THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

The Honorable Bentley Price, Circuit Court Judge

Appellate Case No. 2021-000977
Case No. 2020-CP-15-00604

David Mack Johnson, Sr. ..... Respondent,

v.

Palmetto Solar, LLC, Palmetto South Carolina Solar I, LLC, Brightest Solar, Inc., Sunlight Financial, LLC, Cross River Bank, Great America Services Corporation and Robert Dodge ..... Defendants,

of which Palmetto Solar, LLC, Palmetto South Carolina Solar I, LLC, Brightest Solar, Inc., Sunlight Financial, LLC, Cross River Bank, and Robert Dodge are the ..... Appellants.

APPELLANTS' FINAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

Under the Federal Arbitration Act, courts must place arbitration agreements on equal footing with other contracts and compel claims to arbitration—including fraud claims—unless the plaintiff provides evidence or testimony attacking the validity of the arbitration agreement. A plaintiff's mere request that the Court permit discovery on fraud claims generally is insufficient to preclude, or postpone, an order compelling claims to arbitration.

Here, the issues presented are:

I. Whether the trial court erred in denying Appellants' motion to compel arbitration "as being premature" in a Form 4 Order when Appellants presented a written agreement to arbitrate signed by the plaintiff and the plaintiff presented no evidence to dispute he signed the agreement.

II. Whether the trial court erred in declining to "proceed summarily to the determination of the issue" upon which it based its denial of Appellants' motion to compel arbitration "as being premature."

III. Whether the trial court erred in refusing to dismiss claims against Appellant Cross River Bank when it is undisputed that the plaintiff never served the bank with process.

STATEMENT OF THE CASE

This appeal arises from the denial of Appellants' motion to compel arbitration according to the terms of an arbitration agreement Respondent David Mack Johnson, Sr. ("Purchaser") concedes he signed. On October 8, 2020, Purchaser filed a summons and complaint in the Court of Common Pleas for Colleton County. (Compl.; R. at 8.) Purchaser alleged three causes of action related to the installation of solar panels at his home in Colleton County: breach of warranty, fraud, and breach of contract. (Compl. ¶¶ 6, 8–12, 13–19, 20–25; R. at 9, 10, 11, 13) Purchaser sued all Appellants collectively on the basis that they "acted in concert and as a joint enterprise in representing, selling and financing the solar system to [Purchaser]." (Compl. ¶ 7; R. at 9.)

Purchaser served Appellants Palmetto Solar, LLC, Sunlight Financial, LLC, Brightest Solar, LLC, and Robert Dodge with process. (Affs. Service, Oct. 27, 2020; R. at 95–98.) Purchaser did not serve Appellant Cross River Bank with process. (Public Index Docket, Jan. 10, 2022; R. at 99–101.) In lieu of filing an answer, Appellants Palmetto Solar, LLC, Palmetto South Carolina Solar I, LLC, and Sunlight Financial, LLC (collectively, the "Palmetto Solar Appellants") timely moved to stay or dismiss this action and compel an arbitration pursuant to an arbitration agreement signed by Purchaser. (Mot. Compel Arbitration, Dec. 16, 2020; R. at 42.)[1] Appellants Brightest Solar, Inc. and Robert Dodge (collectively, the "Brightest Solar Appellants") timely joined the motion to compel arbitration. (Joinder, Dec. 21, 2020; R. at 58.) The Palmetto Solar Appellants filed a supporting memorandum of law shortly thereafter. (Mem. Supp., Dec. 31, 2020; R. at 60.) The motion and memorandum asked the Court to compel Purchaser's claims to arbitration and dismiss or stay those claims. (*Id.* at 1; R. at 60; Mot. Compel at 3; R. at 44.)

[1] Appellant Cross River Bank (the "Bank") joined the motion and additionally moved to dismiss based on Purchaser's failure to serve it with process, which precluded the Court from asserting personal jurisdiction over the Bank. (Mot. Compel at 1 n.1; R. at 42.)

The trial court heard the motion at an in-person hearing at which only counsel appeared. (Mot. Compel Hr'g. Tr., Jan. 6, 2021; R. at 23.) At the hearing, Appellants referred to the installation contract signed by Purchaser that contained the arbitration agreement. (*Id.* at 3:16–21; R. at 25.) Purchaser presented no briefs or affidavits before, during, or at the hearing. (*Id.*) Two days later, the Court issued a Form 4 order denying the motion to compel arbitration "as being premature." (Order, Jan. 8, 2021; R. at 1.)

