court case no. **2016CP1801678** on or about **March 29, 2019** and United States Appeals Court case no. **18-2461** on or about **March**

29, 2019 before any decisions were rendered by either courts as the contracts are governed und the **Federal Arbitration Act** (herein to be known as the **FAA**). Because the referenced presentment to compel arbitration was not part of the record on appeal, the appeal court could not review this presentment to compel arbitration and exhibits filed in Common Pleas Court.

15) On or about **April 10, 2019** Appellant filed Declarations and Proposed Orders in support of the presentment to compel arbitration/motion to stay the proceedings in Dorchester County Common Pleas court which should have been addressed as soon as Common Pleas Court retained their jurisdiction in this matter to render a decision to compel arbitration based off the **exhibits/evidence - J** filed on the record in common Pleas Court in support of the referenced presentment to compel arbitration/motion to stay the proceedings which is hereby reintroduced and incorporated by reference in this case. The referenced presentment was ignored because of clerical mistakes as the clerks and or other officials from the judicial office made a mistake and misplaced the Proposed Order was to be presented to the Judge of Record before any other hearings were scheduled. The Appellant informed the Court that he presented the court with a proposed order as specified above because the clerk of court alleged that the Appellant never filed one so the Judge was never presented with the Proposed Order to review the Presentment to Compel Arbitration Referenced above.

16) On or about **April 23, 2019** all respondents referenced in the above conditional acceptance agreement/contract and addendum received a notice from the arbitrator dated **April 19, 2019** of the scheduled arbitration hearing as agreed upon by all parties (the respondents) to

the referenced agreement in writing which stated that the Arbitration Hearing is scheduled for **May 13, 2019 at 12:00 P.M.** and also contained an **IMPORTANT NOTICE** to the all parties in the above referenced agreement. All respondents to the referenced agreement had the opportunity respond and to answer this notice and object to the hearing and request(s) sought within the time indicated which was **10 days** from receipt of that notice or the Arbitrator will presume all parties acceptance and may proceed to review the supporting documentation and issue a binding decision **(an arbitration award).** All respondents failed to respond and or failed to respond in the timeframe specified by the Arbitrator in accords to their guidelines therefore agreeing to the hearing proceeding and therefore the arbitrator proceeded with the arbitration of the referenced agreement in writing and the parties default.

17) On or about **May 13, 2019** arbitration was completed which resolved the claims, disputes, and controversies presented and associated with the referenced agreement.

18) On or about **June 6, 2019** the Respondent to this case by their attorneys filed an opposition to the Appellants Presentment to Compel Arbitration which was well after Arbitration had been completed and the arbitrator had provided their findings.

19) On or about **June 13, 2019** Appellant filed his reply to the Respondents Opposition filed on **June 6, 2019** and filed a copy of the findings by the Arbitrator (the Arbitration Award **Exhibits/Evidence – K which is hereby reintroduced and incorporated by reference in this case**) where a copy of the award was sent to all parties to the referenced here by the arbitrator had already decided that there is an irrevocable agreement coupled with interest between the parties (the respondents referenced in the contract), the contract was valid,

the arbitration clause was valid, the parties to the contract was in default and violated the terms of the contract, and that the parties was and are estopped from any further collateral attacks as it pertains to the parties to this case **(see section 10294 of the contract)**, the respondent in regards to the pending foreclosure in Common Pleas Court which Common Pleas Court completely ignored when rendering their decision to deny the relief Appellant requested in his Presentment to Compel Arbitration/Motion to Stay Proceedings.

20) On or about **June 14, 2019** the clerk on behalf of Court provide a MOTION Roster/Notice of Case Roster for hearings of **7 separate motions scheduled** for **July 30, 2019 at 10:30 a.m. excluding the Presentment to Compel Arbitration/Motion to Stay the proceedings pending Arbitration referencing Judge Maite' Murphy** as the Judge who has never been the Judge of record for his case. **Judge Diane S. Goodstein** is the Judge of record for his case not **Judge Maite' Murphy** as Appellant has not been notified of any judge change and does not consent to any judge change to which he has not been notified of which have been presented to the "Court of Appeals" under **APP-Exhibit A**.

