

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Perry H. Gravely, Circuit Court Judge

Civil Action No. 2020-CP-23-00012

RECEIVED
Oct 01 2020
SC Court of Appeals

Appellant Case No.: 2020-001136

Redemption, Appellant,

v.

The Relentless Church, Respondent.

v.

Ron Carpenter and Hope Carpenter, John Doe and Jane Doe, Third-Party Defendants.

APPELLANT’S RETURN TO RESPONDENT’S MOTION TO DISMISS APPEAL

John R. Devlin, Jr., S.C. Bar No. 1667
Devlin & Parkinson, P.A.
P.O. Box 10387
Greenville, SC 29603
(864) 242-4050
(864) 242-4277-Facsimile
john.devlin@devlinparkinson.com

Attorneys for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

I. SUMMARY OF POSITION..... 1

II. PROCEDURAL BACKGROUND..... 1

III. ARGUMENT 2

 A. Redemption’s appeal is properly before this Court. 2

 B. The Orders are immediately appealable. 3

 1. S.C. Code Ann. § 14-3-330 does not control..... 3

 2. Relentless is barred from raising enforceability under
 state and federal law for the first time on appeal. 5

IV. CONCLUSION..... 6

TABLE OF CONTENTS TO REDEMPTION APPENDIX

Notice of Appeal and Proof of Service 1

Relentless’s Memorandum in Opposition of Motion to Compel Arbitration 21

TABLE OF AUTHORITIES

CASES

Cape Romain Contractors, Inc. v. Wando E., LLC,
405 S.C. 115, 747 S.E.2d 461 (S.C. 2013).....5

Doe v. TCSC, LLC,
430 S.C. 602, 846 S.E.2d 874, 876 (S.C. Ct. App. 2020) 6

Elam v. S.C. Dep’t of Transp., 361 S.C. 9, 602 S.E.2d 772 (S.C. 2004) 3

Equivest Fin., LLC, v. Ravenel, 422, S.C. 499, 812 S.E.2d 438 (S.C. App. Ct. 2018)..... 6

Heffner v. Destiny, Inc., 321 S.C. 536, 471 S.E.2d 135 (S.C. 1995) 3, 4

Nat’l Advert. Co. v. Mount Pleasant Bd. of Adjustment,
312 S.C. 397, 440 S.E.2d 875 (S.C. 1994)..... 3

Ray v. Austin Industrial, Inc.,
No. 3:18-CV-00392-JMC, 2018 WL 4701375 (D.S.C. September 29, 2018)..... 6

Stedor Enter. Ltd. v. Armtex, Inc.,
947 F.2d 727,730 (4th Cir. 1991)..... 5

Towles v. United HealthCare Corp.,
338 S.C. 29, 524 S.E.2d 839 (S.C. Ct. App. 1999)..... 4, 5

RULES

Rule 203(b)(1), SCACR..... 3

Rule 203(d)(1)(B), SCACR 2

STATUTES

S.C. Code Ann. § 15-48-10..... 5

S.C. Code Ann. § 15-48-200..... 3, 4, 5

S. C. Code Ann. § 14-3-330..... 3, 4

9 U.S.C. Chapter 1 5, 6

Appellant Redemption (“Redemption”) would respond as follows to the Motion to Dismiss filed by Respondent The Relentless Church (“Relentless”).

I. SUMMARY OF POSITION

Relentless seeks to dismiss Redemption’s appeal of the lower court’s denial of its Motion to Compel Arbitration using two theories. The first is that a late filing of proof of service with the lower court bars the appeal. No law exists in support of that position. Second, Relentless contends this Court has no jurisdiction because (a) interlocutory rulings are unappealable, and (b) the arbitration agreement itself is unenforceable. The former position is contrary to established South Carolina law, while the latter is an effort to argue the substance of the dispositive appellate issue using an argument Relentless failed to raise in the lower court.

II. PROCEDURAL BACKGROUND¹

The litigation between Redemption and Relentless, both religious nonprofit corporations, involves a dispute regarding occupancy rights to real estate owned by Redemption located at 635 Haywood Road, Greenville, South Carolina and 80 Byrdland Drive, Greenville, South Carolina (collectively the “Properties”). In January 2020, after many months of failed negotiation attempts between the parties to resolve their respective rights to the Properties, Redemption filed a claim in equity, seeking to eject Relentless from the Properties. (*See* Relentless App. 17-24.) In February 2020, Relentless filed its first responsive pleading alleging in part that Redemption breached proposed leases for the Properties that were part of a larger proposed Asset Transfer Agreement. Thereafter, on March 26, 2020, Relentless amended its responsive pleading and, for the first time, alleged the Asset Transfer Agreement had been validly entered into, and sought the court’s order

¹ Redemption incorporates by reference the Appendix filed with this Court by Relentless concurrently with its Motion to Dismiss, which will be cited as “Relentless App. ___”. Documents relevant to this Return not referenced in the Relentless Appendix are included in the concurrently filed Redemption Appendix, which is cited as “Redemption App. ___”.

requiring Redemption to transfer all of the real and personal property referenced in the Asset Transfer Agreement to Relentless. (*See* Relentless App. 25-56.) That pleading made no mention of Relentless's ongoing inability or unwillingness to provide the consideration required by the Asset Transfer Agreement to purchase the Properties. The Asset Transfer Agreement contained an arbitration agreement. (*See* Relentless App. 88 ¶ 12.12.) On May 8, 2020, Redemption timely filed its reply to Relentless's amended pleading, along with a Motion to Compel Arbitration. (*See* Relentless App. 153-173.)

The appeal filed by Redemption arises out of the Circuit Court's denial of Redemption's Motion to Compel Arbitration, which initially occurred on July 13, 2020. (*See* Relentless App. 1-6.) Redemption filed a Motion to Alter or Amend, which was denied on July 24, 2020. (*See* Relentless App. 7-9.) The final order, in which scrivener's errors were corrected, was entered on August 6, 2020. (*See* Relentless App. 10-15.) These orders are collectively referred to herein as the Orders. Thereafter, on August 11, 2020, Redemption served its Notice of Appeal on Relentless and filed it with this Court with the required proof of service that the Notice of Appeal was served on Relentless. (*See* Redemption App.1-20.)