Appellants timely filed motions for reconsideration on all the grounds raised in their motions to compel arbitration. (Palmetto Solar's Mot. Reconsider, Jan. 19, 2021; R. at 67; Brightest Solar's Mot. Reconsider, Jan. 19, 2021; R. at 73.) The trial court held a hearing on Appellants' motions five months later. (Reconsideration Hr'g. Tr., June 28, 2021; R. at 34.) At that hearing, Purchaser indicated that he intended to file an amended complaint, and the trial court gave Purchaser thirty days to do so, holding Appellants' motions in abeyance until the amended complaint was filed. (*Id.* at 6:24–7:11; R. at 39–40.) Purchaser filed his amended complaint, (Am. Compl., July 27, 2021; R. at 15), and, after receiving guidance from chambers that a formal motion was unnecessary, Appellants timely filed a joint letter incorporating their previous motions and supporting arguments in response to Purchaser's amended complaint, (Ltr. re Mot. Compel Arbitration, Aug. 3, 2021, 2021; R. at 84.) After consideration of the amended complaint and Appellant's submission, the trial court denied Appellants' motions for reconsideration. (Order Den. Mot. to Recon., August 12, 2021; R. at 4.) Specifically, the trial court's order "denie[d] arbitration, dismissal, and reconsideration as to all [Appellants]." (Email re Court's Order, Aug. 25, 2021; R. at 102.)

Appellants timely filed and served their Joint Notice of Appeal. (Not. Appeal, Sep. 7, 2021; R. at 117.)

STATEMENT OF THE FACTS

Purchaser signed a written Solar Installation Agreement (the "Agreement") in May 2018.[2] (Mot. Compel, Ex. 1; R. at 45.) The Agreement included various terms relating to the sale and installation of a solar panel system at Purchaser's home, including a warranty and various disclaimers and disclosures. (*Id.*). Notably, as required by South Carolina law, the Agreement states at the top of the first page: "South Carolina Sales Only: THIS AGREEMENT IS SUBJECT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT." (*Id.* at 1; R. at 46.) The Agreement's arbitration clause, located under the heading "Arbitration and Class Action Waiver," further stipulates that the parties would resolve disputes "under or relating to this Installation Agreement . . . by binding arbitration, as described below, instead of in court." (*Id.* ¶ 14; R. at 47–48.) The arbitration clause further establishes that it is governed by the Federal Arbitration Act and that the arbitration clause is applicable to the parties, as well as other third-parties: "In addition to [Purchaser] and [Palmetto], the rights and duties described in this arbitration agreement apply to the [Palmetto]'s affiliates and their officers, directors, members, managers, partners, independent contractors, and employees; and any third party co-defendant of a claim subject to this arbitration provision." (*Id.* ¶ 14(vi); R. at 48.)

Upon the execution of the Agreement, including its arbitration clause, a solar panel system was installed at Purchaser's home. (Am. Compl. ¶ 11; R. at 18.) Purchaser claims the system suffers from various defects in materials, workmanship, and installation. (*Id.* ¶ 6; R. at 17.) He also claims the system fails to perform as originally promised. (*Id.* ¶ 14; R. at 19.)

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[2] Purchaser signed the Agreement using DocuSign software that permits parties to securely and electronically sign documents. The contract includes a "Certificate of Completion" indicating when and how the parties securely signed the agreement. Courts have approved using signing agreements using DocuSign, which was used here. *See Graham v. Hall's Southern Kitchens, LLC*, 331 F.R.D. 619, 622 (D.S.C. 2018).

Over two years after the system was installed, Purchaser filed a complaint against Appellants and served it on some, but not all, of the named defendants. (Docket; R. at 99–101.) Appellants sought to compel the arbitration of Purchaser's claims on basis of the arbitration agreement. (Mot. Compel at 1–2; R. at 42–43.) Appellant Cross River Bank also moved to dismiss based on Purchaser's failure to serve it with process. (*Id.* at 1 n.1; R. at 42.)

