

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Common Pleas Case No. 2020-CP-23-00012

Appellate Case No. 2020-001136

REDEMPTION,

Appellant,

v.

THE RELENTLESS CHURCH,

Respondent,

RON CARPENTER and HOPE CARPENTER, v.
JOHN DOE and JANE DOE,

*Respondent.
Third-Party Defendants.*

**Reply in Support of
Motion to Dismiss Appeal**

Howard W. Anderson III (#100329)
LAW OFFICE OF
HOWARD W. ANDERSON III, LLC
P.O. Box 661
Pendleton, SC 29670
howard@hwalawfirm.com
864-643-5790 (p)
Counsel for Respondent

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COMES NOW Respondent the Relentless Church (“Relentless”) and would respectfully show the Court as follows in reply in support of its Motion to Dismiss.

ARGUMENT

The Opposition fails to overcome what Respondent Relentless showed in the Opening Memorandum: This appeal must be dismissed for two, independent reasons. First, Appellant failed to properly perfect the appeal. Second, even if the appeal had been properly perfected, the orders at issue are not immediately appealable.

I. The Appeal Was Not Timely Perfected.

While arguing that it complied with other requirements, Appellant explicitly concedes that it failed to timely file the notice of appeal with the clerk of the lower court. [Opp. at 2]. Appellant does not dispute that the plain text of the Appellate Court Rules required that the appellant file “[t]he notice of appeal ... with the clerk of the lower court...within ten (10) days after the notice of appeal [was] served.” R. 203(d)(1)(B), SCACR.

This Court must apply the Appellate Court Rules with the same fidelity that it applies the General Assembly’s statutes. *See, e.g., Pers. Care, Inc. v. Theos*, 426 S.C. 78, 85 (Ct. App. 2019) (interpreting rules of Civil Procedure). Under the plain text of the Appellate Court Rules, “[i]f the notice of appeal is not timely filed or the filing fee is not paid in full, the appeal shall be dismissed....” R. 203(d)(3), SCACR.

Strong policy considerations undergird the insistence on timely perfecting an appeal. *See, e.g., Gibbes v. Beckett*, 84 S.C. 534, 536 (1910) (“The law requiring appeals to be taken within a fixed time may sometimes produce hardship, but it is important to the administration of justice that there be no uncertainty. There will be few, if any, cases of hardship if the time allowed is utilized without dependence on quick work at the end of the period.”). Because Appellant failed to timely perfect the appeal, this Court must dismiss the appeal.

II. The Circuit Court’s Orders Are Not Immediately Appealable.

Appeals are a matter of legislative grace. *E.g., Jones v. Barnes*, 463 U.S. 745, 751 (1983) (“There is, of course, no constitutional right to an appeal...”). Consequently, “[t]he right of appeal arises from and is controlled by statutory law.” *N.C. Fed. Sav. & Loan Assn. v. Twin States Dev. Corp.*, 289 S.C. 480, 481 (1986).

The parties agree that S.C. Code § 14-3-330 does not confer jurisdiction to appeal the orders at issue. While Appellant says that S.C. Code § 14-48-200 does confer jurisdiction, Appellant is wrong. To the extent that Appellant would seek to find jurisdiction under the Federal Arbitration Action (“FAA”), 9 U.S.C. §§ 1-16, that claim also fails.

A. As the Parties Agree, S.C. Code § 14-3-330 Confers No Jurisdiction.

In its Opening Memorandum, Respondent Relentless established that none of the

provisions of the general appeals statute, S.C. Code § 14-3-330, confers jurisdiction with respect to the interlocutory orders at issue. [Open. Mem. at 5-7]. Appellant agrees. *See* [Opp. at 3]. This Court can accept that concession. *Cf. Raley v. Hyundai Motor Co.*, 642 F.3d 1271, 1275 (10th Cir. 2011) (Gorsuch, J.) (“Where an appellant fails to lead, we have no duty to follow. It is the appellant’s burden, not ours, to conjure up possible theories to invoke our legal authority to hear her appeal.”).

