CHAPTER 48

Uniform Arbitration Act

**SECTION 15‑48‑10.** Validity of arbitration agreement; exceptions from operation of chapter.

 (a) A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract. Notice that a contract is subject to arbitration pursuant to this chapter shall be typed in underlined capital letters, or rubber‑stamped prominently, on the first page of the contract and unless such notice is displayed thereon the contract shall not be subject to arbitration.

 (b) This chapter however shall not apply to:

 (1) Any agreement or provision to arbitrate in which it is stipulated that this chapter shall not apply or to any arbitration or award thereunder;

 (2) Arbitration agreements between employers and employees or between their respective representatives unless the agreement provides that this chapter shall apply; provided, however, that notwithstanding any other provision of law, employers and employees or their respective representatives may not agree that workmen’s compensation claims, unemployment compensation claims and collective bargaining disputes shall be subject to the provisions of this chapter and any such provision so agreed upon shall be null and void. An agreement to apply this chapter shall not be made a condition of employment.

 (3) A pre‑agreement entered into when the relationship of the contracting parties is such that of lawyer‑client or doctor‑patient and the term “doctor” shall include all those persons licensed to practice medicine pursuant to Chapters 9, 15, 31, 37, 47, 51, 55, 67 and 69 of Title 40 of the 1976 Code.

 (4) Any claim arising out of personal injury, based on contract or tort, or to any insured or beneficiary under any insurance policy or annuity contract.

HISTORY: 1978 Act No. 492, Section 1.

CROSS REFERENCES

Arbitration in public construction project disputes, see Section 10‑1‑100.

Arbitration of claims for damages resulting from an unlawful discharge of pollutants, see Section 48‑43‑600.

Arbitration of property damage liability claims arising out of the operation of motor vehicles, see Sections 38‑77‑710.

Conciliation of industrial labor disputes, see Sections 41‑17‑10 et seq.

Prohibition of arbitration clauses in uninsured motorist provisions, see Section 38‑77‑200.

Right of contractors to have the right of arbitration by agreement with laborers, subcontractors and materialmen with regard to liens, see Section 29‑7‑30.

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70 Am. Jur. Proof of Facts 3d 379, Proof that an Arbitration Clause in a Commercial Transaction Agreement is Properly Challenged as Inapplicable to or Unenforceable Against the Parties.

44 Am. Jur. Trials 507, Alternative Dispute Resolution: Commercial Arbitration.

S.C. Jur. Arbitration Section 4, Exceptions from Application of Act.

S.C. Jur. Arbitration Section 6, Application of Federal Arbitration Act.

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25 Causes of Action 473, Cause of Action to Vacate Arbitration Award on Ground of Partiality or Misconduct of Arbitrator.

27 Causes of Action 113, Cause of Action to Vacate Arbitration Award on Ground of Excess of Powers by Arbitrator.

2 Causes of Action 2d 649, Cause of Action to Vacate Arbitration Award on Ground of Corruption, Fraud, or Undue Means in Procuring Award.

41 Causes of Action 2d 1, Cause of Action for Enforcement of Arbitration Clause in Long‑Term Care Agreement.

Employment Coordinator Labor Relations Section 15:43, South Carolina.

Guide to Employment Law and Regulation 2d Section 61:4, Arbitration of Labor Disputes.

Restatement (3d) of Law Governing Law Section 54, Defenses; Prospective Liability Waiver; Settlement With a Client.

Restatement (3d) of Law Governing Law Section 76 TD 8, Defenses; Prospective Liability Waiver; Settlement.

Williston on Contracts Section 57:5, Federal Arbitration Act‑Preemption of State Law.

Williston on Contracts Section 15:11, Agreements to Replace Courts by Arbitration; Effect of Federal Arbitration Act.

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Alternative dispute resolution, arbitrability under Federal Arbitration Act had to be addressed for all claims, see KPMG LLP v. Cocchi, U.S.Fla.2011, 132 S.Ct. 23, 565 U.S. 18, 181 L.Ed.2d 323, on remand 88 So.3d 327. Alternative Dispute Resolution 205

Alternative dispute resolution, Arbitrator did not exceed powers in finding that contract provided for class arbitration, see Oxford Health Plans LLC v. Sutter, 2013, 133 S.Ct. 2064, 186 L.Ed.2d 113. Alternative Dispute Resolution 316

Alternative dispute resolution, Compliance with local litigation requirement in investment treaty was question for arbitrators, with deferential judicial review, see BG Group, PLC v. Republic of Argentina, 2014, 134 S.Ct. 1198, 188 L.Ed.2d 220, on remand 555 Fed.Appx. 2, 2014 WL 2178324. Alternative Dispute Resolution 514; Treaties 8

Alternative dispute resolution, Contractual waiver of class arbitration was enforceable despite high costs of individual arbitration which allegedly impaired the effective vindication of federal statutory rights, see American Exp. Co. v. Italian Colors Restaurant, 2013, 133 S.Ct. 2304, 186 L.Ed.2d 417. Alternative Dispute Resolution 124(1)

Alternative dispute resolution, state court erred in applying preempted state law to invalidate arbitration agreement governed by Federal Arbitration Act, see DIRECTV, Inc. v. Imburgia, U.S.Cal.2015, 136 S.Ct. 463, 193 L.Ed.2d 365, on remand 2016 WL 2609764, unpublished. Alternative Dispute Resolution 117; States 18.15

Alternative dispute resolution, state public policy against enforcing arbitration agreements in wrongful death actions against nursing homes was preempted by Federal Arbitration Act, see Marmet Health Care Center, Inc. v. Brown, 2012, 132 S.Ct. 1201, 565 U.S. 530, 182 L.Ed.2d 42, on remand 229 W.Va. 382, 729 S.E.2d 217. Alternative Dispute Resolution 117; States 18.15

Alternative dispute resolution, state‑law enforceability of noncompete agreement was issue for arbitrator under Federal Arbitration Act, see Nitro‑Lift Technologies, L.L.C. v. Howard, U.S.Okla.2012, 133 S.Ct. 500, 568 U.S. 17, 184 L.Ed.2d 328. Alternative Dispute Resolution 199

Arbitration, appellate review, denial of request for stay of action pending arbitration, nonparties to agreement, see Arthur Andersen LLP v. Carlisle, 2009, 129 S.Ct. 1896, 556 U.S. 624, 173 L.Ed.2d 832.

Arbitration, Federal Arbitration Act, exclusive grounds for expedited vacatur and modification of arbitration award under Act, see Hall Street Associates, L.L.C. v. Mattel, Inc., 2008, 128 S.Ct. 1396, 552 U.S. 576, 170 L.Ed.2d 254, on remand 531 F.3d 1019.

Arbitration, federal preemption, agreement to arbitrate all issues, state law lodging primary jurisdiction in another forum, see Preston v. Ferrer, 2008, 128 S.Ct. 978, 552 U.S. 346, 169 L.Ed.2d 917.

Arbitration agreements, voidable clauses of contract, see Rent‑A‑Center, West, Inc. v. Jackson, 2010, 130 S.Ct. 2772, 561 U.S. 63, 177 L.Ed.2d 403.

Arbitration awards, ripeness of claims, enforcement of agreements to arbitrate, class arbitration, see Stolt‑Nielsen S.A. v. AnimalFeeds International Corp., 2010, 130 S.Ct. 1758, 559 U.S. 662, 176 L.Ed.2d 605, on remand 624 F.3d 157.

Banking, dispute between credit card issuer and cardholder, state law counterclaims, right to compel arbitration under the Federal Arbitration Act, federal district court jurisdiction, see Vaden v. Discover Bank, 2009, 129 S.Ct. 1262, 556 U.S. 49, 173 L.Ed.2d 206.

Breach of no‑strike clause in collective labor contract as affecting enforceability of arbitration clause therein. 8 L Ed 2d 1013.

Consumer credit, claims under the Credit Repair Organizations Act are arbitrable, see CompuCredit Corp. v. Greenwood, 2012, 132 S.Ct. 665, 565 U.S. 95, 181 L.Ed.2d 586, on remand 674 F.3d 1095. Alternative Dispute Resolution 121

Due process, fair trial, jury selection, good faith error in denial of peremptory challenge, see Rivera v. Illinois, U.S.Ill.2009, 129 S.Ct. 1446, 556 U.S. 148, 173 L.Ed.2d 320.

Employment law, arbitration agreements, tortuous interference with contract, see Granite Rock Co. v. International Broth. of Teamsters, 2010, 130 S.Ct. 2847, 561 U.S. 287, 177 L.Ed.2d 567, on remand 645 F.3d 1096, on remand 649 F.3d 1067.

Federal Arbitration Act, class arbitration waiver, preemption, see AT&T Mobility LLC v. Concepcion, 2011, 131 S.Ct. 1740, 563 U.S. 333, 179 L.Ed.2d 742, on remand 663 F.3d 1034.

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1. In general

No contrary congressional command overrode the overarching principle, reflected in the text of the Federal Arbitration Act (FAA), that arbitration was a matter of contract, as would require the court to reject merchants’ waiver of class arbitration in their contract with charge‑card issuer, which waiver the issuer sought to enforce with respect to merchants’ federal antitrust claims against issuer; even if costs for merchants to individually arbitrating their antitrust claims exceeded potential recovery for each merchant, federal antitrust laws did not guarantee an affordable procedural path to the vindication of every claim or evince an intention to preclude a waiver of class‑action procedure, and congressional approval of the federal rule of civil procedure allowing class proceedings did not establish an entitlement to class proceedings for the vindication of statutory rights. American Exp. Co. v. Italian Colors Restaurant, 2013, 133 S.Ct. 2304, 186 L.Ed.2d 417. Alternative Dispute Resolution 134(1)

Because parties bargained for arbitrator’s construction of their agreement, arbitral decision even arguably construing or applying the contract must stand, regardless of court’s view of its merits or demerits; only if arbitrator acts outside scope of his contractually delegated authority, issuing award that simply reflects his own notions of economic justice, rather than drawing its essence from the contract, may court overturn his determination. Oxford Health Plans LLC v. Sutter, 2013, 133 S.Ct. 2064, 186 L.Ed.2d 113. Alternative Dispute Resolution 316; Alternative Dispute Resolution 324

Arbitrator did not exceed his powers in authorizing class arbitration of dispute regarding health plan’s alleged failure to make prompt and accurate reimbursement payments to physicians participating in primary care physician agreement; parties agreed that arbitrator should determine what contract meant, and so it was sufficient that arbitrator construed the contract, determining that it permitted class action arbitration; abrogating Reed v. Florida Metropolitan Univ., Inc., 681 F.3d 630. Oxford Health Plans LLC v. Sutter, 2013, 133 S.Ct. 2064, 186 L.Ed.2d 113. Alternative Dispute Resolution 316