21) On or about **July 3rd through 9th, 2019** Appellant filed a Notice and an Amended Notice to the Court of Common Pleas and all parties reiterating and reintroducing in the form of an **Affidavit** which is hereby reintroduced and incorporated by reference in this case that has not been rebutted by the court nor any other parties at the time of the decision by Judge **Diane S. Goodstein** to deny Appellants Presentment to Compel/Motion to Stay Proceedings, Declaration and Proposed Order. Appellant reiterated and reintroduced the findings of facts by the arbitrator and for the parties to Cease and Desist from any further collection activities and to remove any and all hearings scheduled based off the finding of

the arbitrator as evidence to support his claims which the judge and the parties to this case continued to ignore and the judge on behalf of the court decided to deny the Appellants Presentment to Compel Arbitration/Motion to Stay Proceedings, and Proposed order without reviewing and or considering the referenced Notice to the Court and **Exhibits/Evidence - K** but only providing her opinion which is not supported by facts to support her opinion as she has stated, "Although the matter is referred as consented to, I do not believe that information is accurate." This belief of the judge conflicts with the evidence placed before the court and the contract which according to the FAA and in a unanimous decision by the Supreme Court in ***Henry Schein, Inc. v. Archer and White Sales, Inc.*****, No. 17-1272 (U.S. Sup. Ct. Jan. 8, 2019)** … it was held that the courts must interpret the Act as written, and the Act in turn requires that we interpret the contract as written. When the parties' contract delegates the arbitrability question to an arbitrator, a court may not override the contract. In those circumstances, a court possesses no power to decide the arbitrability issue. That is true even if the court thinks that the argument that the arbitration agreement applies to a particular dispute is wholly groundless. That conclusion follows not only from the text of the Act but also from precedent. We have held that a court may not "rule on the potential merits of the underlying" claim that is assigned by contract to an arbitrator, "even if it appears to the court to be frivolous." **AT&T Technologies, Inc. v. Communications Workers, 475 U. S. 643, 649–650 (1986).** A court has "no business weighing the merits of the grievance" because the "agreement is to submit all grievances to arbitration, not merely those which the court will deem meritorious." **Id., at 650 (quoting Steelworkers v. American Mfg. Co., 363 U. S. 564, 568 (1960)).** Therefore this case should

have been compelled to arbitration and any further proceedings stayed pending arbitration immediately after any appeals and or mandates were issued.

22) On or about **July 15, 2019** the clerk of court re-filed the notice of motion hearings to which the Judge on behalf of the court has overridden the contract and the grievance of the Appellant with the filing of their letter dated **July 15, 2019** and filed on the record in case on **July 16, 2019** in violation of the **FAA** and the contract which the court of common pleas was notified of in the **Notice to the Court** by the Appellant filed on or about **July 7th through the 9th , 2019** by denying the Appellants Motions by the filing of a letter by by Judge Diane S. Goodstein and an order based off the decision/statement of the referenced Judge issued by the clerk of court as the Judge's statement of Judgement is without subject matter jurisdiction, done outside of the rules of the court and is a **VOID Order (section 10293 of the contract)** as referenced in the agreement/contract which the court is a party to include their officers and public officials and agreed to as the contract directs all issues of arbitrability to the arbitrator not the court.

23) On or about **July 19, 2019**, Appellant filed a "**Notice of Appeal**" in Common Pleas court and copies to all other parties to this case that have been served and have appeared which as a general rule automatically stays matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision in **Common Pleas Court** as matters appealed greatly affects any future proceedings which are the hearings as they were part of the denied statement of Judgment by Judge Diane S. Goodstein which have been scheduled for **July 30, 2019** because if the Appellants Presentment/Motions was Stayed and the Common Pleas court by and through

their judicial officers (the Judge of record) reviewed all evidence placed before the court and findings by the arbitrator by the issuance of their binding award as they are required to do, which did not happen and showing prejudicial acts by the judge on behalf of Common Pleas Court. The court still continued to proceed with the hearings and ignored all evidence placed before the court as they never mentioned reviewing **Exhibits/Evidence J-K** in their denial letter/decision thereby showing complete negligence of the court.