III. ARGUMENT

A. Redemption's appeal is properly before this Court.

The briefest review of the Notice of Appeal and Proof of Service in Redemption's Appendix shows that Redemption has met the standard required for conferring jurisdiction on this Court. Respondent correctly but selectively states that Redemption did not file the Notice of Appeal with the clerk of the lower court within ten (10) days of service on Respondent, as required by SCACR 203(d)(1)(B); however, Respondent fails to acknowledge Redemption timely served the Notice of Appeal on Respondent and timely filed the Notice of Appeal with this Court. Redemption later filed the Notice of Appeal with the Clerk of the Circuit Court on September 1,

2020, and Appellee has not been prejudiced in any way by Redemption’s late filing. The South Carolina Supreme Court has stated:

The notice of appeal in a case appealed from the Court of Common Pleas must be served on all respondents within thirty days after receipt of written notice of entry of the order or judgment. Rule 203(b)(1), SCACR. The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to “rescue” the delinquent party by extending or ignoring the deadline for service of the notice.

Elam v. S.C. Dep’t of Transp., 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (S.C. 2004) (citation omitted).

Redemption served its Notice of Appeal on Relentless and filed the Notice of Appeal and Proof of Service with this Court on August 11, 2020, which was twenty-nine days from the date of the initial order dated July 13, 2020, and only eighteen days after receiving notice of the denial of its Rule 59 Motion. (Redemption App.1-20.) Therefore, Redemption’s appeal is properly before this Court, and this Court has jurisdiction to consider the appeal.

B. The Orders are immediately appealable.

1. S.C. Code Ann. § 14-3-330 does not control.

Relentless engages in a lengthy analysis of the appealability of the Orders under S. C. Code § 14-3-330, the general statute creating appellate jurisdiction. Relentless concludes the Orders denying arbitration do not fit into any of the four general categories of appeal and are thus not immediately appealable. Relentless fails to consider the longstanding rule of statutory construction that specific laws prevail over general laws and, therefore, the more specific provisions of S.C. Code Ann. § 15-48-200 must prevail over the more general provisions of S.C. Code Ann. § 14-3-330. *See Nat’l Advert. Co. v. Mount Pleasant Bd. of Adjustment*, 312 S.C. 397, 400, 440 S.E.2d 875, 877 (S.C. 1994); *Heffner v. Destiny, Inc.*, 321 S.C. 536, 538, 471 S.E.2d 135, 136 (S.C. 1995).

In *Heffner*, appellants sought to challenge the lower court's order staying an action and compelling arbitration. The South Carolina Supreme Court, after recognizing the policy of the United States and this State is to favor arbitration, ruled that, unlike an order denying arbitration,² an order compelling arbitration was not immediately appealable. *Heffner*, 321 S.C. at 537-538. The *Heffner* court explained the specific provisions of S.C. Code § 15-48-200 are controlling over the more general provisions of S.C. Code Ann. § 14-3-330: "To apply the general appealability provisions of § 14-3-330 would conflict with the more specific provisions of § 15-48-200 regarding the appealability of orders related to arbitration." *Id.* at 538 (citations omitted).

Relentless argues the Orders do not affect the merits because they have not finally determined any part of a cause of action or defense. It is certainly accurate that the lower court ruled Redemption could, in effect, litigate the validity of the entire contract in which the arbitration provision was contained and then renew its motion to compel arbitration. (Relentless App. 5.) In addition to misapplying the applicable case law, however, this illusory remedy is counter to the provisions of S.C. Code Ann. § 15-48-200 allowing an immediate appeal of the denial of a motion to compel arbitration. Moreover, this precise issue has been raised and rejected by our appellate courts. In *Towles v. United HealthCare Corp.*, 338 S.C. 29, 524 S.E.2d 839 (S.C. Ct. App. 1999), the lower court denied appellant's motion to compel arbitration but granted appellant leave to refile its motion after the completion of discovery. This Court reversed after citing with approval the strong state and federal policy favoring arbitration and held that the lower court's order favoring litigation over arbitration was immediately appealable, despite the caveat allowing appellant to renew its motion. *Id.* at 35.

² See, S.C. Code Ann. § 15-48-200 (allowing immediate appeal of an order denying an application to compel arbitration).

Finally, and surprisingly, Relentless contends, in spite of statutes and case law allowing for the immediate appeal of denials of arbitration,³ that “[w]hen Appellant Redemption loses at trial, then it would be able to take an appeal to argue that arbitration should have been required.” (Resp’t’s Mem. in Supp. of Mot. to Dismiss Appeal, 7.) The confidence displayed by that statement is laudable; the accuracy less so for the reasons set forth above.

2. Relentless is barred from raising enforceability under state and federal law for the first time on appeal.

Relentless did not raise the enforceability of the arbitration agreement under South Carolina or federal law with the Circuit Court and is therefore barred from raising the issue on appeal.

In the proceedings below, Relentless briefed and argued in full its contentions as to why the claims between the parties were not subject to arbitration. (Redemption App. 21) Relentless claimed Redemption had waived arbitration by participating in the litigation process at the lower court and the legal positions taken by Redemption created a judicial estoppel. The Circuit Court agreed with neither position, and ruled instead on the grounds set forth in its order. (*See* Relentless App. 1-15.)

Relentless never argued that the arbitration agreements contained in the relevant contracts were defective based on the requirements of either S.C. Code § 15-48-10 or 9 U.S.C. Chapter 1. The Circuit Court in fact noted “there is no claim that the arbitration agreements are void...” (Relentless App. 3, 12). Relentless ignores the extensive body of law which favors arbitration and presumes arbitration agreements are valid. (*See, e.g., Cape Romain Contractors, Inc.*, 405 S.C. at

³ *See* S.C. Code § 15-48-200(a)(1); 9 U.S.C. § 16(a)(1)(C); *Towles*, 338 S.C. at 35; *Cape Romain Contractors, Inc. v. Wando E., LLC*, 405 S.C. 115, 747 S.E.2d 461 (S.C. 2013); *Stedor Enter. Ltd. v. Armtex, Inc.*, 947 F.2d 727,730 (4th Cir. 1991).

125; *Doe v. TCSC, LLC*, 430 S.C. 602, 846 S.E.2d 874, 876 (S.C. Ct. App. 2020); *Ray v. Austin Industrial, Inc.*, No. 3:18-CV-00392-JMC, 2018 WL 4701375 (D.S.C. September 29, 2018).)

Relentless further fails to recognize that Redemption’s motion was expressly based on the Federal Arbitration Act, 9 U.S.C. Chapter 1, rather than its state law equivalent. (Relentless App. 172.)

In effect, Relentless now seeks to raise an additional sustaining ground in support of the lower court’s substantive ruling. In order to do so, the basis for such a ground has to appear in the Record on Appeal. *Equivest Fin., LLC, v. Ravenel*, 422, S.C. 499, 812 S.E.2d 438 (S.C. App. Ct. 2018) (“Issues not raised and ruled upon in the trial court will not be considered on appeal.”). Additionally, Relentless’s contention fails because, arguments of this nature are unsuited for resolution at this preliminary stage. Redemption is entitled to brief in full its position, rather than be forced into a premature substantive defense of its position.