Although the right to enforce an arbitration clause may be waived, there is a strong policy favoring arbitration. Rich v. Walsh (S.C.App. 2003) 357 S.C. 64, 590 S.E.2d 506, rehearing denied. Alternative Dispute Resolution 113

It is the policy of the State to favor arbitration of disputes. MailSource, LLC v. M.A. Bailey & Associates, Inc. (S.C.App. 2003) 356 S.C. 370, 588 S.E.2d 639. Alternative Dispute Resolution 113

Arbitration rests on the agreement of the parties, and the range of issues that can be arbitrated is restricted by the terms of the agreement. Vestry and Church Wardens of Church of Holy Cross v. Orkin Exterminating Co., Inc. (S.C.App. 2003) 356 S.C. 202, 588 S.E.2d 136, rehearing denied, certiorari denied. Alternative Dispute Resolution 112; Alternative Dispute Resolution 143

Arbitration clause in extermination company’s contracts with church, requiring arbitration for all disputes between parties, was sufficiently broad so as to embrace disputes arising under prior contracts. Vestry and Church Wardens of Church of Holy Cross v. Orkin Exterminating Co., Inc. (S.C.App. 2003) 356 S.C. 202, 588 S.E.2d 136, rehearing denied, certiorari denied. Alternative Dispute Resolution 143

It is policy of South Carolina to favor arbitration of disputes. Toler’s Cove Homeowners Ass’n, Inc. v. Trident Const. Co., Inc. (S.C. 2003) 355 S.C. 605, 586 S.E.2d 581. Alternative Dispute Resolution 113

Courts resolve any doubts concerning the scope of arbitrable issues in favor of arbitration. Bazzle v. Green Tree Financial Corp. (S.C. 2002) 351 S.C. 244, 569 S.E.2d 349, certiorari granted 123 S.Ct. 817, 537 U.S. 1098, 154 L.Ed.2d 766, vacated 123 S.Ct. 2402, 539 U.S. 444, 156 L.Ed.2d 414. Alternative Dispute Resolution 139

Both federal and state policy favor arbitrating disputes. Towles v. United HealthCare Corp. (S.C.App. 1999) 338 S.C. 29, 524 S.E.2d 839. Alternative Dispute Resolution 113

There is strong presumption in favor of the validity of arbitration agreements because of the strong policy favoring arbitration. Towles v. United HealthCare Corp. (S.C.App. 1999) 338 S.C. 29, 524 S.E.2d 839. Alternative Dispute Resolution 210

The court should have granted a motion to stay litigation of pending arbitration, since the parties’ controversy as to whether a corporation’s purported termination of a shareholder’s agreement, which contained an arbitration provision and which granted the majority shareholder an option to sell its outstanding shares to the corporation, violated the requirement of the shareholder’s agreement that any termination be in writing and signed by 75 percent of the shareholders, arose “under, in connection with and relating to” the termination provision of the agreement, and thus was subject to arbitration under Sections 15‑48‑10 and 15‑48‑20. Jackson Mills, Inc. v. BT Capital Corp. (S.C. 1994) 312 S.C. 400, 440 S.E.2d 877.

The statute of limitations for a wrongful discharge claim was not tolled during the period that compulsory arbitration of the dispute, pursuant to the employee’s union contract, was taking place. Nowlin v. General Telephone Co. (S.C.App. 1992) 310 S.C. 183, 426 S.E.2d 114, rehearing denied, certiorari granted, affirmed 314 S.C. 352, 444 S.E.2d 508. Limitation Of Actions 108

1.5. Construction with other laws

South Carolina law invalidating arbitration agreements in insurance policies was a law enacted “for the purpose of regulating the business of insurance,” and was thus subject to the McCarran‑Ferguson Act. ESAB Group, Inc. v. Zurich Ins. PLC (C.A.4 (S.C.) 2012) 685 F.3d 376. Insurance 1107; States 18.41

Even if an article of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards describing signatories’ responsibilities with respect to the enforcement of foreign arbitration agreements was not self‑executing, the implementing provisions of the Federal Arbitration Act (FAA), as implementing legislation of a treaty, did not fall within the scope of the McCarran‑Ferguson Act, but rather, McCarran‑Ferguson was limited to legislation within the domestic realm and, consequently, South Carolina law invalidating arbitration agreements in insurance policies did not apply to an insurance coverage dispute pursuant to McCarran‑Ferguson’s reverse‑preemption rule. ESAB Group, Inc. v. Zurich Ins. PLC (C.A.4 (S.C.) 2012) 685 F.3d 376. Insurance 1107; States 18.41

Arbitration agreement signed by nursing home resident’s son was separate from the admission agreement, which resident’s son was authorized to execute under the Adult Health Care Consent Act, and therefore, any authority son had to sign the arbitration agreement on patient’s behalf could not come from the Act. Thompson v. Pruitt Corp. (S.C.App. 2016) 416 S.C. 43, 784 S.E.2d 679, rehearing denied, certiorari denied. Alternative Dispute Resolution 141; Health 910

Nursing home’s arbitration agreement did not require the type of decision for which the Adult Health Care Consent Act conferred authority on a surrogate, i.e., health care or payment for health care; arbitration agreement was separate from the admission agreement. Thompson v. Pruitt Corp. (S.C.App. 2016) 416 S.C. 43, 784 S.E.2d 679, rehearing denied, certiorari denied. Alternative Dispute Resolution 141; Health 910

Borrowers’ claim for violation of the claim and delivery proceedings statute against lenders, for allegedly repossessing borrowers’ mobile home without following requisite formalities after borrowers’ defaulted on loan, was within the scope of the contract’s arbitration clause applicable to claims “arising out of or relating to” the contract; lender’s actions to recover the property as a result of borrowers’ default created a controversy arising out of the contract. Hall v. Green Tree Servicing, LLC (S.C.App. 2015) 413 S.C. 267, 776 S.E.2d 91. Alternative Dispute Resolution 143

Borrowers’ claim for violation of the statutory notification provisions against lender, for allegedly repossessing borrowers’ mobile home without providing borrowers the notice required after borrowers defaulted on loan, arose out of the parties’ contract and was within the scope of the contract’s arbitration clause applicable to claims “arising out of or relating to” the contract; lender reclaimed the mobile home due to borrowers’ failure to comply with the terms of the contract. Hall v. Green Tree Servicing, LLC (S.C.App. 2015) 413 S.C. 267, 776 S.E.2d 91. Alternative Dispute Resolution 143

Confirmation provision of Federal Arbitration Act (FAA) applies only in federal court. Henderson v. Summerville Ford‑Mercury Inc. (S.C. 2013) 405 S.C. 440, 748 S.E.2d 221. Alternative Dispute Resolution 116

Although the arbitration agreement between purchaser and car dealership stated that Federal Arbitration Act (FAA) would apply to the arbitration of purchaser’s claims under Unfair Trade Practices Act (UTPA) and the South Carolina Regulation of Manufacturers, Distributors, and Dealers Act, circuit court did not err in applying the South Carolina Uniform Arbitration Act’s (UAA) confirmation provision because the confirmation statute was procedural, not substantive. Henderson v. Summerville Ford‑Mercury Inc. (S.C. 2013) 405 S.C. 440, 748 S.E.2d 221. Alternative Dispute Resolution 116

Federal Arbitration Act’s (FAA) substantive provisions apply to arbitration in federal or state courts, but a state’s procedural rules apply in state court unless they conflict with or undermine the purpose of the FAA. Henderson v. Summerville Ford‑Mercury Inc. (S.C. 2013) 405 S.C. 440, 748 S.E.2d 221. Alternative Dispute Resolution 116

Both Federal Arbitration Act (FAA) and South Carolina Uniform Arbitration Act (UAA) mandate confirmation of arbitration award unless grounds were established for vacating, modifying, or correcting the award. Henderson v. Summerville Ford‑Mercury Inc. (S.C. 2013) 405 S.C. 440, 748 S.E.2d 221. Alternative Dispute Resolution 354

Challenge to arbitration clause as a violation of public policy by precluding punitive damages was premature prior to arbitration in suit alleging fraud and violation of the Unfair Trade Practices Act (UTPA); the arbitrator needed to decide whether the UTPA was violated and the statutory treble damages were punitive or compensatory damages, it was unclear how the arbitrator would rule on merits or claim for punitive damages, and the issues were thus not ripe. Carolina Care Plan, Inc. v. United HealthCare Services, Inc. (S.C. 2004) 361 S.C. 544, 606 S.E.2d 752, rehearing denied. Alternative Dispute Resolution 213(1)

2. Preemption

Provision in South Carolina’s Uniform Arbitration Act, which expressly invalidated provisions for arbitration in insurance policies, “reverse pre‑empted” Federal Arbitration Act (FAA) through application of the McCarran‑Ferguson Act, so that FAA did not apply to arbitration clauses in South Carolina insurance policies. American Health and Life Ins. Co. v. Heyward, 2003, 272 F.Supp.2d 578. Insurance 1107; States 18.41

McCarran‑Ferguson Act precludes application of a federal statute in face of state law enacted for the purpose of regulating the business of insurance, if the federal measure does not specifically relate to the business of insurance, and would invalidate, impair, or supersede the state’s law. American Health and Life Ins. Co. v. Heyward, 2003, 272 F.Supp.2d 578. Insurance 1100; States 18.41

South Carolina’s Uniform Arbitration Act was enacted “for the purpose of regulating the business of insurance,” within the meaning of the McCarran‑Ferguson Act, precluding application of federal statutes in the face of such a state law, because it exempts insurance contracts from arbitration. American Health and Life Ins. Co. v. Heyward, 2003, 272 F.Supp.2d 578. Insurance 1107; States 18.41

Insurance agency agreement containing arbitration provision involved interstate commerce, and thus agreement was subject to the Federal Arbitration Act (FAA), in actions brought by insureds and competing agents against agency for unfair trade practices alleging that insurers were liable under respondeat superior for failure to investigate, supervise, or audit agents; agreement, along with its addenda, indicated that insurers were located outside the state, and some or all of the insurance premiums to which insureds claimed they were entitled, as well as any resulting commissions of which competing agents claimed they were deprived, would have been sent from outside the state. Wilson v. Willis (S.C.App. 2016) 416 S.C. 395, 786 S.E.2d 571, rehearing denied. Alternative Dispute Resolution 114; Commerce 80.5

To ascertain whether an arbitration agreement implicates interstate commerce and the Federal Arbitration Act (FAA), a court must examine the agreement, the complaint, and the surrounding facts, focusing particularly on what the terms of the agreement specifically require for performance. Dean v. Heritage Healthcare of Ridgeway, LLC (S.C. 2014) 408 S.C. 371, 759 S.E.2d 727. Alternative Dispute Resolution 114; Commerce 80.5