24) On or about **July 19, 2019** respondents attorney filed a notice of Motion Hearing reiterating the hearing dates which at this point was to be automatically stayed by the notice of appeal filed on the record as referenced above.

25) On or about **July 30, 2019**, at 12:37 p.m., judge **Maite' Murphy 2166** on behalf of the court of Common Pleas entered another void order (statement of Judgment/decision by the court) on the same date of the scheduled hearings which are in reference to previous motions which as a general rule, **SCACR Rule 241(a)** automatically stays these proceedings and after the time the hearings were scheduled in violation of the referenced general rule as **Judge Maite' Murphy** reason for this statement of Judgement/decision states, **"All motions scheduled for July 30, 2019 are continued until Court of Appeals makes a decision on the current Appeal filed by Mr. Nelson Bruce."** Because the appeal greatly affects the scheduled hearings on the referenced motions as presented by **Judge Diane S. Goodstein's** Statement of Judgment/decision by the court entered on **July 15, 2019** and the Appellants Presentment to Compel Arbitration/Motion to Stay the Proceedings, the lower court did not have the authority to lift any stays that are automatic once a notice of appeal has been filed as provided under **SCACR Rule 241(a)** and all hearing must continue to be stayed until the

duration of the appeal. Also because Judge **Maite' Murphy** is not the judge of record who had authority in the referenced case to make such a void order and no notice of changes in judges where provided to the Appellant and other parties to this case to which the Appellant has not consented to being before a new Judge. This statement of Judgment/decision of the court was electronically filed and mailed on the date of the scheduled hearings, therefore there is no way the Appellant could have receive and challenge this judgement/decision which has no dates to be continued to before the hearings to which an automatic stay is in place, this order is void and improperly continued and should not be considered as a lift of the automatic stay as a lift of the automatic stay is not requested within the referenced statement of judgment/decision by the court.

26) On or about **July 30, 2019, at 2:11 p.m.**, judge **Maite Murphy 2166** on behalf of the court of Common Pleas again entered another void order (statement of Judgment/decision by the court) on the same date of the scheduled hearings which are in reference to previous motions as **Judge Maite Murphy** reason for this statement of Judgement/decision states, **"On July 30, 2019 a certified filed copy of the Order Continuing the motions scheduled for July 30, 2019 was mailed via first class mail on July 30, 2019 to the Pro Se' Defendant, Nelson L. Bruce at 1605 Central Avenue, Ste. 6, #167, Summerville, SC 29483".**

27) On or about **August 5, 2019** Appellant filed in both this court and **Common Pleas Court** an Amended Notice of Appeal to correct deficiencies and a Letter to the court (Court of Appeals) referencing the general rule that should be followed when a **notice of appeal** has been filed on the record in both courts because the court advised the appellant to file a

motion for a stay to which conflicts with the general rules **(SCACR Rule 241(a))** of the court for when a notice of appeal has been filed on the record in court.

III. STANDARD OF REVIEW/ ARGUMENT

28) South Carolina courts found, in favor of arbitration is based largely upon the specific language of the "arbitration agreement" but also based upon the overall federal policy supporting arbitration. ***Devon Smith, individually and on behalf of all others similarly situated v. General Information Solutions, LLC*, WL 2018 6528155 Case No.: 3:18-2354-MGL (December 11, 2018).**

29) The Respondentt's entered into an agreement in writing with the Appellant evidenced by the the record in Common Pleas Court which has an "arbitration clause" where the Appellants **Presentment to Compel Arbitration/Motion to Stay Proceedings** was necessary to be filed directing the Dorchester County Common Pleas Court to Compel Arbitration and place a stay on the proceedings pending the findings of the arbitrator.