IV. CONCLUSION

In the Circuit Court, Relentless seeks to enforce an Asset Transfer Agreement. (Relentless App. 53-55) Relentless does not, however, wish to have the arbitration agreement contained in that Asset Transfer Agreement enforced. Relentless is the beneficiary of an errant lower court ruling requiring Redemption to litigate in full its concerns as to the Asset Transfer Agreement before revisiting the arbitration issue. The South Carolina legislature and courts have time and time again recognized a litigant’s right to appeal the lower court’s decision to deny arbitration to prevent this exact burden from being placed on parties in Redemption’s position. Redemption believes its appeal is timely, this court has jurisdiction over the appeal, and the appeal should be allowed to proceed. Therefore, Redemption respectfully requests that Relentless’s Motion to Dismiss Appeal be denied.

Respectfully submitted,

DEVLIN & PARKINSON, P.A.

s/John R. Devlin, Jr.

John R. Devlin, Jr., S.C. Bar No. 1667

P.O. Box 10387

Greenville, SC 29603

(864) 242-4050

(864) 242-4277-Facsimile

john.devlin@devlinparkinson.com

Dated: October 1, 2020
Greenville, South Carolina

Attorneys for Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Perry H. Gravely, Circuit Court Judge

Civil Action No. 2020-CP-23-00012

Appellate Case No.: 2020-001136

RECEIVED
Oct 01 2020
SC Court of Appeals

Redemption,Appellant,

v.

The Relentless Church,Respondent.

v.

Ron Carpenter and Hope Carpenter, John Doe and Jane Doe,Third-Party Defendants.

APPELLANT'S APPENDIX TO RETURN TO MOTION TO DISMISS

DEVLIN & PARKINSON, P.A.

BY: s/John R. Devlin, Jr.
John R. Devlin, Jr., S.C. Bar No. 1667
P. O. Box 10387
Greenville, SC 29603
(864) 242-4050
(864) 242-4277-Facsimile
John.devlin@devlinparkinson.com

Attorneys for Appellant

Dated: October 1, 2020
Greenville, SC

TABLE OF CONTENTS FOR APPENDIX

PLEADINGS

Notice of Appeal and Proof of Service.....1

Relentless Memorandum of Law in Opposition to Plaintiff’s Motion to Compel Arbitration...21

DEVLIN & PARKINSON, P.A.

ATTORNEYS AT LAW

JOHN R. DEVLIN, JR.
E. BROWN PARKINSON, JR.
CHRISTOPHER R. ANTLEY

POST OFFICE BOX 10387
GREENVILLE, SOUTH CAROLINA 29603-0387
www.devlinparkinson.com

PHONE (864) 242-4050
FAX (864) 242-4277

STREET ADDRESS:
27 CLEVELAND STREET
SUITE 201
GREENVILLE, SC 29601

August 11, 2020

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Redemption vs. The Relentless Church vs. Ron and Hope Carpenter,
John Doe and Jane Doe

Dear Ms. Kitchings:

Enclosed for filing is a Notice of Appeal in the above case which we would appreciate you filing with the Court. I am also enclosing the following:

1. Proof of Service of the Notice of Appeal on the Respondents.
2. A copy of the Order challenged on appeal.
3. Our filing fee of \$100.

I would also appreciate it if you would return a clocked-in copy of the same in the enclosed envelope.

Yours very truly,


John R. Devlin, Jr.

JRDJrAllk

Enclosure

cc: James Stephen Welch, Esq.
Jordan Calloway, Esq.
Bruce W. Bannister, Esq.
Luke Anthony Burke, Esq.
Kimberly T. Thomason, Esq.
Devon M. Puriefoy, Esq.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Perry H. Gravely, Circuit Court Judge

Civil Action No. 2020-CP-23-00012

Redemption,Appellant,

v.

The Relentless Church,Respondent.

v.

Ron Carpenter and Hope Carpenter, John Doe and Jane Doe,Third-Party Defendants.

NOTICE OF APPEAL

Pursuant to S.C. Code Ann. § 14-8-200(a), Redemption appeals the Court’s July 13, 2020 (amended on August 6, 2020 to correct scrivener’s errors) Order Denying Appellant’s Motion to Compel Arbitration and the Court’s July 24, 2020 Order Denying the Appellant’s Rule 59 Motion to Alter, Amend, and Reconsider its July 13, 2020 Order. The Orders were issued by the Honorable Perry H. Gravely. Appellant filed a timely motion to alter or amend the July 13, 2020 Order under Rule 59, SCRCP on July 22, 2020. The Appellant received written notice of entry of the July 13, 2020 Order on July 13, 2020 and written notice of the order denying the Rule 59 Motion to Amend, Alter, and Reconsider on July 24, 2020. This Notice of Appeal is being served and filed within 30 days of both Orders.

Respectfully submitted,

DEVLIN & PARKINSON, P.A.



John R. Devlin, Jr., S.C. Bar No. 1667
P.O. Box 10387
Greenville, SC 29603
(864) 242-4050
(864) 242-4277-Facsimile
john.devlin@devlinparkinson.com

Attorneys for Appellant

Dated: August 11, 2020
Greenville, South Carolina

Other Counsel of Record:

James Stephen Welch, Esq.
McGowan, Hood & Felder, LLC
135 Edinburgh Court, Suite 202
Greenville, SC 29607
swelch@mcgowanhood.com

Jordan Calloway, Esq.
McGowan, Hood & Felder, LLC
1539 Healthcare Drive
Rock Hill, SC 29732
jcalloway@mcgowanhood.com

Bruce W. Bannister, Esq.
Luke Anthony Burke, Esq.
Bannister, Wyatt & Stalvey, LLC
P. O. Box 10007
Greenville, SC 29603
bbannister@bannisterwyatt.com
lburke@bannisterwyatt.com

Kimberly T. Thomson, Esq.
Devon M. Puriefoy, Esq.
Truluck Thomason, LLC
3 Boyce Avenue
Greenville, SC 29601
kim@truluckthomason.com
devon@truluckthomason.com

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
)
 Redemption,)
)
 Plaintiff,)
)
 vs)
)
 The Relentless Church,)
)
 Defendant/Third-Party Plaintiff,)
)
 vs)
)
 Ron Carpenter and Hope Carpenter,)
 John Doe and Jane Doe,)
)
 Third-Party Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS

