

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2019 CP-0219C-P0201030

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SC Court of Appeals

ELECTRONICALLY FILED - 2019 Oct 02 2:06 PM - AIKEN - COMMON PLEAS - CASE#2019CP0201030

UNITED SOLAR

CHARLES BARFIELD, DEFENDANT

PLAINTIFF(S)

SCREC, LLC, LOANPAL
DEFENDANT(S)

Submitted by: COURT	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

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

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

This matter came before the Court on September 27, 2019 on Defendant Loanpal's motion to compel arbitration. Plaintiff United Solar joins in Loanpal's motion. Defendant Barfield opposes the motion. Having reviewed the applicable law and considered the argument of counsel, the Court declines to order arbitration. The Court finds as follows:

Upon seeing an advertisement for "free solar panels," Barfield contacted SCREC, a private company, to inquire about having solar panels installed on his home. United Solar's agent, Miller, subsequently paid Barfield a sales call. In fact, the panels would not be "free" in the traditional sense of the word; rather, the cost of the panels would be covered over time by Barfield saving on the cost of electricity to his home. Barfield agreed to the installation provided that he could receive an additional \$10,000 for debt consolidation; otherwise, Barfield would not be able to afford the loan payments for the solar installation.

Barfield executed a loan agreement with Loanpal for roughly \$39,000. United Solar proceeded to install the panels on Barfield's home. Upon subsequently being contacted by Loanpal about making his first payment on the loan, Barfield inquired about his \$10,000 debt consolidation loan. The Loanpal representative stated that Loanpal did not do debt consolidation loans and that any loan in excess of the contract price would be a violation of federal law. Barfield then contacted Miller who apparently stated in writing that the \$10,000 would come from United Solar. Loanpal subsequently rescinded the loan and charged back the money it had

paid United Solar. United Solar then sued Barfield, and Barfield brought an action against SCREC and Loanpal. Miller is apparently nowhere to be found, installation of the solar panels remains unfinished, and presumably Barfield is unable to obtain financing to complete installation without an accompanying debt consolidation loan.

The loan agreement with Loanpal contained a conspicuous arbitration clause. Barfield objects to arbitration, and Loanpal seeks to compel arbitration. Although not a party to the loan agreement, United Solar joins in Loanpal's motion.

The Court notes that, in some cases, maybe everyone just needs to walk away.

Barfield raises several objections to arbitration. Barfield asserts that the arbitration clause is an unconscionable adhesion contract. The Court rejects this assertion for the following reasons. First, case law clearly supports the proposition that courts favor arbitration. Second, although the contract in issue was clearly an adhesion contract, the arbitration provision was conspicuous and contained an opt-out provision which Barfield could have initialed. Third, the terms of the arbitration are not so onerous or in contravention of South Carolina law as to render the terms unconscionable. Accordingly, the Court finds that this particular arbitration agreement would normally be enforceable under South Carolina law.

However, the Court will not order arbitration for the following reasons. The Court is aware of case law supporting the proposition that arbitration agreements survive termination of the contract. Jackson Mills, Inc. v. B.T. Capital Corp., 312 S.C. 400, 440 S.E.2d 879 (1994) Such a rule makes sense where the parties have voluntarily operated under the provision of a contract for some period of time. In the present case, Loanpal immediately rescinded the contract and charged back all funds it had paid to United Solar. Essentially, Loanpal is the party who nullified their obligations under the contract which contains the very arbitration provision that Loanpal now seeks to enforce. If pressed, Loanpal would likely argue that, due to the illegal nature of the financing arrangement, they have no legal obligation to perform under the contract. Loanpal cannot have it both ways. Either there is a valid contract with a corresponding duty for Loanpal to perform, or there is not contract and, hence, no arbitration provision. As Loanpal has yet to answer Barfield's third party complaint, however, the Court cannot be certain of Loanpal's position on this particular issue.

The Court is aware of the holding in South Carolina Public Service Authority v. Great Western Coal (Kentucky), Inc., 312 S.C. 559, 437 S.E.2d 22 (1993): "A party cannot avoid arbitration through the rescission of the entire contract when there is no independent challenge to the arbitration clause." Again, *Great Western* is a case where the parties operated under the contract in issue for a substantial period of time. In that light, the Supreme Court's holding that any allegation of fraud must relate to the arbitration agreement itself as opposed to the entire contract itself makes perfect sense. Again, however, in the present case, the party claiming that they were the victim of fraud is also the very party who rescinded the contract purportedly because of fraud in the inducement. *Great Western* cannot be read for the proposition that a party seeking to avoid performance under a contract which that party unilaterally rescinded is still able to compel arbitration under a contract which that party refuses to honor. In short, by rescinding the contract at the inception, Loanpal forfeited any right to compel arbitration pursuant to that contract.

As a final matter, the Court is aware of the line of cases holding that arbitration agreements do not cover tortious conduct. Aiken v. World Finance Corp. of South Carolina, 373 SCRC Form 4C (02/2017)

S.C. 144, 644 S.E.2d 705 (2007); Hooters of America, Inc. v. Phillips, 39 F.Supp.2d 582 (1999). In the present case, Loanpal maintains that the underlying transaction, with a kickback to the buyer, violates federal lending law. Assuming for a moment that the arbitration agreement could be enforced despite Loanpal's rescission of the contract, the Court finds that mandating arbitration of an agreement, which was at its inception in contravention of the law, would violate public policy. Simply stated, courts cannot be a privy to enforcement of any agreement which violates the law, even if the court's involvement is limited to addressing the propriety of alternative dispute resolution.

Accordingly, the Court orders that Loanpal's motion is denied, and this case shall proceed to mediation.

Again, in some cases, maybe the best resolution is for everyone to simply walk away. If this is not agreeable, however, then this matter will be subject to resolution in the court of common pleas, not via arbitration.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

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

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

s/Frank R. Addy, Jr.

Circuit Court Judge

2159

Judge Code

Oct. 1, 2019

Date

For Clerk of Court Office Use Only

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

Samuel J. Briggs, Esq.

ATTORNEY(S) FOR THE PLAINTIFF(S)

Brian M. Barnwell, Esq., Benjamin R. Smith, III,
Esq.

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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Aiken Common Pleas

Case Caption: United Solar Inc VS Charles Barfield

Case Number: 2019CP0201030

Type: Order/Form 4

So Ordered

s/Frank R. Addy, Jr., 2159



***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2019CP0201030

Official File Stamp:	10-02-2019 02:06:40 PM
Court:	CIRCUIT COURT Common Pleas Aiken
Case Caption:	United Solar Inc VS Charles Barfield
Document(s) Submitted:	Order/Form 4 Order/Form 4
Filed by or on behalf of:	Frank R. Addy

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This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

- Brian Montgomery Barnwell for Paramount Equity Mortgage Llc
- Benjamin Rush Smith, III for Paramount Equity Mortgage Llc
- Brian C. Gambrell for Charles Barfield
- Samuel Johnston Briggs for United Solar Inc

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

- South Carolina Renewable Energy Commission Llc