30) The policy of the United States and of the state of South Carolina is to favor arbitration of disputes. **Zabinski v. Bright Acres Associates, 346 S.C. at 596, 553 S.E.2d at 118.** Unless a court can say with positive assurance that the arbitration clause is not susceptible to any interpretation that covers the dispute, arbitration should generally be ordered. **Aiken, 373 S.C. at 149, 644 S.E.2d at 708, citing Zabinski, 346 S.C. at 596-97, 553 S.E.2d at 118-19.** Regardless of the label the Appellant uses, when deciding 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. **Zabinski, 346 S.C. at 597, 553 S.E.2d at 118.** Moreover, even if the court finds that a claim is outside of the scope of

the arbitration clause, the clause may still apply. "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." **Zabrinksi, 346 S.C. at 598, 553 S.E.2d at 119, citing Long v. Silver, 248 F.3d 309 (4th Cir. 2001).** Thus, a claim falls within the scope of an arbitration clause if it is encompassed by the language of the clause or if a **"significant relationship"** exists between the claim and the contract. A significant relationship exists between the claims and the contract as the claims provided in the contract have been admitted to by the respondents evidenced by their default as specified within the contract.

31) There is an arbitrablility Issue present in this matter where a contract exists and an Arbitration Clause/Provision exists which the court possesses no power to decide the arbitrability question which must be arbitrated according to the contract and the **Federal Arbitration Act (FAA)** as recently decided in a unanimous decision by the united states supreme court in ***Henry Schein, Inc. v. Archer & White Sales, Inc., No. 17-1272, in the US Supreme Court January 2019)*** ... it was held that the courts must interpret the Act as written, and the Act in turn requires that we interpret the contract as written. When the parties' contract delegates the arbitrability question to an arbitrator, a court may not override the contract. In those circumstances, a court possesses no power to decide the arbitrability issue. That is true even if the court thinks that the argument that the arbitration agreement applies to a particular dispute is wholly groundless. That conclusion follows not only from the text of the Act but also from precedent. We have held that a court may not "rule on the

potential merits of the underlying" claim that is assigned by contract to an arbitrator, "even if it appears to the court to be frivolous." **AT&T Technologies, Inc. v. Communications Workers, 475 U. S. 643, 649–650 (1986).** A court has "no business weighing the merits of the grievance" because the "agreement is to submit all grievances to arbitration, not merely those which the court will deem meritorious." **Id., at 650 (quoting Steelworkers v. American Mfg. Co., 363 U. S. 564, 568 (1960)).** The judges on behalf of the Dorchester County Common Pleas Court are showing signs of being prejudicial to the appellant by overriding the contract, denying him grievance and making judgments on merits that are to be compelled before the Arbitration Tribunal in violation of the contract and the **FAA.**

32) The Dorchester County Common Pleas Court is a party to the referenced agreement/contract and addendum therefore it appears to have been a conflict of interest by the court, and the adverse decision by Judge Diane S. Goodstein on behalf of the Common Pleas Court is self-serving and/or discretion abuse as provided in the contract.

33) There are affidavits and declarations filed on the record in this case which is prima facie evidence as there are no rebuttal affidavits filed by the respondents nor the judges to rebut the facts presented before the Dorchester County Common Pleas Court this matter should have been stayed pending the findings of the arbitrator of any and all claims, disputes and controversies, which are before their arbitration tribunal, this case should have been dismissed with Prejudice and the remaining claims remanded to US District Court as the Common Pleas Court has no Jurisdiction to render any judgments/orders in regards to the Appellants Counter Claims because of diversity, the federal questions, claims and the amount sued upon by the Appellant for the respondents violations of law as provided by

the "**Proposed Order**" which the court refused to file a copy of on the record as required and requested by Appellant in violation of his rights evidenced by his **April 10, 2019** filings as specified above in **paragraph no. 6** as it was presented also to all parties to this case that have been appeared.

34) All parties, "collectively the respondents," received notice of the presented written agreement/contract and addendum with the incorporated arbitration provision and an opportunity to cure their default which have all been filed on the record in common pleas court (**see…Exhibits/Evidence - J)** but deliberately and intentionally refused to respond and made the choice to remain silent, therefore tacitly acquiescing to the facts in such agreement as provided by the agreement if they chose to waive all rights by remaining silent which they exercised (**see sections 10281, 10284, 10291m 10299** of the referenced agreement/contract and addendum**).** The law only requires that the parties receive notice which all parties have received notice evidenced by **Exhibits/Evidence - J** filed on the record as referenced above. The parties were notified of the agreement/contract and addendum and of the terms and provisions of that agreement in writing which has an arbitration clause which all parties to that agreement/contract and addendum have accepted and consented to upon default which has been documented based off of their actions which is specified in the referenced agreement/contract and addendum. The courts (District, Appeals, Supreme or otherwise) also recognize that the parties are required to be provided with and receive notice and that certain action constitute as acceptance of an agreement in writing in contract law where the agreement specifies and an act such as silence constitutes acceptance also where an