O R D E R

C.A. No 2020-CP-23-00012

This matter came before the Court upon Plaintiff Redemption's Motion to Compel Arbitration and was heard on July 2, 2020 and was conducted pursuant to the Order of the South Carolina Supreme Court for the "Operation of the Trial Courts During the Coronavirus Emergency" issued on April 3, 2020 (as amended) (hereinafter "Emergency Order"). The parties consented to holding the hearing via videoconference with a Court Reporter. Participating in the hearing were John Devlin and other counsel of record for the Plaintiff and Devon Puriefoy and other counsel of record for Defendant The Relentless Church ("Relentless") and **counsel for Third Party Defendants, as well.**

On January 2, 2020, Redemption filed an action for ejectment against Relentless for failure to pay rent and abide by their lease arrangements. Relentless filed its Answer and Third Party Complaint on February 2, 2020 referencing a Transition Agreement and a written Lease

Agreement. On March 26, 2020, Redemption filed an Amended Answer and Third Party Complaint renewing its claim under the Lease Agreement, but also asserting claims, for the first time, certain claims under an Asset Transfer Agreement (ATA) allegedly entered into by the parties. Redemption filed its Reply to the Amended Counterclaim on May 8, 2020 denying that the ATA had ever been finalized and was not a valid, enforceable contract. At this time, Redemption also filed its Motion to Compel Arbitration under the terms of the ATA. Throughout this period, there were several hearings regarding the ejectment claim and the setting of rent during the pendency of the lawsuit as set forth in the Amended Order of Judge Robin Stilwell on April 2, 2020. Additionally, the parties participated in extensive mediation which failed to resolve this matter.

At the hearing, a very spirited debate ensued over whether Redemption had waived its right to seek arbitration. The parties present an interesting dilemma. Redemption asserts that the written Lease Agreement nor the ATA are valid. But these agreements contain the Arbitration provisions which Redemption is attempting to compel. Relentless asserts that the written Lease Agreement and ATA are valid and enforceable contracts, but that Redemption has waived its right to compel arbitration.

First, the Court will address the waiver/estoppel argument raised by Relentless. The causes of action set forth in Redemption's Complaint do not fall within any alleged arbitration provision, so the matter could not have been submitted to arbitration. In the initial response, Relentless, alleged that a written Lease Agreement was controlling (which does have an arbitration provision), but there was no reference to the ATA. When it filed its Amended Answer and Counterclaim on March 26, 2020, Relentless asserted, for the first time, that the ATA was controlling. Then, Redemption filed its Reply to the Amended Counterclaim on May

8, 2020 along with its Motion to Compel Arbitration. In Redemptions' first opportunity to formally respond to Relentless' claims under the ATA, it asserted its right of arbitration under the purported agreement. Even though the parties had engaged in substantial "legal wrangling" from the filing of the Complaint until the Motion to Compel arbitration was filed, no party's actions were contrary to asserting rights in arbitration under the ATA. Further, even though there had been several hearings and mediations, when Redemption filed its Motion to Compel arbitration, there had been no discovery and the issues had not been fully joined by the pleadings. Therefore, the Court finds that Redemption had not waived its right to seek arbitration nor did it take any action that would support a claim of estoppel.

Next, the Court must determine whether Redemption can assert arbitration based on an agreement that it claims had never been finalized and was not enforceable. South Carolina and federal policy strongly favor arbitration as a means to resolve disputes between parties and thus the Courts have held that arbitration agreements are presumed to be valid. See *Cape Romain Contractors, Inc. v. Wando E., LLC*, 405 S.C. 115 (2013). The Court would note that Relentless is the party that inserted these Agreements into the lawsuit and there is no claim that the arbitration provisions are void or unconscionable. There is a long line of authority which supports Redemptions' argument that even if the enforceability of a contract is in issue, the Courts must still compel arbitration. Under the *Prima Paint* doctrine, an arbitration provision of a contract can be imposed by the Court even though the enforceability of the contract is in issue. See, *Prima Paint Corporation v. Flood & Conklin Mfg. Co.*, 388 U.S. 395 (1967). However, Redemption's Motion must be viewed in light of two recent decisions by the South Carolina Court of Appeals: *Damico v. Lennar Carolinas, LLC*, 2020WL3067558 (S.C. Ct App. 6/10/20) and *Doe v. TCSC, LLC*, Opinion No. 5733 (S.C. Ct. App. 7/1/20). In *Damico*, the Court of

Appeals in applying *Prima Paint* stated the following: "In deciding whether the parties have a valid agreement to arbitrate we must therefore isolate the arbitration clause from the rest of the contract. If the arbitration agreement is valid, any issues as to the validity of other parts of the contract go to the arbitrator, not the Court." In *Damico*, the Court was addressing a contract which one of the parties claimed was fraudulently induced and found that since the arbitration provision was not in question, that the arbitrator must determine whether the contract was fraudulently induced. But in the case before this Court, Redemption claims that the ATA and lease agreements were never finalized and are not valid *ab initio* and this Court finds that *Doe v. TCSC, LLC* is more applicable. In *Doe*, the Court of Appeals found that the Court, and not the arbitrator, "will decide 'gateway' issues related to arbitration, including whether the arbitration agreement is valid and enforceable and whether it cover the parties' dispute." (citing *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995).) The Court must also look to whether the "gateway" issues were delegated to the arbitrator as well.

Redemption asserts that the contracts containing the arbitration provisions are not valid because they were never finalized. If there is no valid contract between the parties, then there is no basis to compel arbitration. Further, there is no delegation of the gateway issues to the arbitrator. The arbitration provision of the ATA states as follows:

Any controversy, claim, or dispute arising from or related to this Agreement except in respect of the injunctive relief described in Section 2.2(g) shall be settled by mediation and, if necessary, legally binding arbitration in accordance with the Rules of Procedure for Christian Conciliation of the Institute for Christian Conciliation, a division of Peacemaker Ministries (the "Rules"). The complete text of the Rules may currently be obtained by accessing www.HisPeace.org. Judgment upon an arbitration decision may be entered in any court otherwise having jurisdiction. The parties understand that these methods shall be the sole remedy for any controversy, claim, or dispute arising out of this Agreement and they expressly waive their rights to file a lawsuit in any civil court against one another for such controversies, claims or disputes, except to enforce an arbitration decision.

There is clearly no delegation of the "gateway" issues in this provision.

This Court finds that *Doe v. TSCS, LLC* is controlling and that the Court must determine the "gateway" issue of whether the contracts are valid before determining whether the arbitration can be compelled. At this point, the issue of the validity of the various agreements is not properly before the Court and no evidence had been presented for the Court to make this determination. Therefore, the Court denies Redemption's Motion to Compel arbitration. If, after additional discovery and developments, there is sufficient evidence to support the validity of the various agreements, then Redemption can renew its Motion and the Court can make a determination of the "gateway" issues at that time and determine whether arbitration is appropriate

It is so ordered.