At the hearing on the motion, Purchaser's opposition was premised on his fraud claim and the general position that "we don't think that it's fair to cause us to have to go to an arbitration." (Mot. Compel Hr'g. Tr., Jan. 6, 2021, 5:1–2; R. at 27.) Still, Purchaser's counsel conceded that Purchaser entered into the Agreement with Palmetto containing the arbitration agreement. (*Id.* at 4:19–20, 5:2–3; R. at 26, 27.) Purchaser offered no briefs or affidavits in opposition to Appellants' motions before, during, or at the hearing. Moreover, Purchaser did not address his failure to serve Appellant Cross River Bank with process. Rather than rule on Purchaser's stated ground for challenging the arbitration agreement, the trial court denied Appellants' motion "as being premature"—without any further reasoning or guidance to the parties. (Order Den. Mot. to Compel; R. at 1.)

In their motions for reconsideration, Appellants, among other arguments, requested that the trial court reconcile its order with the statutory requirement that the trial court "proceed summarily to the determination of the issue so raised." (Brightest Solar's Mot. Reconsider at 3 (citing S.C. Code Ann. § 15-48-20(a)); R. at 75.) Again, Purchaser offered no briefs or affidavits in opposition to Appellants' motions before, during, or at the hearing. Despite the detailed arguments raised, the trial court denied Appellants' motions without any express consideration of Appellants' substantive arguments. (Order Den. Mot. to Recon.; R. at 4.) Appellants timely appealed. (Not. Appeal; R. at 117.)

STANDARD OF REVIEW

Appeal from the denial of a motion to compel arbitration is subject to *de novo* review. *Chassereau v. Global Sun Pools, Inc.*, 373 S.C. 168, 171, 644 S.E.2d 718, 720 (2007).

The proper interpretation of the South Carolina Rules of Civil Procedure's requirement for dismissal where a plaintiff fails to serve a defendant with process is also subject to *de novo* review. *Kosciusko v. Parham*, 428 S.C. 481, 496, 836 S.E.2d 362, 370 (Ct. App. 2019) (noting that court interprets rules like statutes); *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008) ("Determining the proper interpretation of a statute is a question of law, and this Court reviews questions of law de novo.").

ARGUMENT

The policy under both federal and South Carolina law is to favor arbitration of disputes. *Parsons v. John Wieland Homes & Neighborhoods of the Carolinas, Inc.*, 418 S.C. 1, 6, 791 S.E.2d 128, 131 (2016) (citing *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 590, 553 S.E.2d 110, 115 (2001)). The Federal Arbitration Act ("FAA") establishes "a liberal federal policy favoring arbitration agreements" and "requires courts rigorously to enforce arbitration agreements according to their terms." *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1621 (2018) (citations and internal quotation marks omitted). Here, Appellants moved to enforce the subject arbitration agreement under both the FAA and the South Carolina Uniform Arbitration Act at the appropriate stage of the case, presenting an unrebutted arbitration agreement that covered Purchaser's claims. This Court should carry out that policy.

South Carolina court rules and Due Process require plaintiffs to serve defendants with process before a court can assert personal jurisdiction over the defendant. When a defendant has not been served with process, it may move to dismiss under Rule 12(b)(5) and (2), SCRCP. Here,

it is undisputed that Purchaser failed to serve the Bank with process, so it is legal error to allow Purchaser to maintain its claims against the Bank in the face of its motion to dismiss.

I. Appellants' motion to compel arbitration was ripe for consideration by the trial court.

The trial court's ruling in a Form 4 Order that Appellant's motion to compel arbitration was "premature," without any additional reasoning or guidance, was legal error. Indeed, filing motions to compel arbitrations in lieu of responsive pleadings at the outset of an action is a routine and necessary practice when an arbitration agreement exists that is valid on its face. *See* S.C. Code Ann. § 15-48-20(a) ("On application of a party showing an agreement described in Section 15-48-10, and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration . . . ."); *accord* 9 U.S.C. § 3. In fact, a movant risks waiving the right to enforce the arbitration agreement by failing to timely move to compel arbitration. *See, e.g.*, *Rhodes v. Benson Chrysler-Plymouth*, 374 S.C. 122, 127–28, 647 S.E.2d 249, 251–52 (Ct. App. 2007) (finding that a party seeking to compel arbitration waived right by engaging in extensive discovery).