arbitration clause exists where the actions must be arbitrated, see… ***Bekele v. Lyft, Inc.*, No. 16-2109, 2019 U.S. App. LEXIS 7385 (1st Cir. Ct. App. Mar. 13, 2019), *Diaz v. Sohnen Enterprises*, No. B283077, 2019 Cal. App. LEXIS 329 (Ct. App. Cal. Apr. 10, 2019), *Dagnan v. St. John's Military Sch.*, No. 16-2246-CM, 2016 U.S. Dist. LEXIS 177303 (D. Kan. Dec. 21, 2016), *Joy Zinante v. Drive Electric, LLC*, No. 14-20072 (5th Cir. 2014), & *In re Online Travel Co.*, 953 F. Supp. 2d 713 (N.D. Tex. June 14, 2013.**

35) The written provision in the arbitration agreement/contract and addendum is "valid, irrevocable and enforceable as provide under the **Federal Arbitration Act (FAA) codified under 9 U.S.C. § 2** as the agreement/contract and addendum involves commerce as specified above in the Appellants Presentment to Compel Arbitration/Motion to Stay Proceedings.

36) The parties have a preexisting relationship with each other and a duty to respond/speak but the respondents chose to remain silent thereby creating an estoppel by default and tacitly acquiescing to the facts (Averments and or Proof of Claims) in the referenced agreement/contract and addendum and as provided by the findings of the Arbitrator evidenced by the Arbitration Award filed on the record in Common Pleas Court as referenced above. Silence can only be equated with fraud when there is a legal or moral duty to speak, or when an inquiry left unanswered would be intentionally misleading, **see…U.S. v. Tweel, 550 F2d 297, 299-300.** Fraud maybe committed by failure to speak, but a duty to speak must be imposed, **see…Dunahay v. Struzik, 393 P.2d 930, 96 Ariz. 246 (1964)**). A duty to speak has been imposed to all parties/respondents to the referenced agreement/contract. Fraud and deceit may arise from silence where there is a duty to speak

the truth, as well as from speaking an untruth (**see...Morrison v Acton, 198 P.2d 590, 68 Ariz. 27 (Ariz. 1948)**. Where relation of trust or confidence exists between two parties so that one places peculiar reliance in trustworthiness of another, latter is under duty to make full and truthful disclosure of all material facts and is liable for misrepresentation or concealment, **see...Stewart v. Phoenix Nat. Bank, 64 P.2d 101, 49 Ariz. 34- (Ariz. 1937).** Damages will lie in proper case of negligent misrepresentation of failure to disclose, **see...Van Buren v. Pima Community College Dist Bd., 546 P.2d 821, 113 Ariz. 85 (Ariz.1976) and Wells Fargo Bank v. Arizona Laborers (2002).**

37) The District Court without properly reviewing and considering the appellants presentments to compel arbitration/motion to stay proceedings, declarations, notice to the court supporting exhibits/evidence to include the Binging Arbitration Award, and the **Federal Arbitration Act** through their adverse decision filed on the record in common pleas court as referenced above denying Appellants Presentment to Compel Arbitration/Motion Stay Proceedings and Proposed Order which is evidence of self-serving and discretion abuse by the lower courts by and through their public officials (the judge and clerk) as they have created a conflict of interest as the Common Pleas Court and their public official are a party to the referenced agreement/contract and addendum by reference or otherwise, therefore the judges and clerks on behalf of the court is in violation of the contract and the **FAA** is evidence of the Lower Courts Public/Judicial Officers being prejudicial to the Appellant through neglect and or misconduct.

38) Common Pleas Court Erred in their decision denying Appellants motion to compel

arbitration and his opposed order as they failed to properly review the record and the evidence filed on the record when making such an unlawful decision violating the contract and the FAA by their opinions which are not facts before the court as the court is required to make judgements backed by supported facts not their own opinions. The evidence filed on the record in Common Pleas court backs the facts stated by him evidence by his exhibits/Evidence J-K supported by his unrebutted affidavit in the form of a notice to the court which is prima facie evidence as the arbitrator had already decided the validity of the agreement and rather or not there was consent. Oppositions filed after all proceeding have been completed are invalid/meritless especially when all parties were notified but failed to respond and object to the proceedings as required in the timeframe required.