Whether an arbitration agreement implicates interstate commerce and the Federal Arbitration Act (FAA) is generally a very fact‑specific inquiry. Dean v. Heritage Healthcare of Ridgeway, LLC (S.C. 2014) 408 S.C. 371, 759 S.E.2d 727. Alternative Dispute Resolution 114; Commerce 80.5

Nursing home residency agreement, which was accompanied by arbitration agreement providing for mandatory arbitration of “any and all controversies, claims, disputes, disagreements[,] or demands of any kind arising out of or relating to” residency agreement, implicated interstate commerce, and thus residency agreement was governed by Federal Arbitration Act (FAA), where residency agreement specifically required nursing home to provide meals and medical supplies, instrumentalities of interstate commerce, to resident; overruling Timms v. Greene, 310 S.C. Dean v. Heritage Healthcare of Ridgeway, LLC (S.C. 2014) 408 S.C. 371, 759 S.E.2d 727. Alternative Dispute Resolution 114; Commerce 80.5

Arbitration agreements in automobile purchase agreements complied with Federal Arbitration Act (FAA), and thus, any potential invalidation under state arbitration‑specific law was preempted; each contract involved interstate commerce and evidenced an intent to settle disputes by arbitration. York v. Dodgeland of Columbia, Inc. (S.C.App. 2013) 406 S.C. 67, 749 S.E.2d 139. Alternative Dispute Resolution 117; States 18.15

Recruiting agreement between physician and medical center, which required Michigan physician to relocate his medical practice to South Carolina, involved interstate commerce, and thus was subject to the Federal Arbitration Act (FAA); physician agreed to move from one state to another within a fixed period of time, the agreement provided for medical center to pay for physician’s moving expenses, and the agreement provided for financial incentives to physician if he agreed to relocate. Thornton v. Trident Medical Center, L.L.C. (S.C.App. 2003) 357 S.C. 91, 592 S.E.2d 50, rehearing denied, certiorari denied, on remand 2005 WL 5480812. Alternative Dispute Resolution 114; Commerce 80.5

Federal Arbitration Act (FAA) applies to a contract, thereby trumping the South Carolina notice provision of the South Carolina Arbitration Act. Blanton v. Stathos (S.C.App. 2002) 351 S.C. 534, 570 S.E.2d 565. Alternative Dispute Resolution 117; States 18.15

Federal Arbitration Act (FAA) applied to installment contract and security agreement that debtors signed to finance home improvements, and thus, FAA preempted provision of South Carolina Uniform Arbitration Act requiring that arbitration notice be “typed in underlined capital letters, or rubber‑stamped prominently, on the first page of the contract”; arbitration agreement provided that it would be governed by FAA, and transaction in question involved interstate commerce. Munoz v. Green Tree Financial Corp. (S.C. 2001) 343 S.C. 531, 542 S.E.2d 360, rehearing denied. Alternative Dispute Resolution 117; Commerce 80.5; States 18.15

Unless the parties have contracted to the contrary, the Federal Arbitration Act (FAA) applies in federal or state court to any arbitration agreement regarding a transaction that in fact involves interstate commerce, regardless of whether or not the parties contemplated an interstate transaction; overruling Mathews v. Fluor Corp., 312 S.C. 404, 440 S.E.2d 880. Munoz v. Green Tree Financial Corp. (S.C. 2001) 343 S.C. 531, 542 S.E.2d 360, rehearing denied. Commerce 80.5

Federal Arbitration Act (FAA) preempted South Carolina Uniform Arbitration Act, for purposes of determining enforceability of arbitration clause in installment contract and security agreement that parties signed as part of interstate transaction; state Arbitration Act placed arbitration clause on unequal footing with contracts generally, as that Act applied specifically and exclusively to arbitration agreements. Munoz v. Green Tree Financial Corp. (S.C. 2001) 343 S.C. 531, 542 S.E.2d 360, rehearing denied. Alternative Dispute Resolution 117; States 18.15

Medical director’s activities provided sufficient evidence of interstate commerce to invoke Federal Arbitration Act (FAA), which displaced South Carolina’s Uniform Arbitration Act; director’s responsibilities included attending out‑of‑state conferences, participating in telephone conferences with employer’s corporate medical affairs staff in Minnesota, and reviewing claims from out‑of‑state providers. Towles v. United HealthCare Corp. (S.C.App. 1999) 338 S.C. 29, 524 S.E.2d 839. Commerce 80.5

Federal Arbitration Act (FAA) displaces state statutory arbitration notice provision, that requires notice that contract is subject to arbitration must be typed in underlined capital letters or rubber‑stamped prominently on contract’s first page, if agreement at issue is covered by FAA; state statute singles out arbitration and directly conflicts with FAA. Soil Remediation Co. v. Nu‑Way Environmental, Inc. (S.C. 1996) 323 S.C. 454, 476 S.E.2d 149. Alternative Dispute Resolution 117; States 18.15

Contractual agreement to remove and dispose of water and sludge materials located on property in one state, that was subcontracted for disposal and transportation to facility in another state, involved interstate commerce; thus, as there was nexus between contract and interstate commerce, Federal Arbitration Act (FAA) was applicable and preempted state statutory arbitration notice provision that conflicted with FAA. Soil Remediation Co. v. Nu‑Way Environmental, Inc. (S.C. 1996) 323 S.C. 454, 476 S.E.2d 149. Commerce 80.5; States 18.15

An arbitration clause contained in a construction contract was not invalid for failing to comply with Section 15‑48‑10 et seq. because the contract involved interstate commerce; consequently, federal substantive law supplanted state law regarding arbitration. Osteen v. T.E. Cuttino Const. Co. (S.C. 1993) 315 S.C. 422, 434 S.E.2d 281.

In a nursing home resident’s personal injury action against the home, the arbitration agreement contained in the contract between the home and the resident was not superseded by the Federal Arbitration Act, even though the home was a division of a Delaware partnership, it marketed its services to persons residing outside the state, it hired employees from out of state, it purchased the majority of its supplies from out of state, and it contemplated payment in part by Medicare and Medicaid, since the contract lacked a sufficient relationship with interstate commerce in the personal injury context. Timms v. Greene (S.C. 1993) 310 S.C. 469, 427 S.E.2d 642, rehearing denied.

An arbitration provision in a contract was enforceable under the Federal Arbitration Act, even if it was not enforceable under the South Carolina Uniform Arbitration Act since the Federal Arbitration Act supersedes the South Carolina Uniform Arbitration Act. Godwin v. Stanley Smith & Sons (S.C.App. 1989) 300 S.C. 90, 386 S.E.2d 464. Alternative Dispute Resolution 116

3. Existence of valid agreement

Agency agreement under which agency was permitted to sell insurance on behalf of insurers that contained arbitration provision, and which agency did not sign, could have been performed within one year, and thus agreement did not violate the statute of frauds, where agreement was for an indefinite term and either party could have terminated agreement at will, with or without cause, by giving as little as 90 days notice. Wilson v. Willis (S.C.App. 2016) 416 S.C. 395, 786 S.E.2d 571, rehearing denied. Frauds, Statute Of 49

Nursing home resident’s son had neither actual nor apparent authority to execute arbitration agreement on resident’s behalf, and therefore, son did not have the authority to bind resident to the arbitration agreement; incapacity of nursing home resident, who had dementia, prevented her from consciously or impliedly representing another to be her agent. Thompson v. Pruitt Corp. (S.C.App. 2016) 416 S.C. 43, 784 S.E.2d 679, rehearing denied, certiorari denied. Alternative Dispute Resolution 141; Parent and Child 299

Resident’s right to disclaim the arbitration agreement without having to terminate her residency at the nursing home facility indicated the parties’ intent to keep the arbitration agreement separate from the admission agreement; this was consistent with arbitration agreement’s statement that its execution was not a condition precedent for being admitted to the nursing home. Thompson v. Pruitt Corp. (S.C.App. 2016) 416 S.C. 43, 784 S.E.2d 679, rehearing denied, certiorari denied. Alternative Dispute Resolution 141

Although admission agreement incorporated by reference all exhibits to the agreement, the admission agreement was ambiguous as to whether admission agreement incorporated the arbitration agreement, which was one of the exhibits, and therefore, the admission agreement’s provision incorporating all “exhibits” would be construed against nursing home, which sought to arbitrate resident’s claim. Thompson v. Pruitt Corp. (S.C.App. 2016) 416 S.C. 43, 784 S.E.2d 679, rehearing denied, certiorari denied. Alternative Dispute Resolution 141

Alleged beneficiary, a nonsignatory to client relationship agreements between investment company and decedent, could not be compelled to arbitrate claim for intentional interference with inheritance under arbitration clauses in agreements, despite company’s argument that any duty violated by company was derivative of its duties to decedent under the agreements; no contract, agency, or third‑party beneficiary theory supported finding that alleged beneficiary was obligated to arbitrate pursuant to the agreements, alleged beneficiary did not claim that company breached duty created by the agreements but rather that it breached duty owed to all persons not to intentionally interfere with another’s expected inheritance, and contractual duties between decedent and company were irrelevant to whether company intentionally interfered with alleged beneficiary’s expected inheritance. Malloy v. Thompson (S.C. 2014) 409 S.C. 557, 762 S.E.2d 690. Alternative Dispute Resolution 414

Arbitration clause in home purchase agreement between homeowners and builder and developer was not merged into subsequently‑executed deed, since plain language of purchase agreement established that parties did not intend for arbitration clause to be superseded by deed; purchase agreement provided that its provisions would not be deemed to be merged or waived by instruments executed at closing, and arbitration clause specifically provided that, after closing, all controversies and claims arising out of purchase agreement would be settled by binding arbitration. Carlson v. South Carolina State Plastering, LLC (S.C.App. 2013) 404 S.C. 250, 743 S.E.2d 868. Alternative Dispute Resolution 151; Deeds 94

Issue of arbitration clause’s validity is distinct from substantive validity of contract as a whole. The Housing Authority of City of Columbia v. Cornerstone Housing, LLC (S.C.App. 2003) 356 S.C. 328, 588 S.E.2d 617, rehearing denied, certiorari denied. Alternative Dispute Resolution 140

Arbitration clauses are separable from contracts in which they are imbedded. The Housing Authority of City of Columbia v. Cornerstone Housing, LLC (S.C.App. 2003) 356 S.C. 328, 588 S.E.2d 617, rehearing denied, certiorari denied. Alternative Dispute Resolution 140

Courts should apply ordinary state‑law principles that govern formation of contracts in determining whether agreement to arbitrate exists. The Housing Authority of City of Columbia v. Cornerstone Housing, LLC (S.C.App. 2003) 356 S.C. 328, 588 S.E.2d 617, rehearing denied, certiorari denied. Alternative Dispute Resolution 137; States 18.15