Under South Carolina law, if the movant presents evidence of an agreement, the question for the trial court becomes whether the "opposing party denies the existence of the agreement to arbitrate . . . ." S.C. Code Ann. § 15-48-20(a). In such a circumstance, "the court shall proceed summarily to the determination of the issue so raised and shall order arbitration if found for the moving party, otherwise, the application shall be denied." S.C. Code Ann. § 15-48-20(a). Accordingly, the trial court's denial of arbitration here can only be premised on an inference that Purchaser "denie[d] the existence of the agreement to arbitrate." *See id.* Purchaser, however, did not deny the existence of the Agreement. By contrast, he conceded that he entered into the Agreement. (Mot. Compel Hr'g. Tr. 4:19–20, Jan. 6, 2021; R. at 26.) Yet, he still purported to oppose the motion to compel arbitration without putting forward any brief, affidavit, or sworn

testimony whatsoever. (*Id.*; R. at 26.) This mere claimed resistance to arbitration was insufficient under the plain language of the statute. So too was the trial court's failure to rule on the issue of the arbitration clause's enforceability in its one-sentence Form 4 order under these circumstances was legal error.

II. This Court should reverse the trial court because a valid arbitration agreement exists and because Purchaser's claims fall within the scope of the agreement.

Courts look to state law to determine whether the arbitration agreement between the parties is valid and enforceable. *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 630–31 (2009). For a contract to be enforceable under South Carolina law, the contract must have the following elements: offer, acceptance, and valuable consideration. *Clardy v. Bodolosky*, 383 S.C. 418, 425, 679 S.E.2d 527, 530 (Ct. App. 2009). All three elements are satisfied with regard to the arbitration agreement in this case.

A. Appellants may properly enforce the arbitration agreement.

A valid arbitration agreement exists under both South Carolina and federal law that may be enforced by Appellants.

First, the written arbitration agreement confirms the existence of an offer and acceptance as evidenced by the parties' electronic signatures. Under South Carolina law, a signature must not be denied legal effect because it is in electronic form. S.C. Code Ann. § 2-6-70(D) ("An electronic signature satisfies a law requiring a signature."); *see also* 15 U.S.C. § 7001(a)(1) (establishing authority for enforcement of contract containing electronic signature in interstate commerce). The use of electronic signatures is not a barrier to enforcement of written agreements. *Metro. Reg'l Info. Sys., Inc. v. Am. Home Realty Network, Inc.*, 722 F.3d 591, 602 (4th Cir. 2013) ("Courts have

uniformly applied the E–Sign Act to subsequent interpretations of the FAA's written provision requirement.").[3]

Second, the parties' agreement also contains an exchange of valuable consideration. In addition to the consideration provided by the terms of the agreement, the arbitration agreement includes a mutual promise to arbitrate. (Agreement, ¶ 14; R. at 47–48.) This mutual promise constitutes sufficient consideration to support the arbitration provision. *Rogers v. Clayton Homes Florence*, No. 4:19-cv-00570-DCC, 2019 WL 6608728, at *3 (D.S.C. Dec. 5, 2019).

Finally, the non-signatory Appellants may enforce the arbitration agreement, which expressly provides that it applies to Palmetto's "affiliates and their officers, directors, members, managers, partners, independent contractors, and employees; and any third party co-defendant of a claim subject to this arbitration provision." (Agreement, ¶ 14(vi); R. at 48.) Appellants may also enforce the agreement as third-party beneficiaries or under principles of equitable estoppel because Purchaser's intertwined claims plainly rely on the terms of the Agreement. *See Am. Bankers Ins. Group, Inc. v. Long*, 453 F.3d 623, 630 (4th Cir. 2006) (holding that a nonsignatory to an arbitration clause of an agreement may enforce the clause where the plaintiff relies upon the agreement in seeking recovery); *Brantley v. Republic Mortg. Ins. Co.*, 424 F.3d 392, 395–96 (4th Cir. 2005); *Washington Square Sec., Inc. v. Aune*, 385 F.3d 432, 435 (4th Cir. 2004); *R.J. Griffin & Co. v. Beach Club II Homeowners Ass'n*, 384 F.3d 157, 164 (4th Cir. 2004); *THI of S.C. at Columbia, LLC v. Wiggins*, No. 3:11-888-CMC, 2011 WL 4089435, at *6 (D.S.C. Sept. 13, 2011); *Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 290, 733 S.E.2d 597, 601 (Ct. App. 2012). Indeed,

[3] If the Court had any factual questions regarding the arbitration agreement, at a minimum limited discovery would have been the proper procedure for resolving those questions—not dismissal of the motion to compel as "premature." *See Deputy v. Lehman Bros.*, 345 F.3d 494, 511 (7th Cir. 2003) (permitting only limited discovery in rare situations).