B. S.C. Code § 15-48-200 Does Not Confer Jurisdiction.

While S.C. Code § 15-48-200 authorizes an interlocutory appeal, as relevant here, “from [...] [a]n order denying an application to compel arbitration made under § 15-48-20,” S.C. Code § 15-48-200(a)(1), Respondent Relentless showed in its Opening Memorandum that that grant of appellate jurisdiction cannot apply here. [Open. Mem. at 7-8]. While Appellant takes issue with the Respondent’s analysis, the dispute ultimately does not matter. In its Opposition, Appellant explicitly disclaims that it ever sought below to make a motion to compel under S.C. Code § 15-48-20. [Opp. at 6 (“Relentless further fails to recognize that that Redemptions’ motion [to compel arbitration] was expressly based on the Federal Arbitration Action, 9 U.S. C. Chapter 1, rather than its state law equivalent.”)]. *See also* [App. at 172 (“This motion [to

compel] is based on the Federal Arbitration Act....”)].¹ Without ever having invoked South Carolina’s Uniform Arbitration Act below, that Act’s appeal provisions cannot authorize this appeal.

Insofar as Appellant suggests that this Court cannot independently decide whether Appellant has complied with relevant law that are the prerequisites to appeal, [Opp. at 5], Appellant impermissibly suggests that jurisdiction is subject to waiver. It is not. *Badeaux v. Davis*, 337 S.C. 195, 205 (Ct. App. 1999) (“Lack of subject matter jurisdiction may not be waived, even by consent of the parties....” (citation omitted)). Even compliance with the statute were a waivable issue, Appellant confuses its duty—as the party who lost below—to insure that all of its arguments were raised and ruled upon, with Respondents’ right to marshal any relevant argument in support of the order below. *See, e.g., I’On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 419 (2000) (“[A] respondent – the ‘winner’ in the lower court – may raise on appeal any additional reasons the appellate court should affirm the lower court’s ruling, regardless of whether those reasons have been presented to or ruled on by the lower court.”).

¹ “App.” refers to the appendix filed with the Motion to Dismiss.

C. The FAA Does Not Confer Jurisdiction for this Appeal.

Appellant wrongly claims that the FAA confers jurisdiction here. The FAA does not apply as a matter of fact. Even if it did, the FAA does not itself confer jurisdiction on this Court as a matter of law; only state law can grant jurisdiction.

1. The FAA Does Not Apply.

Despite “having the burden of presenting this Court with an adequate record,” *Harkins v. Greenville Cty.*, 340 S.C. 606, 616 (2000) (citation omitted), Appellant has not provided a record to show that the FAA could even arguably apply here.

First, Appellant specifically denies the validity of the contract containing the arbitration clause, [App. at 4], thus making impossible its claim that the parties had ever consented to arbitration. *See Volt Info. Scis. v. Bd. of Trs.*, 489 U.S. 468, 478 (1989) (holding that choice-of-state law opted out of arbitration when the FAA would have otherwise required it and noting that “the FAA does not require parties to arbitrate when they have not agreed to do so....” (citation omitted)).²

Second, the FAA applies to interstate, not intrastate, commerce. 9 U.S.C. § 2. But

² By contrast, Respondent Relentless maintains that the contract at issue is valid. The parties chose South Carolina law as the exclusive law to apply to their contract. *See* [App. at 88 (“This Agreement shall be governed by and construed with the laws of the State of South Carolina, without regard to conflicts of laws principals thereof.”).] The experienced attorneys who drafted the contract would have known that noncompliance with the notice requirements of S.C. Code § 14-48-10 meant that the arbitration clause in the contract was not actually a part of their contract under state law.

this transaction—involving one *South Carolina* church transferring ownership of real property located *in South Carolina* to another *South Carolina* church—is wholly internal to South Carolina. The contract at issue is thus entirely outside the ambit of the FAA. *See, e.g., Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 459 (2012) (“Because the essential character of the Agreement was strictly for the purchase of a completed residential dwelling and not the construction, we find the FAA does not apply as these types of transactions have historically been deemed to involve intra-state commerce.”).

2. *The FAA Does Not Expand State-Law Appellate Jurisdiction.*

To whatever extent that the FAA could apply to the contract at issue, Respondent respectfully submits that any precedent that the FAA itself expands state appellate jurisdiction is erroneous and ought to be reconsidered.