IV. STATEMENT OF FACTS, "WHERE THERE IS NO LAW, THERE IS EQUITY, WHERE THERE IS LAW, EQUITY REMAINS":

We approach this body highlighting the fact that an arbitrator has determined as a result of issuing an award the validity of the contract at bar, and that the arbitration agreement embedded within the binding contractual agreement is valid, and within strict adherence to **THE FEDERAL ARBITRATION ACT:**

As by law '**when a contract has an arbitration clause, that requires the arbitrator determine the validity of the contract, and the arbitration clause, the courts have no business in the matter**', ***Henry Schein, Inc. v. Archer and White Sales, Inc.*, No. 17-1272 (U.S. Sup. Ct. Jan. 8, 2019),** "and that courts must respect the parties' decision in their contracts to delegate the arbitrability question to the arbitration panel".

"If the arbitration clause clearly and unmistakably delegates questions of arbitrability to the arbitration panel then these issues will be decided by the arbitrators and not the courts. If the "FAA" allows parties to agree by contract that an arbitrator, rather than a court, will resolve threshold arbitrability questions as well as the underlying merits disputes." The courts "**are not at liberty to rewrite the statute passed by Congress and signed by the President**." This quote may become more relevant if "manifest disregard" continues to rear its head. "**We must interpret the [FAA] as written and the [FAA] in turn requires that we interpret the contract as written.**" "**When the parties' contract delegates the arbitrability question to an arbitrator, a court may not override the contract**." "That is true **even if the court thinks** (that is to say it matters not what the court thinks, what matters is the Federal arbitration act and the intentions of Congress, the alleged exception gave a party resisting arbitration an out if it could convince a court that the issue in dispute clearly did not come within the arbitration clause. That "out" is now gone, or as Justice Kavanaugh said in the opinion, "that ship has sailed.") That the argument that the arbitration agreement applies to a particular dispute is wholly groundless." "[W]e may not engraft our own exceptions onto the statutory text." And finally, "it is not our proper role to redesign the statute."

We bring to this court's attention, the judicial officers attempt to circumvent the process and overturn precedent without lawful authority, as the Supreme Court has made it clear "that there is no judicial discretion when it comes to arbitration where the arbitrator and/or questions regarding arbitration are part of a contract, whereby the parties having agreed". In this instance the parties have agreed to have any and all questions, disputes associated with the agreement settled and determined by an arbitrator as specified within the terms of the agreement.

In this matter, contract number: **2019-0108BRUCWSFCM–S12389981– 5577899811**© it was agreed to by the parties, is binding, irrevocable, self-executing, and coupled with interests, and as noted above,

the contract specifically address the issue as to questions dealing with the validity of the contract, that such was only to be determined by the arbitrator and not the court.

The arbitrator in issuing the award has by such actions provided evidence that the contract is valid, and seeing that the contract is valid (and that means that it's terms, conditions, clauses are valid as well), we as a party possess the right to petition for the enforcement of the contract and not just the confirmation of the award, which is our intent in this instance.

The opposing party has waived all rights, defenses, and or objections and has agreed to being estopped bringing forth any complaint and or dispute, and that if such was brought it would be through arbitration despite knowledge of these waivers. We are approaching this body in equity, as equity must render equity.

The contract itself stands as an (express) trust agreement, whereby this petitioner's estate is the grantor/trustor and the opposing party grantee, the petitioner in their natural capacity is the beneficiary of the trust, the government agency "special relationship trustee", the value includes the contract/trust agreement which is property as defined by the Fifth Amendment of the United States Constitution. The contract/trust agreement has an end date, is workable thus satisfying all of the prerequisites for expressing and/or declaring the trust.