Purchaser expressly alleges that Appellants "acted in concert and as a joint enterprise in representing, selling and financing the solar system to [Purchaser]." (Am. Compl. ¶ 7; R. at 17–18.)

Here, Purchaser never raised challenges to Appellants' motion to compel arbitration on these contractual grounds. To the extent his counsel claims that Purchaser never received a copy of the arbitration agreement as a means of challenging the validity of it, that ground fails to make the arbitration provision unenforceable. This is especially true given that Purchaser's counsel contradicted this claim by arguing at the hearing that the agreements were sent to Purchaser's email. (Mot. Compel Hr'g. Tr. 6:22–23; R. at 28.)

In any event, Purchaser failed to present any evidence at the hearing necessary to invalidate the agreement. (Mot. Compel Hr'g. Tr. 7:16–17; R. at 29; Reconsideration Hr'g. Tr. 6:4–10; R. at 39.) While his counsel may have argued that the agreement should not be enforced, counsel's argument is not sworn testimony to be accepted by the Court. *Harper v. Bolton*, 239 S.C. 541, 562, 124 S.E.2d 54, 64 (1962) (noting that "statements of counsel in an argument are not evidence."). By failing to attach any sworn statements supporting any other claims that the agreement is not valid, Purchaser failed to carry his burden of proving the agreement was invalid. *See Masters v. KOL, Inc.*, 431, S.C. 28, 37, 846 S.E.2d 893, 897 (Ct. App. 2020) (placing burden on party resisting arbitration). Accordingly, Purchaser did not rebut the fact he entered into a valid and enforceable arbitration agreement, so the court below erred by failing to grant Appellants' motion to compel arbitration.

B. Purchaser's claims fall within the scope of the agreement.

"To decide whether an arbitration agreement encompasses a dispute, a court must determine whether the factual allegations underlying the claim are within the scope of the broad

arbitration clause, regardless of the label assigned to the claim." *Zabinski*, 346 S.C. at 597, 553 S.E.2d at 118 (citing *Hinson v. Jusco Co.,* 868 F. Supp. 145 (D.S.C. 1994); *S.C. Pub. Serv. Auth. v. Great W. Coal,* 312 S.C. 559, 437 S.E.2d 22 (1993)). If there are any doubts about the scope of arbitrable issues, those doubts should be resolved in favor of arbitration. *Id.* In fact, unless a "court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should be ordered." *Id.* (citing *Great W. Coal,* 312 S.C. at 564, 437 S.E.2d at 25). A motion to compel arbitration should be denied *only if* an arbitration clause in a written contract "is not susceptible to *any* interpretation which would cover the asserted dispute." *Id.* at 597, 553 S.E.2d at 118–19 (emphasis added) (citing *Tritech Elec., Inc. v. Frank M. Hall & Co.*, 343 S.C. 396, 399, 540 S.E.2d 864, 865 (Ct. App. 2000)). A party that resists arbitration also bears the burden of proving that the claims at issue are unsuitable for arbitration. *Masters v. KOL, Inc.*, 431 S.C. 28, 37, 846 S.E.2d 893, 897 (Ct. App. 2020) (quoting *Green Tree Fin. Corp.-Alabama v. Randolph*, 531 U.S. 79, 91 (2000)).

Purchaser's claims fall within the scope of the arbitration agreement because the claims are either expressly covered by the Agreement or because a significant relationship exists between his claims and the Agreement. *Zabinski*, 346 S.C. at 598, 553 S.E.2d at 119; *Masters*, 431 S.C. at 38 n.7, 846 S.E.2d at 898 n.7. The primary factual basis of Purchaser's claims center on alleged misrepresentations concerning the solar panel system, misrepresentations concerning the availability of tax credits, defects in workmanship, and installation problems. (Am. Compl. ¶ 6; R. at 17.) That these claims are all intertwined requires that the Complaint be compelled to arbitration and dismissed with prejudice. *See Choice Hotels Int'l, Inc. v. BSR Tropicana Resort,*