July 13, 2020

E-signature Page of Judge Gravely to follow



Greenville Common Pleas

Case Caption: Redemption , plaintiff, et al vs. The Relentless Church , defendant, et al
Case Number: 2020CP2300012
Type: Order/Other

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2020-07-13 11:00:52 page 6 of 6

ELECTRONICALLY FILED - 2020 Jul 13 11:43 AM - GREENVILLE - COMMON PLEAS - CASE#2020CP2300012

Redemption et al
PLAINTIFF(S)

The Relentless Church et al
DEFENDANT(S)

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.
- 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:

See Page 2

ORDER INFORMATION

This order ends does not end the case.

See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/24/2020 .

Jane Doe
John Doe
Hope Carpenter
Ron Carpenter
The Relentless Church
Relentless Church
Brooke Asiatico for Redemption
Katari Buck for Redemption

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

This matter comes before the Court upon Plaintiff's Motion to Alter, Amend and Reconsider. The Court does not feel that an additional hearing is needed to address the Motion. In its first point, Plaintiff argues that the Order was based on an argument not presented by Defendant. The Court is not aware of any rule which requires that Orders can only be based on what the parties argue, although the Order is consistent with arguments made at the hearing. Secondly, the Plaintiff argues that the Court relied on a case that had not been addressed at the hearing and had only been issued 24 hours earlier, and the parties were not allowed to put their "spin" on the case. Again, the Court is not aware of any rule that requires only using cases cited by the parties. Further, the Court has never imposed a 72 deadline on briefs. Therefore, Plaintiff's Motion is denied.

As to the issue about minor errors of fact, the Court would allow the parties 5 days to submit a short memorandum on any facts which need to be corrected.



Greenville Common Pleas

Case Caption: Redemption , plaintiff, et al vs. The Relentless Church , defendant, et al
Case Number: 2020CP2300012
Type: Order/Electronic Form 4

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2020-07-24 10:30:13 page 3 of 3

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
)
 Redemption,)
)
 Plaintiff,)
)
 vs)
)
 The Relentless Church,)
)
 Defendant/Third-Party Plaintiff,)
)
 vs)
)
 Ron Carpenter and Hope Carpenter,)
 John Doe and Jane Doe,)
)
 Third-Party Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS

AMENDED
ORDER

C.A. No 2020-CP-23-00012

(This Amended Order only corrects two scrivener's errors as submitted by counsel for the Plaintiff and no other changes were made. The Plaintiff's Motion to Reconsider had been denied by separate Order.)

This matter came before the Court upon Plaintiff Redemption's Motion to Compel Arbitration and was heard on July 2, 2020 and was conducted pursuant to the Order of the South Carolina Supreme Court for the "Operation of the Trial Courts During the Coronavirus Emergency" issued on April 3, 2020 (as amended) (hereinafter "Emergency Order"). The parties consented to holding the hearing via videoconference with a Court Reporter. Participating in the hearing were John Devlin and other counsel of record for the Plaintiff and Devon Puriefoy and other counsel of record for Defendant The Relentless Church ("Relentless") and counsel for Third Party Defendants, as well.

On January 2, 2020, Redemption filed an action for ejectment against Relentless for failure to pay rent and abide by their lease arrangements. Relentless filed its Answer and Third Party Complaint on February 2, 2020 referencing a Transition Agreement and a written Lease Agreement. On March 26, 2020, Relentless filed an Amended Answer and Third Party Complaint renewing its claim under the Lease Agreement, but also asserting claims, for the first time, certain claims under an Asset Transfer Agreement (ATA) allegedly entered into by the parties. Redemption filed its Reply to the Amended Counterclaim on May 8, 2020 denying that the ATA had ever been finalized and was not a valid, enforceable contract. At this time, Redemption also filed its Motion to Compel Arbitration under the terms of the ATA. Throughout this period, there were several hearings regarding the ejectment claim and the setting of rent during the pendency of the lawsuit as set forth in the Amended Order of Judge Robin Stilwell on April 2, 2020. Additionally, the parties participated in extensive mediation which failed to resolve this matter.

At the hearing, a very spirited debate ensued over whether Redemption had waived its right to seek arbitration. The parties present an interesting dilemma. Redemption asserts that neither the written Lease Agreement nor the ATA are valid. But these agreements contain the Arbitration provisions which Redemption is attempting to compel. Relentless asserts that the written Lease Agreement and ATA are valid and enforceable contracts, but that Redemption has waived its right to compel arbitration.

First, the Court will address the waiver/estoppel argument raised by Relentless. The causes of action set forth in Redemption's Complaint do not fall within any alleged arbitration provision, so the matter could not have been submitted to arbitration. In the initial response, Relentless, alleged that a written Lease Agreement was controlling (which does have an

arbitration provision), but there was no reference to the ATA. When it filed its Amended Answer and Counterclaim on March 26, 2020, Relentless asserted, for the first time, that the ATA was controlling. Then, Redemption filed its Reply to the Amended Counterclaim on May 8, 2020 along with its Motion to Compel Arbitration. In Redemptions' first opportunity to formally respond to Relentless' claims under the ATA, it asserted its right of arbitration under the purported agreement. Even though the parties had engaged in substantial "legal wrangling" from the filing of the Complaint until the Motion to Compel arbitration was filed, no party's actions were contrary to asserting rights in arbitration under the ATA. Further, even though there had been several hearings and mediations, when Redemption filed its Motion to Compel arbitration, there had been no discovery and the issues had not been fully joined by the pleadings. Therefore, the Court finds that Redemption had not waived its right to seek arbitration nor did it take any action that would support a claim of estoppel.

Next, the Court must determine whether Redemption can assert arbitration based on an agreement that it claims had never been finalized and was not enforceable. South Carolina and federal policy strongly favor arbitration as a means to resolve disputes between parties and thus the Courts have held that arbitration agreements are presumed to be valid. See *Cape Romain Contractors, Inc. v. Wando E., LLC*, 405 S.C. 115 (2013). The Court would note that Relentless is the party that inserted these Agreements into the lawsuit and there is no claim that the arbitration provisions are void or unconscionable. There is a long line of authority which supports Redemptions' argument that even if the enforceability of a contract is in issue, the Courts must still compel arbitration. Under the *Prima Paint* doctrine, an arbitration provision of a contract can be imposed by the Court even though the enforceability of the contract is in issue. See, *Prima Paint Corporation v. Flood & Conklin Mfg. Co.*, 388 U.S. 395 (1967). However,