Issue of whether arbitration agreement existed between city housing authority and developer concerning revitalization of public‑housing project was properly before trial court in authority’s action that sought to enjoin arbitration of dispute, since contracts did not reveal language indicating clear and convincing evidence that parties intended arbitrator to decide threshold issue of whether valid arbitration agreement existed. The Housing Authority of City of Columbia v. Cornerstone Housing, LLC (S.C.App. 2003) 356 S.C. 328, 588 S.E.2d 617, rehearing denied, certiorari denied. Alternative Dispute Resolution 199

Valid arbitration agreement existed between city housing authority and developer regarding contracts to revitalize public‑housing project, since parties agreed that any dispute arising after signing of first contract was to be arbitrated. The Housing Authority of City of Columbia v. Cornerstone Housing, LLC (S.C.App. 2003) 356 S.C. 328, 588 S.E.2d 617, rehearing denied, certiorari denied. Alternative Dispute Resolution 134(1)

Employee handbook acknowledgment form, which indicated that arbitration was the final and exclusive forum for resolution of employment related disputes, constituted a specific communication of an offer which conditioned employee’s continued employment on his acceptance of the employment arbitration policy as part of his employment contract, and employee accepted the offer by continuing in his employment, and thus, the acknowledgment constituted a binding arbitration agreement. Towles v. United HealthCare Corp. (S.C.App. 1999) 338 S.C. 29, 524 S.E.2d 839. Alternative Dispute Resolution 132

4. Arbitrability

Local court litigation requirement in arbitration provisions of investment treaty between United Kingdom and Argentina, which required 18 months to elapse from time that dispute was submitted to local tribunal, without a final decision by that tribunal, before dispute could be submitted for international arbitration, was procedural condition precedent to arbitration, which determined when the contractual duty to arbitrate arose and not whether there was contractual duty to arbitrate at all, such that this requirement, if it appeared in ordinary contract rather than in treaty, would be presumptively for arbitrators, and not courts, to interpret and apply. BG Group, PLC v. Republic of Argentina, 2014, 134 S.Ct. 1198, 188 L.Ed.2d 220, on remand 555 Fed.Appx. 2, 2014 WL 2178324. Alternative Dispute Resolution 514; Treaties 8

Tort claims against agents and insurers brought by insureds and competing agents for unfair trade practices alleging that insurers were liable under respondeat superior for failure to investigate, supervise, or audit agents, were encompassed by arbitration clause in agency agreement that allowed arbitration if “any dispute or disagreement arises in connection with the interpretation” of agreement; agents had no authority to sell insurance on behalf of insurers in the absence of agreement, and agreement governed insurer’s duties to train, investigate, supervise, and audit agents. Wilson v. Willis (S.C.App. 2016) 416 S.C. 395, 786 S.E.2d 571, rehearing denied. Alternative Dispute Resolution 143

Arbitrators exceed their powers within the meaning of the Federal Arbitration Act (FAA) where their award resolves an issue that is not arbitrable because it is outside the scope of the arbitration agreement. Gissel v. Hart (S.C.App. 2007) 373 S.C. 281, 644 S.E.2d 772, rehearing denied, reversed 382 S.C. 235, 676 S.E.2d 320. Alternative Dispute Resolution 316

Provision in installation agreement that any disputes related to above‑ground swimming pool would be subject to arbitration did not encompass unforeseen acts of installer’s employee that were historically associated with tort of outrage. Chassereau v. Global Sun Pools, Inc. (S.C. 2007) 373 S.C. 168, 644 S.E.2d 718. Alternative Dispute Resolution 143

Arbitration is a matter of contract law and is available only when the parties involved contractually agreed to arbitrate, and a party may seek revocation of the contract under such grounds as exist at law or in equity, including fraud, duress, and unconscionability. Simpson v. MSA of Myrtle Beach, Inc. (S.C. 2007) 373 S.C. 14, 644 S.E.2d 663, rehearing denied, certiorari denied, certiorari denied 128 S.Ct. 493, 552 U.S. 990, 169 L.Ed.2d 340. Alternative Dispute Resolution 112; Alternative Dispute Resolution 134(3); Alternative Dispute Resolution 134(6)

Health maintenance organization’s (HMO) allegations of misconduct by chief executive officer (CEO) in connection with negotiation of administrative services agreement failed to state a claim that the arbitration clause was unconscionable, and, thus, the dispute was subject to arbitration; both parties were sophisticated entities, the HMO was apparently represented by independent counsel, it failed to allege lack of a meaningful choice as to the arbitration clause specifically although it alleged lack of a meaningful choice as to entire agreement, and any misconduct affected whether the entire agreement was unconscionable, not simply the arbitration clause. Carolina Care Plan, Inc. v. United HealthCare Services, Inc. (S.C. 2004) 361 S.C. 544, 606 S.E.2d 752, rehearing denied. Alternative Dispute Resolution 199

Contractor’s claims against subcontractor for breach of contract by a fraudulent act and negligence were within scope of arbitration agreement, which provided that any matter concerning subcontractor agreement or any work performed would be subject to arbitration; claims were matters concerning agreement or work performed. Palmetto Homes, Inc. v. Bradley (S.C.App. 2004) 357 S.C. 485, 593 S.E.2d 480, rehearing denied, certiorari denied. Alternative Dispute Resolution 371

Even when dispute does not arise under governing contract, dispute is subject to arbitration when contract contains broadly worded arbitration clause and significant relationship exists between asserted claims and contract in which arbitration clause is contained. The Housing Authority of City of Columbia v. Cornerstone Housing, LLC (S.C.App. 2003) 356 S.C. 328, 588 S.E.2d 617, rehearing denied, certiorari denied. Alternative Dispute Resolution 143

Even if contracts between city housing authority and developer concerning revitalization of public‑housing project failed to specifically include time period when dispute arose, dispute was still subject to arbitration, since both contracts contained broadly worded arbitration agreements, subject matter of each contract centered on revitalization of project, and disagreement concerning continuing negotiations after federal Department of Housing and Urban Development (HUD) initially declined to approve terms of second contract was significantly related to subject matter of first and second contracts. The Housing Authority of City of Columbia v. Cornerstone Housing, LLC (S.C.App. 2003) 356 S.C. 328, 588 S.E.2d 617, rehearing denied, certiorari denied. Alternative Dispute Resolution 144

Arbitration clauses of lender’s retail installment contracts with purchasers of home improvements and mobile homes were silent regarding class‑wide arbitration, for purposes of determining whether class‑wide arbitration was permissible, where the clauses did not mention class‑wide arbitration, though the clauses referred, in the singular, to providing for arbitration of disputes arising under “this contract” or dispute arising out of the relationships resulting from “this contract.” Bazzle v. Green Tree Financial Corp. (S.C. 2002) 351 S.C. 244, 569 S.E.2d 349, certiorari granted 123 S.Ct. 817, 537 U.S. 1098, 154 L.Ed.2d 766, vacated 123 S.Ct. 2402, 539 U.S. 444, 156 L.Ed.2d 414. Alternative Dispute Resolution 141

Any doubts concerning scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or allegation of waiver, delay, or a like defense to arbitrability. Towles v. United HealthCare Corp. (S.C.App. 1999) 338 S.C. 29, 524 S.E.2d 839. Alternative Dispute Resolution 139

Whether investor’s claims against stockbrokerage firm stemming from decrease in value of her accounts were ineligible for arbitration before the National Association of Securities Dealers (NASD) based on limitations provision of NASD Code of Arbitration Procedure was to be determined by the arbitrator, not the circuit court, where arbitration agreement provided that arbitrator was to decide applicability of provisions of NASD code. Merrill Lynch, Pierce, Fenner & Smith Inc. v. Havird (S.C.App. 1999) 335 S.C. 642, 518 S.E.2d 48, rehearing denied, certiorari granted, vacated 343 S.C. 485, 541 S.E.2d 241. Alternative Dispute Resolution 412

The determination of arbitrability is for the arbitrator only if the arbitration agreement, when viewed in light of the ordinary state rules of contract construction, clearly evinces an intent for the arbitrator to make the decision; if no such intent can reasonably be gleaned from the arbitration agreement, then the court decides the issue of arbitrability under established legal principles. Merrill Lynch, Pierce, Fenner & Smith Inc. v. Havird (S.C.App. 1999) 335 S.C. 642, 518 S.E.2d 48, rehearing denied, certiorari granted, vacated 343 S.C. 485, 541 S.E.2d 241. Alternative Dispute Resolution 200

Under either New York law or South Carolina law, employee’s agreement to arbitrate FLSA claims against employer was enforceable, even though arbitration clause was contained in associate agreement that employee had signed three months after commencement of employment, and employer had not signed at all; laws of both states permitted party who had not signed agreement containing arbitration clause to enforce the arbitration clause. Poteat v. Rich Products Corp. (C.A.4 (S.C.) 2004) 91 Fed.Appx. 832, 2004 WL 119363, Unreported. Alternative Dispute Resolution 133(2)

4.5. Applicability

Although master deed, which required condominium association to maintain common elements, authorized association to bring claims against contractor, association was not equitably estopped from avoiding arbitration clause in master deed; association’s claims had nothing to do with breach of any provision of master deed. R.J. Griffin & Co. v. Beach Club II Homeowners Ass’n (C.A.4 (S.C.) 2004) 384 F.3d 157. Alternative Dispute Resolution 182(1)

Under South Carolina law, contractor was not intended third‑party beneficiary of master deed filed by developer of condominium, and thus could not invoke its arbitration provision; contractor was not referred to, either directly or indirectly, in any part of the deed. R.J. Griffin & Co. v. Beach Club II Homeowners Ass’n (C.A.4 (S.C.) 2004) 384 F.3d 157. Alternative Dispute Resolution 179

Condominium homeowners association’s claim that contractor breached the implied warranty of good workmanship and constructed separation walls, installed studs, and used combustible materials in manner that violated building code did not seek direct benefit from construction contract, as would estop nonsignatory association from avoiding arbitration provision of that contract; under South Carolina common law, legal duties contractor allegedly violated arose from its role as builder, and these duties were not dependent on terms of its contract with developer. R.J. Griffin & Co. v. Beach Club II Homeowners Ass’n (C.A.4 (S.C.) 2004) 384 F.3d 157. Alternative Dispute Resolution 182(1)

Homeowners’ tort claims alleging that builder and developer negligently constructed their home’s stucco siding bore significant relationship to home purchase agreement between homeowners and builder and developer, and therefore claims fell within scope of agreement’s arbitration clause; language of arbitration clause providing that “every controversy or claim arising out of or relating to this agreement” would be subject to arbitration was not limited to contract‑related claims, and purchase agreement encompassed parties’ agreements regarding construction of homeowners’ home, including builder and developer’s promise to construct a home free from defective materials. Carlson v. South Carolina State Plastering, LLC (S.C.App. 2013) 404 S.C. 250, 743 S.E.2d 868. Alternative Dispute Resolution 144