Inc., 252 F.3d 707, 709–10 (4th Cir. 2001) (noting dismissal is a proper remedy when all of the issues presented in a lawsuit are arbitrable).[4]

Purchaser's position that allegations of fraud generally void an arbitration agreement is a misstatement of the law. When fraud is asserted, the Court still must compel claims to arbitration unless the fraud is directed at the making of the arbitration provision itself. *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 404 (1967); *New Hope Baptist v. Paragon*, 379 S.C. 620, 627, 667 S.E.2d 1, 4 (Ct. App. 2008). Purchaser made no such claim here. "A party cannot avoid arbitration through rescission of an entire contract when there is no independent challenge to the arbitration clause itself. There must be fraud in the inducement of the arbitration agreement to avoid arbitration of the contract." *Carolina Care Plan, Inc. v. United HealthCare Servs., Inc.*, 361 S.C. 544, 550–51, 606 S.E.2d 752, 755 (2004) (citing *S.C. Pub. Serv. Auth. v. Great Western Coal (Kentucky), Inc.*, 312 S.C. 559, 562–63, 437 S.E.2d 22, 24 (1993)). Courts routinely compel actions to arbitration where plaintiffs raise contract claims and fraud claims in the same complaint. *See id.*; *Parsons*, 418 S.C. at 5, 791 S.E.2d at 130.

Accordingly, the trial court committed legal error in not dismissing Purchaser's claims and compelling Purchaser to submit his claims against Appellants to arbitration.

III. Purchaser never served Cross River Bank with process, so the Court lacks jurisdiction over it and its dismissal is proper.

Purchaser failed to serve Cross River Bank with process. (Public Index Docket; R. at 99–101.) Because of this failure, the Court lacks personal jurisdiction over Cross River Bank, so dismissal of the claims against it was proper. *See also Brown v. Evatt*, 322 S.C. 189, 194, 470 S.E.2d 848, 850 (1996) (dismissing action for lack of personal jurisdiction based on the plaintiff's

[4] If a court declines to dismiss the complaint, it must stay the action pending arbitration of the arbitrable claims. *See Hooters of Am., Inc. v. Phillips*, 173 F.3d 933, 937 (4th Cir. 1999).

failure to serve summons and complaint); *Unisun Ins. Co. v. Hawkins*, 342 S.C. 537, 543 n.3, 537 S.E.2d 559, 561 n.3 (Ct. App. 2000) ("A Rule 12(b)(5) motion is the proper vehicle for challenging the . . . *lack of delivery* of the summons and complaint.") (emphasis supplied). Cross River Bank consistently raised this issue with the Court, yet the Court failed to address this ground in its one-sentence Form 4 Order or its Reconsideration Order. (Mot. Compel at 1 n.1; R. at 42; Mem. Supp. Mot. Compel at 1 n.1; R. at 60; Mot. Compel Hr'g. Tr. 3:9–15; R. at 25; Mot. Reconsider at 1 n.1; R. at 67.)

As a result, the trial court committed legal error by not dismissing Purchaser's claims against Cross River Bank on this alternative ground.

CONCLUSION

In light of the strong state and federal policies favoring arbitration, as well as the existence of a valid and enforceable arbitration agreement covering Purchaser's claims, Appellants respectfully request that this Court reverse the ruling of the trial court and remand the matter for entry of an order dismissing Purchaser's claims without prejudice and compelling Purchaser to submit to an arbitration of his claims against Appellants. Appellant Cross River Bank further requests the Court reverse the trial court's failure to dismiss claims against Cross River Bank for Purchaser's failure to serve it with process.

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May 25, 2022

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

The Honorable Bentley Price, Circuit Court Judge

Appellate Case No. 2021-000977
Case No. 2020-CP-15-00604

David Mack Johnson, Sr. ..... Respondent,

v.

Palmetto Solar, LLC, Palmetto South Carolina Solar I, LLC, Brightest Solar, Inc., Sunlight Financial, LLC, Cross River Bank, Great America Services Corporation and Robert Dodge ..... Defendants,

of which Palmetto Solar, LLC, Palmetto South Carolina Solar I, LLC, Brightest Solar, Inc., Sunlight Financial, LLC, Cross River Bank, and Robert Dodge are the ..... Appellants.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Appellant's briefs comply with Rule 211(b), SCACR.

[Signature page attached]

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