Redemption's Motion must be viewed in light of two recent decisions by the South Carolina Court of Appeals: *Damico v. Lennar Carolinas, LLC*, 2020WL3067558 (S.C. Ct App. 6/10/20) and *Doe v. TCSC, LLC*, Opinion No. 5733 (S.C. Ct. App. 7/1/20). In *Damico*, the Court of Appeals in applying *Prima Paint* stated the following: "In deciding whether the parties have a valid agreement to arbitrate we must therefore isolate the arbitration clause from the rest of the contract. If the arbitration agreement is valid, any issues as to the validity of other parts of the contract go to the arbitrator, not the Court." In *Damico*, the Court was addressing a contract which one of the parties claimed was fraudulently induced and found that since the arbitration provision was not in question, that the arbitrator must determine whether the contract was fraudulently induced. But in the case before this Court, Redemption claims that the ATA and lease agreements were never finalized and are not valid *ab initio* and this Court finds that *Doe v. TCSC, LLC* is more applicable. In *Doe*, the Court of Appeals found that the Court, and not the arbitrator, "will decide 'gateway' issues related to arbitration, including whether the arbitration agreement is valid and enforceable and whether it cover the parties' dispute." (citing *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995).) The Court must also look to whether the "gateway" issues were delegated to the arbitrator as well.

Redemption asserts that the contracts containing the arbitration provisions are not valid because they were never finalized. If there is no valid contract between the parties, then there is no basis to compel arbitration. Further, there is no delegation of the gateway issues to the arbitrator. The arbitration provision of the ATA states as follows:

Any controversy, claim, or dispute arising from or related to this Agreement except in respect of the injunctive relief described in Section 2.2(g) shall be settled by mediation and, if necessary, legally binding arbitration in accordance with the Rules of Procedure for Christian Conciliation of the Institute for Christian Conciliation, a division of Peacemaker Ministries (the "Rules"). The complete text of the Rules may currently be

obtained by accessing www.HisPeace.org. Judgment upon an arbitration decision may be entered in any court otherwise having jurisdiction. The parties understand that these methods shall be the sole remedy for any controversy, claim, or dispute arising out of this Agreement and they expressly waive their rights to file a lawsuit in any civil court against one another for such controversies, claims or disputes, except to enforce an arbitration decision.

There is clearly no delegation of the "gateway" issues in this provision.

This Court finds that *Doe v. TSCS, LLC* is controlling and that the Court must determine the "gateway" issue of whether the contracts are valid before determining whether the arbitration can be compelled. At this point, the issue of the validity of the various agreements is not properly before the Court and no evidence had been presented for the Court to make this determination. Therefore, the Court denies Redemption's Motion to Compel arbitration. If, after additional discovery and developments, there is sufficient evidence to support the validity of the various agreements, then Redemption can renew its Motion and the Court can make a determination of the "gateway" issues at that time and determine whether arbitration is appropriate

It is so ordered.

August 5, 2020

E-signature Page of Judge Gravely to follow



Greenville Common Pleas

Case Caption: Redemption , plaintiff, et al vs. The Relentless Church , defendant, et al
Case Number: 2020CP2300012
Type: Order/Amend

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2020-08-05 16:36:55 page 6 of 6

ELECTRONICALLY FILED - 2020 Aug 06 8:38 AM - GREENVILLE - COMMON PLEAS - CASE#2020CP2300012

In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Perry H. Gravely, Circuit Court Judge

Civil Action No. 2020-CP-23-00012

Redemption,Appellant,

v.

The Relentless Church,Respondent.

v.

Ron Carpenter and Hope Carpenter, John Doe and Jane Doe,Third-Party Defendants.

PROOF OF SERVICE

I certify that on August 11, 2020, I served the **Notice of Appeal** on Respondent The Relentless Church via e-mail and by depositing a copy of it in the United States Mail, postage prepaid, addressed to their attorneys of record, listed below:

James Stephen Welch, Esq.
McGowan, Hood & Felder, LLC
135 Edinburgh Court, Suite 202
Greenville, SC 29607
swelch@mcgowanhood.com

Jordan Calloway, Esq.
McGowan, Hood & Felder, LLXC
1539 Healthcare Drive
Rock Hill, SC 29732
jcalloway@mcgowanhood.com

Bruce W. Bannister, Esq.
Luke Anthony Burke, Esq.
Bannister, Wyatt & Stalvey, LLC
P. O. Box 1007
Greenville, SC 29603
bbannister@bannisterwyatt.com
lburke@bannisterwyatt.com

Kimberly T. Thomason, Esq.
Devon M. Puriefoy, Esq.
Truluck Thomson, LLC
3 Boyce Avenue
Greenville, SC 29601
kim@truluckthomason.com
devon@truluckthomason.com

Laura Kirwan

Laura Kirwan

Legal Assistant to John R. Devlin, Jr.

Devlin & Parkinson, P.A.

P.O. Box 10387

Greenville, SC 29603

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Redemption,)
Plaintiff,)
v.)
The Relentless Church,)
Defendant/Third-Party Plaintiff,)
v.)
Ron Carpenter and Hope Carpenter,)
John Doe and Jane Doe,)
Third-Party Defendants.)

COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

C.A. No. 2020-CP-23-00012

**MEMORANDUM OF LAW IN OPPOSITION
TO PLAINTIFF’S MOTION TO COMPEL
ARBITRATION**

**DEFENDANT’S MEMORANDUM IN OPPOSITION TO
PLAINTIFF’S MOTION TO COMPEL ARBITRATION**

Defendant, The Relentless Church (“Relentless”), hereby submits this Memorandum in Opposition to Plaintiff’s Motion to Compel Arbitration. As explained herein, Plaintiff’s motion must be denied, or, in the alternative, there must be a finding that Plaintiff acknowledges the validity and enforceability of the Asset Transfer Agreement (“ATA”) and all supporting documents.

PROCEDURAL BACKGROUND

Plaintiff filed a Complaint in the Greenville County Court of Common Pleas for the 13th Judicial Circuit on January 2, 2020 against Relentless. Subsequently, on February 7, 2020 Relentless filed an Answer, Counterclaims, and Third-Party claims against Redemption Church (“Redemption”), and Ron (“Ron”) and Hope Carpenter (“Hope”) (*collectively referred to*

as “The Carpenters”), and certain unnamed individuals. A number of subsequent filings have been submitted by the respective parties to this action which are addressed in more detail below.

