

TABLE OF CONTENTS

TABLE OF CONTENTS.....2

TABLE OF AUTHORITIES.....3

STATEMENT OF ISSUES ON APPEAL.....5

STATEMENT OF THE CASE.....6

FACTS.....12

ARGUMENTS

I. THE MASTER’S ORDERS DENYING PETITIONERS’ MOTION TO STAY AND TO COMPEL ARBITRATION ARE IMMEDIATELY APPEALABLE AND THE RULING OF THE COURT OF APPEALS DISMISSING THE APPEAL AS INTERLOCUTORY CONSTITUTES REVERSIBLE ERROR.....13

II. BECAUSE THE CONTRACT CONTAINS MANDATORY MEDIATION/ARBITRATION PROVISIONS AND THE PETITIONERS HAVE NOT DEFAULTED UPON NOR WAIVED THEIR RIGHTS TO MEDIATION/ARBITRATION, THE COURT ERRED WHEN IT FAILED TO STAY THIS ACTION AND COMPEL MEDIATION/ARBITRATION.....17

CONCLUSION.....48

TABLE OF AUTHORITIES

CASES

Am. Bankers Ins. Group, Inc. v. Long, 453 F. 3d 623 (4th Cir. 2006).....21

American Recovery Corp. v. Computerized Thermal Imaging, Inc., 96 F.3d 88 (4th Cir. 1996).....33

Bazzle V. Green Tree Financial Corp., 351 S.C. 244, 569 S.E. 2d (2002).....18

Brown v. Green Tree Services, LLC, 585 F. Supp. 2d 770 (DSC 2008).....39, 47

Cape Romain Contractors, Inc. v. Wando E, LLC, 405 S.C. 115, 747 S.E.2d 461 (2013).....14

Carlson v. South State Plastering, LLC, 404 S.C. 250, 743 S.E.2d 860 (Ct. App. 2013)16, 17, 38, 47

Cedar Surgery Center v. Bonelli, 96 P.3d 911 2004 UT 58 (Utah, 2004).....35, 37, 36

Cent. Fla. Inv., Inc. v. Parkwest Assocs., 2002 UT 13, 40 P.3d 599 (2002).....36

Chandler v. Blue Cross Blue Shield, 833 P.2d 356 (Utah 1992).....36

Charming Shoppes, Inc. v. Overland Constr. Inc., 717 N.Y.S.2d 860 (N. Y. Sup. Ct. 2000).....28, 29

Choctaw Generation Ltd. P’ship v. American Home Assur. Co., 271 F. 3d 403 (2d Cir. 2001).....21

Cox v. Woodmen of World Ins. Co., 347 S.C. 460, 556 S.E.2d 397 (Ct. App. 2001).....15

Davis v. KB Home of S.C., Inc., 394 S.C. 116, 131, 713 S.E. 2d 799, 807 (Ct. App. 2011).....39, 47

Evans v. Accent Manufactured Homes, Inc., 352 S.C. 544, 575 S.E. 2d 74 (Ct. App. 2003).....44

General Equip. & Supply Co., Inc. v. Keller Rigging & Constr., SC., Inc., 344 S.C. 553, 544 S.E. 2d 643 (Ct. App. 2001).....23, 46, 47

Heffner v. Destiny, Inc., 321 S.C. 536, 471 S.E. 2d 135 (1995).....18

Hyload Inc. v. Pre-Eng’d Prods, Inc., 308 S.C. 277, 417 S.E.2d 622 (1992).....40

Interconex, Inc. v. Ugarov, 224 S.W.2d 523 (Tex. Ct. App. 2007).....30, 31, 32

Lafitte v. Bridgestone Corp., 381 S.C. 460, 674 S.E.2d 154 (2009).....16

LaFrance Architect v. Point Five Dev. Burlington, LLC 91 A.3d 364 (Vt. 2013).....32, 33

Lamell Lumber Corp. v. Newstress Int’l, Inc., 2007 BT 83, 182 Ut. 282 (2007).....32

Lee v. Grandcor Medical Systems, Inc., 702 F. Supp. 252 (D. Colo. 1988).....27

Lester v. Dawson, 327 S.C. 263, 491 S.E. 2d 240 (1997).....14

Liberty Builders, Inc. v. Horton, 336 S.C. 658, 665, 521 S.E. 2d 749, 753 (Ct. App. 1999).....14, 38
.....40, 47

MailSource, LLC v. M.A. Bailey & Assoc., 356 S.C. 370, 588 S.E. 2d 639 (Ct. App. 2003)...16, 17