5. Notice

Notice of arbitration provision of master deed governing relationship between homeowners’ association members and condominium developers did not appear on first page of master deed as required by Uniform Arbitration Act, thus rendering provision inoperable and relieving members of any requirement to resolve dispute through arbitration; although deed language identified second page as first page, page preceding that page, or actual first page, prominently displayed title of document, contained stamp of Register of Deeds with book and page numbers, and provided name of parties and law firm and contact information for lawyer who “prepared” master deed. Richland Horizontal Property Regime Homeowners Ass’n, Inc. v. Sky Green Holdings, Inc. (S.C.App. 2011) 392 S.C. 194, 708 S.E.2d 225, rehearing denied. Alternative Dispute Resolution 133(1)

Arbitration provision in contract to provide design, drawing, and architectural services in the construction of a restaurant failed to meet standard of the South Carolina Arbitration Act and its notice provision; although contract contained an arbitration clause for settling disputes, it contained no notice that it is subject to arbitration. Blanton v. Stathos (S.C.App. 2002) 351 S.C. 534, 570 S.E.2d 565. Alternative Dispute Resolution 134(1)

The notice provision required by the South Carolina Arbitration Act must by typed in underlined capital letters, or rubber‑stamped prominently, on the first page of the contract; no other variation is acceptable. Zabinski v. Bright Acres Associates (S.C. 2001) 346 S.C. 580, 553 S.E.2d 110, rehearing denied. Alternative Dispute Resolution 133(1)

After receiving and signing employee handbook acknowledgment form, which indicated that arbitration was the final and exclusive forum for resolution of employment related disputes, employee could not legitimately claim that employer failed to provide actual notice of arbitration provisions; law did not impose a duty to explain document’s contents to individual when individual could learn contents from simply reading the document. Towles v. United HealthCare Corp. (S.C.App. 1999) 338 S.C. 29, 524 S.E.2d 839. Alternative Dispute Resolution 134(1)

Terms of statutory provision concerning arbitration clauses in contracts, that notice that contract is subject to arbitration shall be typed in underlined capital letters, or rubber‑stamped, prominently on the contract’s first page, are clear and court must apply those terms according to their literal meaning. Soil Remediation Co. v. Nu‑Way Environmental, Inc. (S.C. 1996) 323 S.C. 454, 476 S.E.2d 149. Alternative Dispute Resolution 133(1)

Finding that technical requirements of contractual arbitration notice statutory provision were met was error where arbitration notice in contract was not underlined, even though it was in capital letters at the top of the first page; statutory provision was that notice shall be typed in underlined capital letters, or rubber‑stamped, prominently on the contract’s first page. Soil Remediation Co. v. Nu‑Way Environmental, Inc. (S.C. 1996) 323 S.C. 454, 476 S.E.2d 149. Alternative Dispute Resolution 133(1)

5.5. Confirmation

Under South Carolina Uniform Arbitration Act (UAA), unsuccessful party in an arbitration proceeding may not prevent the confirmation of an award by paying the award prior to the confirmation proceeding. Henderson v. Summerville Ford‑Mercury Inc. (S.C. 2013) 405 S.C. 440, 748 S.E.2d 221. Alternative Dispute Resolution 354

Confirmation of arbitration award in favor of purchaser on her claims against car dealership under South Carolina Unfair Trade Practices Act (UTPA) and the South Carolina Regulation of Manufacturers, Distributors, and Dealers Act was appropriate because by law a court had to confirm an award upon application of a party unless the defendant moved to vacate, modify, or correct the award and dealership filed no such motion. Henderson v. Summerville Ford‑Mercury Inc. (S.C. 2013) 405 S.C. 440, 748 S.E.2d 221. Alternative Dispute Resolution 354

Confirmation of arbitration award is a distinguishable issue from a defendant’s payment or satisfaction of an award, and payment of the award does not make the matter nonjusticiable, and instead, payment is more appropriately considered as a defense to any attempt to execute on a judgment. Henderson v. Summerville Ford‑Mercury Inc. (S.C. 2013) 405 S.C. 440, 748 S.E.2d 221. Alternative Dispute Resolution 354; Alternative Dispute Resolution 396

Having mandated arbitration in its sales agreement with purchaser, car dealership was bound to the full arbitral process, including the ministerial recording of the result. Henderson v. Summerville Ford‑Mercury Inc. (S.C. 2013) 405 S.C. 440, 748 S.E.2d 221. Alternative Dispute Resolution 151

Confirmation of arbitration award is required by the South Carolina Uniform Arbitration Act’s (UAA) statutory procedure governing confirmation. Henderson v. Summerville Ford‑Mercury Inc. (S.C. 2013) 405 S.C. 440, 748 S.E.2d 221. Alternative Dispute Resolution 354

Both the South Carolina Uniform Arbitration Act (UAA) and the Federal Arbitration Act (FAA) use the words “shall” or “must” in directing that an award be confirmed upon application in the absence of a motion to vacate, modify, or correct the award, and such language is mandatory, and no statutory provision in either Act legislatively prohibits confirmation based on the fact that payment has been made. Henderson v. Summerville Ford‑Mercury Inc. (S.C. 2013) 405 S.C. 440, 748 S.E.2d 221. Alternative Dispute Resolution 354

6. Enforceability

Tort claims against agents and insurers brought by insureds and competing agents for unfair trade practices alleging that insurers were liable under respondeat superior for failure to investigate, supervise, or audit agents, were not outrageous torts that were unforeseeable to a reasonable consumer, as required to find that claims were not encompassed by arbitration provision in agency agreement under which agency was permitted to sell insurance on behalf of insurers. Wilson v. Willis (S.C.App. 2016) 416 S.C. 395, 786 S.E.2d 571, rehearing denied. Alternative Dispute Resolution 143

Insureds and competing agents were equitably estopped from arguing that their status as nonsignatories of agency agreement between agents and insurers containing arbitration provision precluded enforcement of provision, in actions brought by insureds and competing agents for unfair trade practices alleging that insurers were liable under respondeat superior for failure to investigate, supervise, or audit agents; the duties that insureds and agents contended that insurers allegedly breached arose from agreement, and insureds and agents would not have been able to reach insurers with their claims in the absence of agreement, which established the agency relationship between agents and insurers. Wilson v. Willis (S.C.App. 2016) 416 S.C. 395, 786 S.E.2d 571, rehearing denied. Alternative Dispute Resolution 182(1)

Agency agreement under which agency was permitted to sell insurance on behalf of insurers and which contained arbitration provision was enforceable despite lack of signature by agency, in actions brought by insureds and competing agents against agency for unfair trade practices, where agents sold insurance policies on behalf of insurers, and the agreement, along with predecessor agreements, provided the sole source of authorization for them to do so. Wilson v. Willis (S.C.App. 2016) 416 S.C. 395, 786 S.E.2d 571, rehearing denied. Alternative Dispute Resolution 133(2); Insurance 1626

Personal representative of resident’s estate did not carry her burden to show that arbitration agreement’s designation of American Arbitration Association (AAA) was a material term of agreement, and thus agreement was not rendered unenforceable by AAA’s unavailability to arbitrate representative’s claims against nursing home; although agreement provided that arbitration “shall follow the rules” of AAA and that arbitrator was to be selected “in accordance with the rules” of AAA, nothing in agreement indicated that AAA was to serve as the exclusive arbitral forum, representative admitted that neither she nor nursing home’s employee who signed agreement even knew about AAA or its rules when signing agreement, and agreement contained severance clause that permitted severance of any portion of agreement later found to be unenforceable. Dean v. Heritage Healthcare of Ridgeway, LLC (S.C. 2014) 408 S.C. 371, 759 S.E.2d 727. Alternative Dispute Resolution 149

When deciding a motion to compel arbitration under the South Carolina Uniform Arbitration Act (SCUAA) or the Federal Arbitration Act (FAA), the court should look to the state law that ordinarily governs the formation of contracts in determining whether a valid arbitration agreement arose between the parties. Smith v. D.R. Horton, Inc. (S.C.App. 2013) 403 S.C. 10, 742 S.E.2d 37, affirmed 417 S.C. 42, 790 S.E.2d 1, rehearing denied. Alternative Dispute Resolution 116

Allegation by city housing authority that contract between authority and developer to revitalize public‑housing project was never in legal force due to lack of approval from federal Department of Housing and Urban Development (HUD) did not preclude dispute between authority and developer from being subject to arbitration under arbitration clause in contract, since authority’s claim did not specifically attack arbitration agreement. The Housing Authority of City of Columbia v. Cornerstone Housing, LLC (S.C.App. 2003) 356 S.C. 328, 588 S.E.2d 617, rehearing denied, certiorari denied. Alternative Dispute Resolution 144

Allegation that contract to agree to negotiate subsequent contract to undertake revitalization of public‑housing project was illegal due to developer not being a licensed contractor did not preclude arbitration of dispute pursuant to contract’s arbitration clause, and thus legality of contract was issue for arbitrator to decide; allegation failed to attack validity of arbitration agreement itself. The Housing Authority of City of Columbia v. Cornerstone Housing, LLC (S.C.App. 2003) 356 S.C. 328, 588 S.E.2d 617, rehearing denied, certiorari denied. Alternative Dispute Resolution 134(1); Alternative Dispute Resolution 140

It is only when party has valid grounds upon which to challenge arbitration clause itself that arbitration may be avoided. The Housing Authority of City of Columbia v. Cornerstone Housing, LLC (S.C.App. 2003) 356 S.C. 328, 588 S.E.2d 617, rehearing denied, certiorari denied. Alternative Dispute Resolution 134(1)

Costs related to arbitration did not render unconscionable arbitration clause in contract between contractor and stucco subcontractor, although arbitration filing fee was $8,500 and case service fee was $2,500, and thus costs did not support subcontractor’s attempt to invalidate clause; contractor was responsible for filing fee, and case service fee would be split between five parties involved in underlying action and contractor’s third‑party action. Toler’s Cove Homeowners Ass’n, Inc. v. Trident Const. Co., Inc. (S.C. 2003) 355 S.C. 605, 586 S.E.2d 581. Alternative Dispute Resolution 134(6)

Agreement to submit equitable apportionment claims to binding arbitration was valid and enforceable even if wife believed that arbitration award was not truly binding, and thus, because wife did not argue that there was proper ground for vacating arbitration award, it was binding on Family Court; record showed that husband understood he was entering into binding arbitration and that arbitration award would be presented to family court for approval only for enforcement purposes, and thus, wife’s alleged belief as to agreement’s nature amounted to unilateral mistake on her part and was insufficient to warrant recission of arbitration agreement. Swentor v. Swentor (S.C.App. 1999) 336 S.C. 472, 520 S.E.2d 330, rehearing denied. Alternative Dispute Resolution 134(3)

A real estate agent could not contest his agreement to arbitrate, as required by the county board of realtors rules, a commission dispute with another agent, even though he later discovered that the other agent’s membership in the county board had lapsed, where he had ample opportunity before the arbitration to discover the other agent’s standing, and he did not seek a stay when questions concerning the other agent’s standing arose during the arbitration. Garrell v. Blanton (S.C.App. 1993) 311 S.C. 201, 428 S.E.2d 8, rehearing denied, certiorari granted, affirmed 316 S.C. 186, 447 S.E.2d 840.