First, as a matter of plain text, the FAA appellate provision that Appellant seeks to invoke provides that “[a]n appeal may be taken from...an order...denying a petition under section 4 of this title to order an arbitration to proceed.” 9 U.S.C. § 16(a)(1)(B). Section 4, in turn, provides that “[a] party aggrieved by the alleged failure...to arbitrate under a written agreement for arbitration may petition *any United States district court*...for an order directing such arbitration to proceed in the manner provided for in such agreement.” 9 U.S.C. § 4. Because Appellant is not seeking to

appeal from the denial of arbitration by a U.S. District Court, 9 U.S.C. § 16(a)(1)(B) cannot apply. *See, e.g., Volt Info.*, 489 U.S. at 477 n.6 (“While we have held that the FAA’s ‘substantive’ provisions – §§ 1 and 2 – are applicable in state as well as federal court, we have never held that §§ 3 and 4, which by their terms appear to apply only to proceedings in federal court are nonetheless applicable in state court.” (citations omitted)). Consequently, “state procedural laws addressing the timing of appeals are not preempted by the FAA.” *Am. Gen. Fin. Servs. v. Jape*, 732 S.E.2d 746, 749 (Ga. 2012) (collecting cases).³

Second, interpreting the FAA to require an interlocutory appeal would violate the Tenth Amendment. U.S. Const. Amend. X. The Commerce Clause does not authorize Congress to force South Carolina’s overburdened appellate courts to consider an interlocutory appeal even though the General Assembly has not created appellate jurisdiction over this appeal. *Bush v. Paragon Prop., Inc.*, 997 P.2d 882, 888 (Or. Ct. App. 2000) (“Congress lacks the power under Article I to alter our jurisdiction. Thus, our state jurisdictional statute controls, and under it defendants have no right

³ Indeed, the purpose of the FAA is to put agreements to arbitrate “upon the same footing as other contracts.” *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 24 (1991) (citations omitted). Interpreting the FAA to preempt state law governing the timing of appeals would, however, treat arbitration *better than* regular contracts.

to appeal from the order [denying a motion to compel arbitration]. We therefore dismiss the appeal.”). *See also, e.g., New York v. United States*, 505 U.S. 144, 166 (1992) (“[T]he Framers explicitly chose a Constitution that confers upon Congress the power to regulate individuals, not States.... [E]ven where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit those acts.”).

CONCLUSION

This Court should dismiss the appeal for failure to perfect the appeal or, in the alternative, for lack of subject-matter jurisdiction.

Dated this 5th day of October 2020.

THE RELENTLESS CHURCH

s/Howard W. Anderson III

Howard W. Anderson III

SC Bar No. 100329

Counsel for Respondent

LAW OFFICE OF
HOWARD W. ANDERSON III, LLC
P.O. Box 661
Pendleton, SC 29670
howard@hwalawfirm.com
864-643-5790 (p)

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Proof of Service

Howard W. Anderson III (#100329)
LAW OFFICE OF HOWARD W. ANDERSON
III, LLC
P.O. Box 661
Pendleton, SC 29670
howard@hwalawfirm.com
864-643-5790 (p)
Counsel for Respondent

Proof of Service

I, the undersigned, served a copy this document and the following document(s):

- Reply in Support of Motion to Dismiss Appeal

on the following counsel of record this 5th day of October, 2020, by email to the following email addresses of record in the AIS:

John R. Devlin, Jr.
john.devlin@devlinparkinson.com

Kimberly Thomason
kim@truluckthomason.com

James Stephen Welch
swelch@mcgowanhood.com

Devon Puriefoy
devon@truluckthomason.com

Bruce W. Bannister
bbannister@bannisterwyatt.com

Jordan Calloway
jcalloway@mcgowanhood.com

Luke Anthony Burke
lburke@bannisterwyatt.com

“I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.” Dated this 5th day of October, 2020.

s/Howard W. Anderson III
Howard W. Anderson III
SC Bar No. 100329
Counsel for Respondent



Howard Anderson <howard@hwalawfirm.com>

Redemption v. The Relentless Church - Reply in support of motion to dismiss

Howard Anderson <howard@hwalawfirm.com>

Mon, Oct 5, 2020 at 7:07 PM

To: john.devlin@devlinparkinson.com, swelch@mcgowanhood.com, bbannister@bannisterwyatt.com, Devon Puriefoy <devon@truluckthomason.com>, jcalloway@mcgowanhood.com, Kimberly Thomason <kim@truluckthomason.com>, lburke@bannisterwyatt.com

Counsel:

Please see the attached reply and proof of service that I am filing with the Court of Appeals in the above-referenced case (along with a copy of this service email).

Best,
Howard

--

Howard W. Anderson III

*Licensed in AK, GA, IL, IN, NC, SC, & TN

Law Office of Howard W. Anderson III, LLC

PO Box 661

176 E. Main St.

Pendleton, SC 29670

864-643-5790

howard@hwalawfirm.com

www.hwalawfirm.com

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