There appears to have been an injustice, in that despite the Dorchester County Common Pleas Court having knowledge of an arbitration agreement, and the election of a party to that agreement to proceed before arbitration rather than through the court, the court forsook its duties and obligations and through its judicial officer violated the terms and conditions for the delegation of authority albeit limited as the express in statute and law. By acting outside the scope of its discretion, the common pleas court continued acting outside the scope of the protection of the law i.e. without immunity. We seek only to

have an order by the court for the enforcement of the contract, it is not our intent at this time to seek confirmation of arbitration award, as the statute of limitations has not tolled.

This body has within it the delegatory authority, power, and the obligational duty to see that "justice be done", and yet we have found that many would ignore equity and its most adored maxims, just to prevent one from being victorious by using the law to their advantage, 'we stand present without justice as the heavens fall'.

The matter involved commerce, so we invoke the Federal Arbitration Act or otherwise known as the **UNITED STATES ARBITRATION LAW, "A court has "'no business weighing the merits of the grievance'" because the "'agreement is to submit all grievances to arbitration, not merely those which the court will deem meritorious.'" Id., at 650** (quoting **Steelworkers v. American Mfg. Co., 363 U. S. 564, 568 (1960)).**

We further bring to the court's attention that it cannot act outside the scope of the intentions of Congress, here is the intentions of Congress and what they had to say with regards two legislative intentions respecting **THE UNITED STATES ARBITRATION ACT** otherwise known as **THE FEDERAL ARBITRATION ACT**:

By enacting **Section 2**, Congress sought generally to promote the enforcement of arbitration agreements. Historically, American courts viewed arbitration with judicial hostility. It is believed that this hostility flowed from a similar enmity displayed by English courts. Arbitration infringed on the livelihood of English judges who were paid fees based on the number of cases they decided. English courts were also generally unwilling to surrender their jurisdiction over various disputes. The hostility toward arbitration subsided as industrialization led to an increased number of business disputes. In 1924, the Court upheld a New York law that compelled arbitration in a dispute involving a maritime contract. The Court's decision in **Red Cross Line v. Atlantic Fruit Company** is believed to have opened the door for

federal legislation that recognized the validity of arbitration agreements. President Calvin Coolidge signed the United States Arbitration Act (commonly referred to as the Federal Arbitration Act) on February 12, 1925. The enactment of the new law "**declared a national policy favoring arbitration and withdrew the power of the states to require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration**." While Congress's primary motivation for drafting the FAA reflected its interest in protecting the enforcement of arbitration agreements as agreed to by the contracting parties, it also understood the potential benefits that would be provided by the law's enactment: It is practically appropriate that the action should be taken at this time when there is so much agitation against the costliness and delays of litigation.

These matters can be largely eliminated by agreements for arbitration, if arbitration agreements are made valid and enforceable. Although Section 2 of the FAA requires the enforcement of arbitration agreements in maritime transactions and contracts "**evidencing a transaction involving commerce**," the precise scope of this latter group of contracts has not always been certain. Congress provided a definition for the term "commerce" in Section 1 of the FAA, but it did not identify the extent to which a contract must "evidenc[e] a transaction involving commerce" before the FAA would apply. The courts held that the Section 2 phrase "**involving commerce" reached to the limits of Congress's power under the Commerce Clause**. In **Snyder v. Smith 736 F.2d 409 (7th Cir. 1984),** for example, the U.S. Court of Appeals for the Seventh Circuit maintained that the courts should take into account Congress's broad power to regulate under the Commerce Clause when deciding which contracts involve commerce. Because Congress may reach activities "affecting" interstate commerce under its Commerce Clause authority, the Seventh Circuit reasoned that it was logical to conclude that any contract affecting interstate commerce falls under Section 2 of the FAA. In 1995, **the Supreme Court determined that a broad interpretation of "involving commerce" is appropriate. In Allied-Bruce Terminix Companies, Inc. v. Dobson, the Court held in a 7-2 opinion authored by Justice Breyer that the phrase "involving**