6.1. Revocation of agreement

A party may seek revocation of the contract under such grounds as exist at law or in equity, including fraud, duress, and unconscionability. Smith v. D.R. Horton, Inc. (S.C.App. 2013) 403 S.C. 10, 742 S.E.2d 37, affirmed 417 S.C. 42, 790 S.E.2d 1, rehearing denied. Contracts 1.11(1); Contracts 94(1); Contracts 95(1)

Arbitration is a matter of contract law and is available only when the parties involved contractually agreed to arbitrate; accordingly, a party may seek revocation of the contract under such grounds as exist at law or in equity, including fraud, duress, and unconscionability. Lucey v. Meyer (S.C.App. 2012) 401 S.C. 122, 736 S.E.2d 274, rehearing granted. Alternative Dispute Resolution 112; Alternative Dispute Resolution 134(3); Alternative Dispute Resolution 134(6)

6.2. Unconscionability

Arbitration provision in new home purchase agreement between homeowners and contractor that built home was unconscionable and unenforceable, and thus homeowners were not required to arbitrate their construction defect claims against contractor; buyers were not represented by independent counsel and were a single client to contractor, which was a corporation that constructed homes in 27 states, the only remedy for a defect in the home was repair or replacement, which were options left entirely to contractor’s discretion, and monetary recuperation was disallowed even though repairs were inadequate. Smith v. D.R. Horton, Inc. (S.C. 2016) 417 S.C. 42, 790 S.E.2d 1, rehearing denied. Alternative Dispute Resolution 134(6)

Arbitration clause in home purchase agreement between homeowners and builder and developer was not unconscionable, so as to preclude enforcement, where clause was clearly identified in purchase agreement, clause did not waive any rights or remedies otherwise available by law, parties were mutually bound by clause, and there was no evidence indicating that purchase agreement was an adhesion contract or that homeowners lacked meaningful choice in entering agreement. Carlson v. South Carolina State Plastering, LLC (S.C.App. 2013) 404 S.C. 250, 743 S.E.2d 868. Alternative Dispute Resolution 134(6)

Warranties and dispute resolution section in purchase agreement between homeowner and contractor was unconscionable, where the section contained many attempted waivers of important legal remedies, including all implied warranties, and the section purported to disclaim contractor’s liability for any money damages. Smith v. D.R. Horton, Inc. (S.C.App. 2013) 403 S.C. 10, 742 S.E.2d 37, affirmed 417 S.C. 42, 790 S.E.2d 1, rehearing denied. Alternative Dispute Resolution 134(6)

7. Enforcement by Family Court

Although Family Court has subject matter jurisdiction to review whether parties freely and voluntarily agreed to submit equitable apportionment claims to binding arbitration, Arbitration Act precludes Family Court from exercising its general power to review and approve substantive fairness of such agreements; rather, family court presented with arbitration agreement and award pertaining to equitable apportionment may set aside agreement only upon proof of “grounds as exist at law or in equity for the revocation of any contract,” may correct or modify award only in accordance with Arbitration Act, and may vacate award only upon establishment of ground set forth in Act, or rarely applied non‑statutory ground of “manifest disregard or perverse misconstruction of the law.” Swentor v. Swentor (S.C.App. 1999) 336 S.C. 472, 520 S.E.2d 330, rehearing denied. Alternative Dispute Resolution 329; Alternative Dispute Resolution 362(2)

Parties to separation agreement may agree to submit all disputes, other than those involving their children, to arbitration and thus deprive family court of its traditional powers of enforcement over those disputes. Messer, Ex parte (S.C.App. 1998) 333 S.C. 391, 509 S.E.2d 486. Alternative Dispute Resolution 119; Alternative Dispute Resolution 152

Arbitration clause in separation agreement which did not comply with formal statutory requirements for contract was unenforceable, even though separation agreement ceased to be contract for jurisdictional purposes when it was approved by family court; family court’s approval and merger of agreement into order did not insulate arbitration provision from statutory compliance. Messer, Ex parte (S.C.App. 1998) 333 S.C. 391, 509 S.E.2d 486. Alternative Dispute Resolution 134(1)

8. Opposing arbitration

Estate of deceased partner was not equitably estopped from opposing arbitration of dispute over distribution of partnership assets, even though partner’s attorney prepared partnership agreement with defective arbitration clause, where allegations of wrongdoing were against attorney, not deceased partner, there was no evidence of false representation or concealment by deceased partner, knowledge of all parties was equal and nothing was done by one to mislead others at time partners entered into partnership agreement, and partners seeking arbitration did not allege that they detrimentally changed their position in reliance on deceased partner’s conduct. Zabinski v. Bright Acres Associates (S.C. 2001) 346 S.C. 580, 553 S.E.2d 110, rehearing denied. Alternative Dispute Resolution 182(1)

9. Waiver

As in all cases involving waiver of an arbitration agreement any appropriate analysis is heavily fact‑driven. Johnson v. Heritage Healthcare of Estill, LLC (S.C. 2016) 416 S.C. 508, 788 S.E.2d 216, rehearing denied. Alternative Dispute Resolution 182(1)

The party seeking to establish waiver of an arbitration agreement has the burden of showing prejudice through an undue burden caused by a delay in the demand for arbitration; mere inconvenience or delay is insufficient to establish prejudice on its own. Johnson v. Heritage Healthcare of Estill, LLC (S.C. 2016) 416 S.C. 508, 788 S.E.2d 216, rehearing denied. Alternative Dispute Resolution 182(1); Alternative Dispute Resolution 210

South Carolina courts favor arbitration; nonetheless, a party may waive its right to enforce an arbitration agreement. Johnson v. Heritage Healthcare of Estill, LLC (S.C. 2016) 416 S.C. 508, 788 S.E.2d 216, rehearing denied. Alternative Dispute Resolution 113; Alternative Dispute Resolution 182(1)

Evidence supported finding that personal representative of nursing home resident’s estate suffered prejudice from nursing home’s discovery activities and delay in seeking arbitration, as required to establish waiver of right to compel arbitration by nursing home, in personal representative’s wrongful death and survival action against nursing home; nursing home’s tactics caused personal representative to incur further expenses, both in responding to nursing home’s requested discovery, and in preparing for litigation in the event that the nursing home never moved to compel arbitration at all. Johnson v. Heritage Healthcare of Estill, LLC (S.C. 2016) 416 S.C. 508, 788 S.E.2d 216, rehearing denied. Alternative Dispute Resolution 182(2)

Insurers did not waive their right to compel arbitration in actions brought by insureds and competing agents for unfair trade practices alleging that insurers were liable under respondeat superior for failure to investigate, supervise, or audit agents, even though insurers took some actions that could have taken advantage of the judicial system or availed themselves of circuit court’s assistance; actions had only been pending for anywhere from six to 11 months prior to insurers seeking to compel arbitration, actions had not progressed much beyond the filing of pleadings and dismissal motions, the parties had not engaged in extensive discovery, and insureds and agents were unable to show anything beyond mere inconvenience caused by delay. Wilson v. Willis (S.C.App. 2016) 416 S.C. 395, 786 S.E.2d 571, rehearing denied. Alternative Dispute Resolution 182(2)

Nursing home did not waive its right to enforce arbitration agreement providing for mandatory arbitration of “any and all controversies, claims, disputes, disagreements[,] or demands of any kind arising out of or relating to” residency agreement, in action by personal representative of resident’s estate against nursing home for medical malpractice, survival, and wrongful death; although nursing home attempted to mediate representative’s claims for approximately four months after representative filed notice of intent to file a medical malpractice suit, and nursing home requested limited discovery in order to engage meaningfully in statutorily required mediation process, nursing home moved to compel arbitration at its first opportunity after representative filed her formal complaint, and even if nursing home should have filed motion to compel arbitration immediately after representative filed notice of intent, representative showed no prejudice or undue burden to her from four‑month delay. Dean v. Heritage Healthcare of Ridgeway, LLC (S.C. 2014) 408 S.C. 371, 759 S.E.2d 727. Alternative Dispute Resolution 182(2)

Shareholders of corporation that sold its assets relating to direct mail processing business did not waive their contractual right to arbitration of asset buyer’s claim that shareholders violated their noncompete agreement, though the day before buyer filed its action, shareholders had brought action alleging buyer’s nonpayment of promissory note, where buyer was not prejudiced; shareholders demanded arbitration within 20 days of filing of buyer’s complaint and before they filed their answer, the only prejudice alleged by buyer was that promissory note and noncompete claims would be considered separately, and buyer could elect arbitration of promissory note claims. MailSource, LLC v. M.A. Bailey & Associates, Inc. (S.C.App. 2003) 356 S.C. 370, 588 S.E.2d 639. Alternative Dispute Resolution 182(2)

Ordinarily, bringing a suit based on the contract, instead of relying on the arbitration provision, constitutes a waiver of the right to arbitrate. MailSource, LLC v. M.A. Bailey & Associates, Inc. (S.C.App. 2003) 356 S.C. 370, 588 S.E.2d 639. Alternative Dispute Resolution 182(2)

Waiver of arbitration may not be inferred from the fact that a party does not rely exclusively on the arbitration provisions of a contract, but attempts to meet all issues raised in litigation between it and another party to the agreement. MailSource, LLC v. M.A. Bailey & Associates, Inc. (S.C.App. 2003) 356 S.C. 370, 588 S.E.2d 639. Alternative Dispute Resolution 182(2)

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. MailSource, LLC v. M.A. Bailey & Associates, Inc. (S.C.App. 2003) 356 S.C. 370, 588 S.E.2d 639. Alternative Dispute Resolution 182(1)

Mere inconvenience, relating to the opposing party’s delay in demanding arbitration, is insufficient to establish prejudice, as element for waiver of arbitration. MailSource, LLC v. M.A. Bailey & Associates, Inc. (S.C.App. 2003) 356 S.C. 370, 588 S.E.2d 639. Alternative Dispute Resolution 182(1)