LEGAL ARGUMENT

A. Plaintiff’s Motion to Compel Arbitration should be denied.

I. Plaintiff has waived its right to compel arbitration.

Although South Carolina favors arbitration, our courts have almost unanimously held “the right to enforce an arbitration clause...may be waived.” *Rhodes v. Benson Chrysler-Plymouth, Inc.*, 374 S.C. 122, 126, 647 S.E.2d 249, 251 (Ct. App. 2007) (citing *Liberty Builders, Inc. v. Horton*, 336 S.C. 658, 665, 521 S.E.2d 749, 753 (Ct.App.1999). “In order to establish waiver, a party must show prejudice through an undue burden caused by delay in demanding arbitration.” Mere inconvenience or delay is insufficient to establish prejudice on its own. *Toler's Cove*, 355 S.C. at 612, 586 S.E.2d at 585; *Rich v. Walsh*, 357 S.C. 64, 72, 590 S.E.2d 506, 510 (Ct. App. 2003). As in all waiver cases, any appropriate analysis is heavily fact-driven. *Liberty Builders*, 336 S.C. at 665, 521 S.E.2d at 753 (“There is no set rule as to what constitutes a waiver of the right to arbitrate; the question depends on the facts of each case.” *Id.*

In *Liberty Builders v. Horton*, in an effort to determine whether prejudice existed so as to warrant the denial of Appellant’s motion to compel arbitration, the court analyzed litigation tactics similar to those being employed in the present matter. *Liberty Builders*, 336 S.C. at 665, 521 S.E.2d at 753. There, the court noted that the parties had engaged in extensive litigation, including the filing of pleadings, motions to amend, compel, dismiss, and to add parties, all before the filing of Appellant’s motion to compel arbitration. *Id.* The court ultimately ruled that Appellant’s election to seek arbitration after such extensive litigation was not only prejudicial, but also served only to allow Appellant to “test the water before taking swim.” *Id.* at 754.

On April 1, 2020, after four (4) months of pleadings, motions (including two *pro hac vice* motions), and numerous opposing and supporting memoranda, this Court issued its first order in which it set Relentless' monthly "rent" obligation at \$41,902.00. This obligation was to be paid directly to Redemption. Under this Court's April 1, 2020 Order, Relentless was also required to pay "past due rent obligations" of nearly \$200,000.00, in addition to the \$41,902 monthly payments. This "past due rent obligation," like the monthly obligation, was to be paid directly to Redemption. Redemption did not move to compel arbitration following this order. On April 3, 2020 Relentless filed a Motion to Alter or Amend this Court's April 1, 2020 Order. On April 14, 2020 the Court amended its April 1, 2020 Order in part so as to require all "past due rent obligations" and the difference in the disputed "rental" amounts to be paid into the trust account of Devlin and Parkinson, PA, rather than directly to Redemption. As a result of this order Redemption would only receive the undisputed monthly payment amount of \$18,603.25, with the remaining monthly amount, plus the "past due obligations," being held untouchable in counsel's trust account until a ruling on the merits.

On April 27, 2020, the parties participated in a more than nine (9) hour mediation with mediator Lee Plumblee. Although the discussions of that mediation are strictly confidential, the parties fleshed out legal positions, theories of their respective cases, and litigation strategy.

It was not until after the April 14, 2020 Order, and after a nine (9) hour mediation, that Redemption elected to attempt to compel arbitration in this matter. The reality of Redemption's most recent filing is that Redemption now attempts to render null and void the last five (5) months of litigation, and perhaps more importantly, relitigate the exact same "rent" issues before an arbitrator in hopes of a more favorable outcome.

In addition to this Court’s rulings on the handling of the payment of the monthly “rent” and “past due rent obligations” pending litigation, this Court has also made a number of other substantive rulings, the most important of which was made early on in the case. In reviewing the pleadings, motions, memoranda, and supporting documents originally submitted by the parties, the Court ultimately determined that Redemption was not entitled to an award of immediate ejectment and that all issues were subject to continued litigation, another ruling that Redemption did not anticipate.

Redemption has now tested at least portions of its legal strategy/theories with the Greenville County Court of Common Pleas. Redemption has filed pleadings with expansive attached exhibits that allowed the matter, as they intended, to be played out in the media in a public forum. Redemption has also filed motions that received unfavorable, yet informative, rulings and now attempts to press the restart button through its Motion to Compel Arbitration to retry all of these issues in hopes of a more favorable ruling in a different forum on matters already decided by this Court.

For the foregoing reasons, Redemption has waived its right to compel arbitration in the present matter, and this Court should retain jurisdiction.

II. Plaintiff is estopped from alleging partial enforceability of the Asset Transfer Agreement for the sole purpose of compelling arbitration.

The South Carolina supreme court expressly adopted the doctrine of judicial estoppel, as it relates to matters of fact, in the case of *Hayne Federal Credit Union v. Bailey*, 327 S.C. 242, 489 S.E.2d 472 (1997). The doctrine precludes a party from adopting a position in conflict with one previously taken in the same or related litigation. *Id.* The purpose of the doctrine is not to protect litigants from allegedly improper or deceitful conduct by their adversaries, but to protect the integrity of the judicial process and the courts. *Id.* The supreme court explained, in order for the

judicial process to function properly, litigants must approach it in a truthful manner. The doctrine thus punishes those who take the truth-seeking function of the system lightly. When a party has formally asserted a certain version of the facts in litigation, he cannot later change those facts when the initial version no longer suits him. *Id.*

From the outset of this litigation, which was instituted by Redemption, it has been Redemption's position that the ATA and supporting documents (including the real estate leases) were unenforceable as a matter of fact, and therefore not binding. Below are a but a few excerpts from Plaintiff's filings that demonstrate its express adoption of this position:

1. "As a result of Relentless' failure to execute and deliver the Proposed Leases, it is occupying the Properties on a month-to-month term..."
2. "...to the extent that Relentless might claim that it is somehow entitled to the benefit of the Proposed Leased it never executed and delivered..."
3. "...neither the proposed leases nor any other asset transfer documents were executed..."
4. "...the Asset Transfer Agreement was fully negotiated between the parties and finalized but never executed or delivered..."
5. "...Redemption rescinded the conditional approval of those agreements."

Assuming for purposes of this memorandum that counsel for Redemption did in fact read the ATA and supporting documents, including the real estate leases, which Redemption now relies on in its attempt to move to compel arbitration, a strategic decision was made to file this matter in the Greenville County Court of Common Pleas. This course of action seemed to conflate with Redemption's position regarding the enforceability, or lack thereof from Redemption's point of view, of the ATA and supporting documents. Oddly, Redemption now bases its pending Motion

to Compel Arbitration on **Relentless**' allegation that the ATA and all supporting documents are in fact binding, while still apparently attempting to deny validity and enforceability of the same.

This is the very conduct our Supreme Court was attempting to prevent through the adoption of the theory of judicial estoppel. Redemption has, at every phase of this litigation, pushed its factual narrative that the ATA and supporting documents were never executed and delivered, and therefore unenforceable. Only now that Redemption has failed to obtain immediate ejectment, and failed to ensure all monthly "rent" deposits and "past due obligations" were paid directly to the Redemption for immediate use, does Redemption attempt to adopt, at least on a temporary basis, new facts that better supports its Motion to Compel Arbitration.

