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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2020-001044

Meghan Gaffney,...Petitioner,

v.

The Greenville County Sheriff's Office, Greenville County, and Alorica, Defendants,

Of Which Alorica is the ……………………………………...Respondent.

PETITION FOR WRIT OF CERTIORARI

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INDEX

Certificate of Counsel 1

Questions Presented 1

Statement of the Case 1

Arguments

I. The Circuit Court erred in dismissing the Petitioner's claims against the Respondent and compelling arbitration where a fact question existed as to whether the Petitioner signed an arbitration agreement 2

II. Even if the Circuit Court found that a question of fact did not exist as to whether the parties entered into a binding arbitration agreement, the Court erred in dismissing Petitioner's claims 3

III. The Respondent cannot terminate an employee in such a reprehensible way and then cry "Arbitration!" 4

Conclusion 5

CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on September 25, 2020.

QUESTION PRESENTED

I. Whether the Circuit Court erred in dismissing the Petitioner's claims against the Respondent and ruling that the Petitioner must be compelled to arbitrate her claims against the Respondent where a fact question exists as to whether the Petitioner signed an arbitration agreement.

STATEMENT OF THE CASE

The Petitioner was at home with her boyfriend and minor children when Greenville County Sheriff's deputies came into her home and arrested her boyfriend. Soon after, Alorica terminated Petitioner's employment as a result of her boyfriend's arrest. Petitioner filed suit against Greenville County, the Greenville County Sheriff's Office, and Alorica, alleging multiple causes of action. Alorica moved to dismiss Petitioner's case and to compel arbitration, claiming that the Petitioner was bound to an arbitration agreement.

On June 22, 2020, the Circuit Court entered an order dismissing the Petitioner's claims against Alorica and compelling arbitration. The Petitioner filed a timely motion to reconsider, which the Circuit Court denied on July 15, 2020. The Petitioner filed a notice of appeal on July 28, 2020. The Court of Appeals denied the Petitioner's appeal on August 13, 2020. This Petition for Certiorari follows.

ARGUMENT

As an initial matter, forced arbitration arising out of adhesion "contracts" like Alorica's is unconstitutional: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved…" Amendment VII, United States Constitution. The law surrounding forced arbitrations should be extended or changed[1], but for the following reasons, arbitration is not appropriate in this case, even under existing law.

I. The Circuit Court erred in dismissing the Petitioner's claims against the Respondent and compelling arbitration where a fact question existed as to whether the Petitioner signed an arbitration agreement.

"Arbitration is a matter of contract law and is available only when the parties involved contractually agreed to arbitrate." *Lucey v. Meyer*, 736 S.E.2d 274 (Ct. App. 2012); *Towles v. United Healthcare Corp.*, 338 S.C. at 37, 524 S.E.2d at 843-44. In *Simpson v. MSA of Myrtle Beach, Inc., et al.*, 644 S.E.2d. 663, our Supreme Court held that an arbitration agreement was unconscionable and unenforceable because the party bringing an action under the South Carolina Unfair Trade Practices Act did not have a "meaningful choice" as to arbitration. *Id* at 669. Absence of meaningful choice on the part of an appellant generally speaks to the fundamental fairness of the bargaining process in the contract at issue. *See Carlson v. General Motors Corp.*, 883 F.2d 287, 295 (4th Cir.1989). Not only is the arbitration agreement at issue fundamentally unfair like the Court determined in *Simpson*[2], there is a dispute as to whether or not the Petitioner signed the agreement at all. Prior to the Circuit Court's decision, the Petitioner filed an affidavit in which she testified that she did not recall signing the document submitted by Alorica.

[1] All issues related to the constitutionality of forced arbitration are preserved for appeal.
[2] *Simpson* is a case about an arbitration agreement related to the purchase of a car, but the analysis related to fundamental unfairness is applicable to this case.

At a minimum, the Circuit Court should have allowed the Petitioner to engage in discovery as to whether the parties entered into an arbitration agreement. Arbitration agreements are not unassailable. *Rent-A-Center West, Inc. v. Jackson*, 561 U.S. 63 (2010). As the *Rent-A-Center West* Court noted, "[i]n *Prima Paint Corp. v. Flood & Conklin Mfg. Co.,* 388 U.S. 395 (1967) ...if the claim had been 'fraud in the inducement of the arbitration clause itself,' then the court would have considered it." If the Petitioner does not remember signing an agreement and never intended to be bound by any agreement as stated in her sworn affidavit, then there is at least a question as to whether any agreement was ever entered into at all and, more importantly, whether the document presented by Alorica contains a valid signature. "To immunize an arbitration agreement from judicial challenge on the ground of fraud in the inducement would be to elevate it over other forms of contract." *Ibid*.

II. Even if the Circuit Court found that a question of fact did not exist as to whether the parties entered into a binding arbitration agreement, the court erred in dismissing the Petitioner's claims.

Even if Alorica were able to show that the parties entered into an arbitration agreement and the court ruled that *Simpson* did not govern, the Circuit Court should have stayed the action pending arbitration. A court has the power to grant a stay until the arbitration agreement's requirements are satisfied. 9 U.S.C. § 3 (2010) ("If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement . . . ."). In this case, a stay would not have undermined

the scheme of the arbitration agreement, if it is enforceable, and it would not have impeded or prejudiced the parties. Further, a stay would have ensured an expeditious resolution of the dispute between the parties.

III. The Respondent cannot terminate an employee in such a reprehensible way and then cry "Arbitration!"

The Petitioner has alleged that Alorica fired her for something wholly out of her control and related to heinous conduct on the part of police. It is impossible for the parties to have contracted to arbitrate claims related to such unreasonable conduct. The Petitioner should not be forced to arbitrate claims arising from "unanticipated and unforeseeable tortious conduct that was not within the scope of the arbitration agreement." *Wachovia Bank v. Blackburn*, 716 S.E.2d 454 (Ct. App. 2011); *Partain v. Upstate Automotive Group*, 386 S.C. at 494, 689 S.E.2d at 605 (holding Partain could not have contemplated that, in signing the arbitration clause, he was agreeing to arbitrate claims arising from allegedly fraudulent conduct).

"[E]ven the most broadly-worded arbitration agreements still have limits founded in general principles of contract law, and therefore, the court will refuse to interpret any arbitration agreement as applying to outrageous torts that are unforeseeable to a reasonable consumer in the context of normal business dealings." *Wachovia Bank v. Blackburn*, 716 S.E.2d 454 (Ct. App. 2011); *Aiken v. World Finance Corp. of South Carolina* at 151, 644 S.E.2d at 709. The Petitioner could not possibly have foreseen that Alorica would fire her because her boyfriend got arrested and then male officers watched her as she got dressed. The Petitioner respectfully requests that this Court apply the rationale of the *Aiken* Court and determine that the Petitioner's claims arising from Alorica's reprehensible conduct are not subject to arbitration.

CONCLUSION

For the reasons stated, the Petitioner asks the Court to grant the Petition for a Writ of Certiorari.

Respectfully submitted,

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