In order to establish waiver of arbitration, a party must show prejudice through an undue burden caused by delay in demanding arbitration. MailSource, LLC v. M.A. Bailey & Associates, Inc. (S.C.App. 2003) 356 S.C. 370, 588 S.E.2d 639. Alternative Dispute Resolution 182(1)

The right to enforce an arbitration clause may be waived. MailSource, LLC v. M.A. Bailey & Associates, Inc. (S.C.App. 2003) 356 S.C. 370, 588 S.E.2d 639. Alternative Dispute Resolution 182(1)

Contractor did not waive its right to arbitrate by engaging in litigation process in contractor’s third‑party action against stucco subcontractor regarding alleged construction defects in condominium complex, since only approximately six weeks had passed between filing of third‑party complaint and filing of motion to compel arbitration, discovery that occurred was very limited in nature, and parties had not availed themselves of court’s assistance other than contractor’s request to file third‑party complaint. Toler’s Cove Homeowners Ass’n, Inc. v. Trident Const. Co., Inc. (S.C. 2003) 355 S.C. 605, 586 S.E.2d 581. Alternative Dispute Resolution 182(2)

In order to establish waiver of right to enforce arbitration clause, party must show prejudice through undue burden caused by delay in demanding arbitration. Toler’s Cove Homeowners Ass’n, Inc. v. Trident Const. Co., Inc. (S.C. 2003) 355 S.C. 605, 586 S.E.2d 581. Alternative Dispute Resolution 182(1)

Mere inconvenience to opposing party is not sufficient to establish prejudice, for purposes of finding waiver of right to enforce arbitration clause due to delay in demanding arbitration. Toler’s Cove Homeowners Ass’n, Inc. v. Trident Const. Co., Inc. (S.C. 2003) 355 S.C. 605, 586 S.E.2d 581. Alternative Dispute Resolution 182(1)

There is no set rule as to what constitutes waiver of right to arbitrate; question depends on facts of each case. Toler’s Cove Homeowners Ass’n, Inc. v. Trident Const. Co., Inc. (S.C. 2003) 355 S.C. 605, 586 S.E.2d 581. Alternative Dispute Resolution 182(1)

Contractor waived its right to enforce arbitration clause in contract with property owners by submitting its dispute with property owners to the court and availing itself of court system for two and one‑half years before asserting its right to arbitrate, resulting in prejudice to property owners who were forced to answer contractor’s complaint, to respond to discovery in circuit court, and to incur attorney fees. Liberty Builders, Inc. v. Horton (S.C.App. 1999) 336 S.C. 658, 521 S.E.2d 749, rehearing denied, certiorari denied. Alternative Dispute Resolution 182(2)

The right to arbitrate can be waived even in the face of a no‑waiver provision. Liberty Builders, Inc. v. Horton (S.C.App. 1999) 336 S.C. 658, 521 S.E.2d 749, rehearing denied, certiorari denied. Alternative Dispute Resolution 182(1)

10. Insurance

Husband whose wife died was an “insured” under life insurance policy covering wife, and thus, husband could enforce provision of South Carolina’s Uniform Arbitration Act, expressly invalidating provisions for arbitration in insurance policies, to preclude arbitration of his dispute with life insurer, even though payment was made to husband for his wife’s death under the policy, and policy allowed only one payment; husband and wife were named as joint insureds under policy. American Health and Life Ins. Co. v. Heyward, 2003, 272 F.Supp.2d 578. Insurance 3273

The exception in the South Carolina Arbitration Act, which expressly invalidated provisions for arbitration in insurance policies, “reverse pre‑empted” Federal Arbitration Act (FAA) through application of the McCarran‑Ferguson Act, so that the FAA did not apply to arbitration clause in insurance policies. Wilson v. Willis (S.C.App. 2016) 416 S.C. 395, 786 S.E.2d 571, rehearing denied. Insurance 1107; States 18.41

Agency agreement under which agency was permitted to sell insurance on behalf of insurers and which contained arbitration provision was not an insurance policy, and thus arbitration of claims brought by insureds and competing agents for unfair trade practices alleging that insurers were liable under respondeat superior for failure to investigate, supervise, or audit agents, was not precluded by the exception in the South Carolina Arbitration Act that expressly invalidated provisions for arbitration in insurance policies. Wilson v. Willis (S.C.App. 2016) 416 S.C. 395, 786 S.E.2d 571, rehearing denied. Alternative Dispute Resolution 121

Provision within automobile lease agreement, pursuant to which prorated portion of lessors’ monthly payment was payment for credit life insurance premium, was not contract for insurance exempt from Federal Arbitration Act (FAA), and thus, lessor’s claims against dealership arising out of dealership’s failure to procure policy arose out of lease agreement that was subject to mandatory, nonbinding arbitration. Walden v. Harrelson Nissan, Inc. (S.C.App. 2012) 399 S.C. 205, 731 S.E.2d 324. Alternative Dispute Resolution 119; Alternative Dispute Resolution 143

Though in most instances South Carolina policy, like federal policy, favors arbitrating disputes, the South Carolina Arbitration Act does not apply to any insured or beneficiary under any insurance policy or annuity contract. Cox v. Woodmen of World Ins. Co. (S.C.App. 2001) 347 S.C. 460, 556 S.E.2d 397, rehearing denied, certiorari denied. Alternative Dispute Resolution 113; Insurance 3265; Insurance 3267

Exception in South Carolina Arbitration Act, which expressly invalidated provisions for arbitration in insurance policies, “reverse pre‑empted” Federal Arbitration Act (FAA) through application of the McCarran‑Ferguson Act, so that FAA did not apply to arbitration clause in insurance policies. Cox v. Woodmen of World Ins. Co. (S.C.App. 2001) 347 S.C. 460, 556 S.E.2d 397, rehearing denied, certiorari denied.

Provision in South Carolina Arbitration Act invalidating arbitration clauses in insurance policies did not apply to fraternal benefit associations, as provision was an insurance law and legislature did not expressly provide that provision applied to fraternal benefit associations. Cox v. Woodmen of World Ins. Co. (S.C.App. 2001) 347 S.C. 460, 556 S.E.2d 397, rehearing denied, certiorari denied. Insurance 3273

Arbitration clause extending to any claim “arising out of or relating to” agreement between health care provider and insurer for payment for services provided to insured applied to provider’s precertification dispute with insurer; although dispute could not be resolved by terms of agreement alone and provider’s claim arose by assignment from insured, agreement obliged provider to adhere to precertification protocols and parties bargained for assignment when they entered into agreement and therefore derivative nature of claim did not preclude it from “relating to” agreement. Greenville Hosp. System v. Employee Welfare Ben. Plan for Employees of Hazelhurst Management Co. (C.A.4 (S.C.) 2015) 628 Fed.Appx. 842, 2015 WL 5935095. Insurance 3277

11. Appeals

Arbitrability determinations are subject to de novo review; nevertheless, a circuit court’s factual findings will not be reversed on appeal if any evidence reasonably supports the findings. Johnson v. Heritage Healthcare of Estill, LLC (S.C. 2016) 416 S.C. 508, 788 S.E.2d 216, rehearing denied. Alternative Dispute Resolution 213(5)

Nursing home’s claim that arbitration agreement merged with the admission agreement, which resident’s son was authorized to execute under the Adult Health Care Consent Act, thereby making both agreements one and the same, was waived for appeal since nursing home did not raise this issue below. Thompson v. Pruitt Corp. (S.C.App. 2016) 416 S.C. 43, 784 S.E.2d 679, rehearing denied, certiorari denied. Alternative Dispute Resolution 213(4)

In doctor’s breach of contract action against medical center and center’s former parent company, decision in prior appeal, which affirmed denial of center’s motion to compel arbitration, was law of the case, and thus trial court properly denied parent’s subsequent motion to compel arbitration, even though doctor’s deposition testimony showed facts substantially different from those presented by center; rather than waiting to file its own motion until more than seven months after filing of center’s motion, parent should have taken deposition before hearing on, and joined in, center’s motion, or parent should have requested that prior appeal be held in abeyance until parent’s motion to compel could be heard. Flexon v. PHC‑Jasper, Inc. (S.C.App. 2015) 413 S.C. 561, 776 S.E.2d 397, rehearing denied, certiorari denied. Alternative Dispute Resolution 375

Agents of a company that sold buyers their mobile homes failed to preserve for appellate review their claims that an arbitration award imposing punitive damages was outside the scope of the arbitration agreement and was a manifest disregard of the law, where such claims were not argued prior to their appeal. Gissel v. Hart (S.C.App. 2007) 373 S.C. 281, 644 S.E.2d 772, rehearing denied, reversed 382 S.C. 235, 676 S.E.2d 320. Alternative Dispute Resolution 371

Order that favors litigation over arbitration, whether it refuses to stay litigation in deference to arbitration or refuses to compel arbitration, is immediately appealable, even if interlocutory. Towles v. United HealthCare Corp. (S.C.App. 1999) 338 S.C. 29, 524 S.E.2d 839. Alternative Dispute Resolution 213(3)

12. Sanctions

Failure to sanction insurers for declining to earlier provide agency agreement containing arbitration provision was not an abuse of discretion, in actions brought by insureds and competing agents for unfair trade practices alleging that insurers were liable under respondeat superior for failure to investigate, supervise, or audit agents, even though insurers relied on agreement in their motion to compel arbitration, where insurers properly waited to serve copies of agreement with their motions to compel arbitration and produced agreement well in advance of hearing on motion, which gave insureds and agents sufficient time to review, challenge, and respond to it. Wilson v. Willis (S.C.App. 2016) 416 S.C. 395, 786 S.E.2d 571, rehearing denied. Alternative Dispute Resolution 214

13. Estoppel

Doctrine of equitable estoppel was not applicable, and thus, estate of nursing home resident was not estopped from asserting that the lack of resident’s signature precluded enforcement of arbitration agreement; admission agreement and arbitration agreement were independent of each other, any possible benefit emanating from the arbitration agreement alone was offset by the agreement’s requirement that resident waive her right to access to the courts and her right to a jury trial, and resident had dementia, and her incapacity prevented her from forming the intent or having the requisite knowledge to mislead nursing home or to assent to the arbitration agreement’s terms. Thompson v. Pruitt Corp. (S.C.App. 2016) 416 S.C. 43, 784 S.E.2d 679, rehearing denied, certiorari denied. Alternative Dispute Resolution 182(1)

**SECTION 15‑48‑20.** Proceedings to compel or stay arbitration.

 (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, but if the opposing party denies the existence of the agreement to arbitrate, 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.

 (b) On application, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. Such an issue, when in substantial and bona fide dispute, shall be forthwith and summarily tried and the stay ordered if found for the moving party. If found for the opposing party, the court shall order the parties to proceed to arbitration.