commerce" signaled the full exercise of Congress's power under the Commerce Clause. The Court concluded that the FAA's legislative history "**indicates an expansive congressional intent**." For example, the House Report that accompanied the FAA stated that the Act's "'**control over interstate commerce reaches not only the actual physical interstate shipment of goods but also contracts relating to interstate commerce**.'" In addition, remarks in the Congressional Record indicated that the FAA "'**affects contracts relating to interstate subjects and contracts in admiralty**.'" The Court maintained that **20 H.R. REP. NO. 96, supra note 10 at 2. 21 See 9 U.S.C. § 1** the word **"involve" should be read as the functional equivalent of the word "affect."** Because the phrase **"affecting commerce" normally signals Congress's intent to exercise its Commerce Clause powers to the fullest extent, the Court reasoned that the use of the phrase "involving commerce" should be given a similar reading**. After concluding that the phrase "involving commerce" should be interpreted broadly, the Dobson Court further determined **that the FAA applies to all contracts that involve commerce and does not require the contemplation of an interstate commerce connection by the parties.** The Court found that a "contemplation of the parties" requirement was inconsistent with the FAA's basic purpose of helping parties avoid litigation. Such a requirement invited litigation about what was or was not contemplated by the parties. Any congressional recognition of an expedited dispute resolution system at the time the FAA was drafted would be undermined by this additional litigation. ("**'commerce' ... means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation ...** ").

We include this information as a basis for the preponderance of evidence to the contrary of any claim that the matter does not involve commerce, that the contract between the parties that involve

commerce does not invoke **THE FEDERAL ARBITRATION ACT**, and that the arbitration agreement does not incorporate such issues, including the intentions of Congress when enacting such an act.

This is a matter of equity, dealing with a contractual **TRUST relationship,** and is subject to the rules, principles, and standards of equity. The **FEDERAL ARBITRATION ACT** is an equitable statute, in that it requires an agreement of all parties, the contract with an arbitration clause is documentation of agreement of all parties. The Supreme Court decision In ***Henry Schein, Inc. v. Archer and White Sales, Inc.*****, No. 17-1272 (U.S. Sup. Ct. Jan. 8, 2019),** the court held that such contracts to include issues of viability, disputes, controversies, and or issues are to be resolved before an arbitrator when the contract and arbitration agreement so dictate. In this very instance the contract makes such dictation.

V. REMEDY/RELIEF SOUGHT:

The contract requires certain performances on the part of the opposing parties, including the return of properties, so long as the properties have not been returned this is a violation of the right to property, a constitutional sanctioned and secured right. It is also a breach of the terms as agreed to by the parties and the consequences of said acts are duly enforceable via the valid contract. Interests and other assessments accumulate, and accrue, we asked that this body issue an order to the opposing parties for compliance with the agreement, for the return of all properties and the making of the complainant whole by reversing the acts from the inception of the agreement and or breach, and or actions of the respondents related to this matter and for an injunction against the opposing party from acting outside the scope of the agreement. Confirmation of the award is not sought at this time, that is a separate process and we shall utilize our right to that remedy before the tolling of the statute.

I put before this court that I attest that I have attained the age of majority, am over the age of 18, am competent to handle my own affairs and am attempting to gain control of the securities

held in my minor account, but the custodian and others are colluding and attempting to prevent me from gaining access to my property in violation of my due process rights as outlined and stipulated within the framework of the Bill of Rights specifically the fifth amendment to the Constitution of the United States. I am seeking to redress this issue, I am seeking equity and so I present this brief in equity to the court, and I do so as grantor/trustor over the estate of the minor/infant.

I do hereby say that this is accurate and presented as such on this 21st day of **August, 2019**.

VI. CONCLUSION

For the reasons specified above, this Court should reverse the lower court's decision, grant the relief requested above, dismiss the Respondents' Claims with prejudice, and direct the lower court to remand the Appellants counterclaims/countersuit to U.S. District Court for further proceedings and possible dismissal without prejudice based off of the referenced contract and to stay in compliant with the referenced contract as the parties have agreed that arbitration was and is the exclusive remedy to resolve any and all disputes, claims and controversies between any and all parties to the referenced agreement/contract and addendum which Arbitration has been completed as of **May 6, 2019** evidenced by the Binding Arbitration Award **(See…Exhibits/Evidence – K)** issued by the Arbitrator.

Done this 21st day of **August, 2019**.

RESPECTFULLY PRESENTED,

"Without Prejudice"

Nelson L. Bruce 8-21-2019 void/non assumpsit

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