McCall v. Batson, 285 S.C. 243, 329 S.E.2d 741 (1985).....16

McDonnell v. Dean Witter Reynolds, Inc., 620 F. Supp. 152 (D. Conn. 1985).....33, 34

Menorah Ins. Co. v. INX Reins. Corp., 72 F.3d 218 (1995).....32

Miller v. British American Assurance Co., 238 S.C. 94, 119 S.E.2d 527 (1961).....26

Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 103 S.Ct. 927, 74 L.Ed.2d
765 (1983).....18

Parker v. Parker, 313 S.C. 482, 443 S.E.2d 388 (1994).....38

Patten Grading & Paving, Inc. v. Skanska USA Bldg., Inc., 380 F. 3d 200 (4th Cir. 2004).....39, 43,
.....45, 46, 47

Pruitt v. Bowers, 330 S.C. 483, 499 S.E.2d 250 (Ct. App. 1998).....16

Rice Hope Plantation v. South Carolina Pub. Serv. Auth., 216 S.C. 500, 559 S.E.2d 132 (1950)....16

Rich v. Walsh, 357 SC 64, 590 S.E. 2d 506 (Ct. App. 2003).....47

Rhodes v. Benson Chrysler-Plymouth, Inc., 374 S.C. 122, 647 S.E.2d 249 (Ct. App. 2007).....40, 44

Robinson & Wells, P.C. v. Warren, 669 P.2d 844 (Utah 1983).....36

Sims v. Ritter Constr., Inc., 62 N.C. App. 52, 302 S.E.2d 293 (1983).....15

Soter’s, Inc. v. Deseret Fed. Sav. & Loan Ass’n, 857 P.2d 935 (Utah 1993).....36

Southern Bell Tel and Tel. o.v. Hamm, 306 S.C. 70, 409 S.E.2d 775 (1991).....16

State ex rel. Barden & Robeson Corp. v. Hill, 208 W. Va. 163, 539 S. E. 2d 106 (2000).....28, 33, 35

Stedor Enter., Ltd. v. Armtex, Inc., 947 F.2d 727 (4th Cir. 1991).....14

<u>Sunkist Soft Drinks, Inc. v. Sunkist Growers, Inc.</u> , 10 F. 3d 753 (11 th Cir. 1993).....	21
<u>Thomson-CSF, S.S. v. Am. Arbitration Assoc.</u> , 64 F. 3d 773 (2d Cir. 1995).....	21
<u>Thynes v. Lloyd</u> , 294 S.C. 152, 363 S.E.2d 122 (Ct. App. 1987).....	15
<u>Toler’s Cove Homeowners Ass’n v. Trident Constr. Co., Inc.</u> , 355 S.E. 605, 586 S.E.2d 581 (2003)	47
<u>Towles v. United Healthcare Corp.</u> , 388 S.C. 29, 524 S.E. 2d 839 (Ct. App. 1999).....	14, 18
<u>Tri-State Delta Chemicals, Inc. v. Crow</u> , 61 S.W.2d 172 (Ark. 2001).....	28
<u>Tritech Elec., Inc. v. Frank M. Hall & Co.</u> , 343 S.C. 396, 540 S.E. 2d 864 (Ct. App. 2000).....	18
<u>U.S. ex rel. Coastal Roofing Co., Inc. v. P. Browne & Associates, Inc.</u> , 585 F. Supp. 2d 708 (2007)	20, 21, 22
<u>Wham v. Shearson Lehman, Inc.</u> , 298 S.C. 462, 381 S.E.2d 499 (Ct. App. 1989).....	24, 25, 27
<u>Widdicombe v. Tucker-Cales</u> , 366 S.C. 75, 620 S.E.2d 333 (Ct. App. 2005).....	14, 15, 16
<u>Woodruff v. Spence</u> , 76 Wash. App. 207, 883 P.2d 936 (1994).....	28, 29, 30

STATUTES

S.C. Code Ann. §14-3-330 (1976).....	14
S.C. Code Ann. §15-48-10 (1976), et seq.....	14, 18
9 U.S.C. §1, et seq.....	14, 18

OTHER AUTHORITIES

Rule 8(c), FRCP.....	27
Rule 8(c), SCRCP.....	26, 27
Rule 9, SCRCP.....	26
Rule 12(b)(1), SCRCP.....	19
Rule 55(c), SCRCP.....	7
Rule 59(e), SCRCP.....	9, 10, 42, 45
Rule 8(c), W.VA.RCP.....	35
Rule 9, W.VA.RCP.....	35
Am.Jur. 2d <i>Arbitration and Award</i> §51.....	26, 27
Black’s Law Dictionary 120 (9 th ed. 2009).....	27