It is also important to note that in its Amended Answer and Counterclaims, Relentless filed a declaratory judgment action asking this Court to declare the ATA, along with all accompanying leases and exhibits, to be validly executed and enforceable contracts. Redemption, in its Answer to Relentless' request for Declaratory Judgment, argued vigorously that the Court should not declare them valid and included all of the reasons why they maintained they were not. This Court has not ruled as to Relentless' declaratory judgment action and declared the ATA valid, and unless Redemption is now willing to stipulate to its validity, the issue of ATA's enforceability remains a matter to be determined by this Court and/or a jury as all claims depend upon that determination. Redemption has filed an ejectment claim as its initial primary action based on the fact that there are no valid leases and there is no validly executed and enforceable ATA. Their entire damage claim is based on Redemption's claim that the rent amount they seek from Relentless is based on the month to month rental value and not limited by any valid and enforceable contract. Seeking to recover damages based solely on Redemption's claim that the ATA and leases are not valid, while in the same breath seeking to enforce a single provision in the ATA in an attempt to persuade

this court to divest itself of jurisdiction is precisely why our courts have expressly adopted the theory of judicial estoppel.

CONCLUSION

Based on the foregoing arguments, Plaintiff's Motion to Compel Arbitration must be dismissed.

Respectfully Submitted,
This 28th day of May, 2020.

BANNISTER, WYATT & STALVEY, LLC

s/Bruce W. Bannister
Bruce W. Bannister (SC Bar No.: 15679)
Luke A. Burke (SC Bar No.: 100033)
401 Pettigru Street (29601)
P.O. Box 10007 (29603)
Greenville, South Carolina
T: (864) 298-0084
F: (864) 331-0245
bbannister@bannisterwyatt.com
lburke@bannisterwyatt.com

MCGOWAN HOOD & FELDER, LLC

s/J. Stephen Welch
J. Stephen Welch (SC Bar No.: 13153)
135 Edinburgh Court, Suite 202
Greenville, South Carolina 29607
T: (864) 252-4406
F: (864) 252-4480
swelch@mcgowanhood.com
Jordan Calloway (SC Bar No.: 78728)
1539 Healthcare Drive
Rock Hill, SC 29732
T: (803) 327-7800
jcalloway@mcgowanhood.com

TRULUCK THOMASON, LLC

s/Kimberly T. Thomason
Kimberly T. Thomason (SC Bar No.: 79179)
Devon M. Puriefoy (SC Bar No.: 102097)
3 Boyce Avenue
Greenville, SC 29601
T: (864) 331-1751
F: (864) 243-8115
kim@truluckthomason.com
devon@truluckthomason.com

**ATTORNEYS FOR DEFENDANT/
THIRD-PARTY PLAINTIFF**

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Perry H. Gravely, Circuit Court Judge

Civil Action No. 2020-CP-23-00012

Appellate Case No.: 2020-001136

RECEIVED
Oct 01 2020
SC Court of Appeals

Redemption,Appellant,

v.

The Relentless Church,Respondent.

v.

Ron Carpenter and Hope Carpenter, John Doe and Jane Doe,Third-Party Defendants.

CERTIFICATION OF SERVICE

In accordance with Section (g)(3) of the Supreme Court’s Order RE: Operation of the Appellate Courts During the Coronavirus Emergency (As Amended May 29, 2020), the undersigned employee of Devlin & Parkinson, P.A., counsel for the Appellant, does hereby certify that service of the **Appellant’s Return to Respondent’s Motion to Dismiss and Appendix to the Return to Motion to Dismiss** was made upon all counsel of record by email only this the 1st day of October, 2020:

James Stephen Welch, Esq.
McGowan, Hood & Felder, LLC
135 Edinburgh Court, Suite 202
Greenville, SC 29607
swelch@mcgowanhood.com

Jordan Calloway, Esq.
McGowan, Hood & Felder, LLXC
1539 Healthcare Drive
Rock Hill, SC 29732
jcalloway@mcgowanhood.com

Bruce W. Bannister, Esq.
Luke Anthony Burke, Esq.
Bannister, Wyatt & Stalvey, LLC
P. O. Box 1007
Greenville, SC 29603
bbannister@bannisterwyatt.com
lburke@bannisterwyatt.com

Kimberly T. Thomason, Esq.
Devon M. Puriefoy, Esq.
Truluck Thomson, LLC
3 Boyce Avenue
Greenville, SC 29601
kim@truluckthomason.com
devon@truluckthomason.com

Howard W. Anderson, III
Law Office of Howard W. Anderson, III, LLC
P.O. Box 661
Pendleton, SC 29670
howard@hwalawfirm.com



Laura Kirwan
Legal Assistant to John R. Devlin, Jr.
Devlin & Parkinson, P.A.
P.O. Box 10387
Greenville, SC 29603

DEVLIN & PARKINSON, P.A.

ATTORNEYS AT LAW

JOHN R. DEVLIN, JR.
E. BROWN PARKINSON, JR.
CHRISTOPHER R. ANTLEY

POST OFFICE BOX 10387
GREENVILLE, SOUTH CAROLINA 29603-0387
www.devlinparkinson.com

PHONE (864) 242-4050
FAX (864) 242-4277

STREET ADDRESS:
27 CLEVELAND STREET
SUITE 201
GREENVILLE, SC 29601

October 1, 2020

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Email: ctappfilings@sccourts.org

RE: Redemption, Appellant vs. The Relentless Church, Respondent vs.
Ron and Hope Carpenter, John Doe and Jane Doe, Third-Party Defendants
C. A. No.: 2020-001136

Dear Ms. Kitchings:

In accordance with Section (c)(5) of the Supreme Court's Order RE: Operation of the Appellate Courts During the Coronavirus Emergency (As Amended May 29, 2020), please find enclosed for filing Appellant's Return to the Respondent's Motion and Appendix to the Return to Motion to Dismiss in the above referenced matter. In accordance with Section (g)(3) of this same order, I am hereby serving copies on all counsel of record by email only.

If you have any questions, please advise.

Yours very truly,


John R. Devlin, Jr.

JRDJrAllk

Enclosures

cc: James Stephen Welch, Esq.
Jordan Calloway, Esq.
Bruce W. Bannister, Esq.
Luke Anthony Burke, Esq.
Kimberly T. Thomason, Esq.
Devon M. Puriefoy, Esq.
Howard W. Anderson, III, Esq.

RECEIVED

Oct 01 2020

SC Court of Appeals