 (c) If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under subdivision (a) of this section, the application shall be made therein. Otherwise and subject to Section 15‑48‑190, the application may be made in any court of competent jurisdiction.

 (d) Any action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application therefor has been made under this section or, if the issue is severable, the stay may be with respect thereto only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.

 (e) An order for arbitration shall not be refused on the ground that the claim in issue lacks merit or bona fides or because any fault or grounds for the claim sought to be arbitrated have not been shown.

HISTORY: 1978 Act No. 492, Section 2.

LIBRARY REFERENCES

Westlaw Key Number Searches: 33k22 to 33k25.

Arbitration 22 to 25.

C.J.S. Arbitration Sections 30, 33 to 46, 185 to 188.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arbitration Section 8, Stay of Judicial Proceedings.

S.C. Jur. Arbitration Section 10, Forum for Arbitration Application.

S.C. Jur. Arbitration Section 28, Vacating an Award.

S.C. Jur. Arbitration Section 32, Appeals.

Forms

South Carolina Litigation Forms and Analysis Section 32:6 , Motion to Compel Arbitration.

South Carolina Litigation Forms and Analysis Section 32:8 , Motion to Dismiss And/Or for Stay, and to Compel Arbitration.

South Carolina Litigation Forms and Analysis Section 32:9 , Order for Arbitration.

Treatises and Practice Aids

75 Causes of Action 2d 1, Cause of Action to Enforce Right to Arbitration Pursuant to Contract Clause Requiring Arbitration.

NOTES OF DECISIONS

In general 1

Compelling arbitration 1.5

Existence of agreement 2.5

Review 4

Stay of actions 2

Waiver 3

1. In general

The circuit court, rather than an arbitrator, was the proper forum to decide the enforceability of the arbitration clause in automobile trade‑in and sales contract between customer and automobile dealership, which contract was governed by the South Carolina Uniform Arbitration Act (UAA), even though the contract specifically stated that arbitration applied to issues involving the “validity and scope” of the contract; the customer challenged the arbitration clause on grounds of unconscionability, bringing into question whether an arbitration agreement even existed in the first place. Simpson v. MSA of Myrtle Beach, Inc. (S.C. 2007) 373 S.C. 14, 644 S.E.2d 663, rehearing denied, certiorari denied, certiorari denied 128 S.Ct. 493, 552 U.S. 990, 169 L.Ed.2d 340. Alternative Dispute Resolution 199

Plaintiff’s motion to compel arbitration of defendant’s counterclaims, relating to contractual dispute, was duplicative of defendant’s earlier motion to compel arbitration, which the trial court had denied five years earlier based on a determination that the contractual arbitration clause was unenforceable, and thus, plaintiff could not force defendant to arbitrate the counterclaims, though defendant had not withdrawn its demand for arbitration after its demand had been denied. Deloitte & Touche, LLP v. Unisys Corp. (S.C.App. 2004) 358 S.C. 179, 594 S.E.2d 523, rehearing denied, certiorari dismissed. Alternative Dispute Resolution 205

The question of the arbitrability of a claim is an issue for judicial determination, unless the parties provide otherwise. Thornton v. Trident Medical Center, L.L.C. (S.C.App. 2003) 357 S.C. 91, 592 S.E.2d 50, rehearing denied, certiorari denied, on remand 2005 WL 5480812. Alternative Dispute Resolution 200

Order that favors litigation over arbitration, whether it refuses to stay litigation in deference to arbitration or refuses to compel arbitration, is immediately appealable, even if interlocutory. Towles v. United HealthCare Corp. (S.C.App. 1999) 338 S.C. 29, 524 S.E.2d 839. Alternative Dispute Resolution 213(3)

The court should have granted a motion to stay litigation of pending arbitration, since the parties’ controversy as to whether a corporation’s purported termination of a shareholder’s agreement, which contained an arbitration provision and which granted the majority shareholder an option to sell its outstanding shares to the corporation, violated the requirement of the shareholder’s agreement that any termination be in writing and signed by 75 percent of the shareholders, arose “under, in connection with and relating to” the termination provision of the agreement, and thus was subject to arbitration under Sections 15‑48‑10 and 15‑48‑20. Jackson Mills, Inc. v. BT Capital Corp. (S.C. 1994) 312 S.C. 400, 440 S.E.2d 877.

An oral order of the circuit court compelling the parties to arbitrate the matter which was the subject of the action did not compel the parties to proceed to arbitration where the order was not reduced to writing prior to the dismissal of the action without prejudice. Hilton Head Resort Four Seasons Center Horizontal Property Regime Council of Co‑Owners, Inc. v. Resort Inv. Corp. (S.C.App. 1993) 311 S.C. 394, 429 S.E.2d 459, rehearing denied. Alternative Dispute Resolution 212

1.5. Compelling arbitration

Courts can apply the doctrine of equitable estoppel to allow a nonsignatory of an arbitration agreement to compel arbitration with a signatory in two situations: when a signatory to the agreement with the arbitration clause (1) must rely on the terms of the written agreement in asserting its claims against the nonsignatory or (2) raises allegations of substantially interdependent and concerted misconduct by both the non‑signatory and one or more of the signatories to the contract. Weckesser v. Knight Enterprises S.E., LLC, 2017, 228 F.Supp.3d 561. Alternative Dispute Resolution 132

If a valid arbitration agreement exists and covers the claims at issue, a court has no choice but to grant a motion to compel arbitration. Weckesser v. Knight Enterprises S.E., LLC, 2017, 228 F.Supp.3d 561. Alternative Dispute Resolution 205

2. Stay of actions

A district court must stay an action pending arbitration of any arbitrable claims, with the exception that it may instead dismiss an action if all claims asserted are arbitrable. Weckesser v. Knight Enterprises S.E., LLC, 2017, 228 F.Supp.3d 561. Federal Courts 3053

In reviewing a circuit court’s decision regarding a motion to stay an action pending arbitration, the determination of whether a party waived its right to arbitrate is a legal conclusion subject to de novo review; nevertheless, the circuit judge’s factual findings underlying that conclusion will not be overruled if there is any evidence reasonably supporting them. MailSource, LLC v. M.A. Bailey & Associates, Inc. (S.C.App. 2003) 356 S.C. 370, 588 S.E.2d 639. Alternative Dispute Resolution 213(5)

2.5. Existence of agreement

While there is a presumption in favor of arbitration, this presumption disappears when the parties dispute the existence of a valid arbitration agreement. Weckesser v. Knight Enterprises S.E., LLC, 2017, 228 F.Supp.3d 561. Alternative Dispute Resolution 210

When the parties dispute whether a valid arbitration agreement exists, any ambiguities must be resolved against the drafter, which, in the labor context, will always be against the employer and in favor of the employee. Weckesser v. Knight Enterprises S.E., LLC, 2017, 228 F.Supp.3d 561. Alternative Dispute Resolution 137; Labor and Employment 1269

Under South Carolina law, worker and employer did not execute valid arbitration agreement when they signed arbitration agreement listing name of employer’s parent company with no mention of employer’s name, although arbitration agreement was executed at same time and in course of same transaction as services agreement with employer; entity listed on arbitration agreement, employer’s parent company, was legal entity, arbitration agreement and services agreement could not be construed together because agreements were not executed by same parties and did not have same purpose, services agreement outlined nature and scope of work in exchange for compensation, and arbitration agreement was separate contract with sole purpose of laying out contours of dispute resolution. Weckesser v. Knight Enterprises S.E., LLC, 2017, 228 F.Supp.3d 561. Alternative Dispute Resolution 191; Alternative Dispute Resolution 195

Arbitration will be denied if a court determines no agreement to arbitrate existed. Lucey v. Meyer (S.C.App. 2012) 401 S.C. 122, 736 S.E.2d 274, rehearing granted. Alternative Dispute Resolution 112

Arbitrator did not have jurisdiction to enter an arbitration award in favor of issuing bank against credit cardholder once the cardholder disputed the existence of an agreement to arbitrate, until after issuing bank petitioned a court to compel arbitration; existence of an agreement was for the courts, not the arbitrator. MBNA America Bank, N.A. v. Christianson (S.C.App. 2008) 377 S.C. 210, 659 S.E.2d 209. Alternative Dispute Resolution 199

3. Waiver

Car dealership waived its right to compel arbitration of breach‑of‑contract claim brought by buyer, even though substantial length of time might not have transpired to warrant waiver since dealership sought arbitration less than a year after buyer brought suit; both parties engaged in extensive discovery, parties had completed virtually all discovery before dealership moved to compel arbitration, and extent of discovery, in conjunction with status of the case on trial docket, provided direct nexus to presence and degree of prejudice sustained by buyer, as the party opposing arbitration. Rhodes v. Benson Chrysler‑Plymouth, Inc. (S.C.App. 2007) 374 S.C. 122, 647 S.E.2d 249. Alternative Dispute Resolution 182(2)

Plaintiff waived its contractual right to compel arbitration of defendant’s counterclaims, where, after trial court had denied defendant’s earlier motion to compel arbitration, plaintiff had availed itself of the litigation process for approximately five and one‑half years, the parties had conducted a significant amount of discovery, resulting in production of thousands of documents, and plaintiff had been permitted to try one of its claims against defendant, at first phase of bifurcated bench trial. Deloitte & Touche, LLP v. Unisys Corp. (S.C.App. 2004) 358 S.C. 179, 594 S.E.2d 523, rehearing denied, certiorari dismissed. Alternative Dispute Resolution 182(2)

To establish that there has been a waiver of the right to arbitrate, a party must show it has been unduly burdened by the other party’s delay in seeking arbitration. Deloitte & Touche, LLP v. Unisys Corp. (S.C.App. 2004) 358 S.C. 179, 594 S.E.2d 523, rehearing denied, certiorari dismissed. Alternative Dispute Resolution 182(1)

4. Review

The question of the arbitrability of a claim is subject to de novo review. Deloitte & Touche, LLP v. Unisys Corp. (S.C.App. 2004) 358 S.C. 179, 594 S.E.2d 523, rehearing denied, certiorari dismissed. Alternative Dispute Resolution 213(5)

State procedural rule on appealability of arbitration orders, rather than rule under Federal Arbitration Act (FAA), applied to contractor’s motion to compel arbitration in third‑party action against stucco subcontractor regarding alleged construction defects in condominium complex, and thus trial court’s order compelling arbitration was not immediately appealable, although trial court determined that arbitration agreement between contractor and subcontractor involved interstate commerce; there was no federal policy favoring arbitration under certain set of procedural rules, and state law did not undermine goals and policies of FAA. Toler’s Cove Homeowners Ass’n, Inc. v. Trident Const. Co., Inc. (S.C. 2003) 355 S.C. 605, 586 S.E.2d 581. Alternative Dispute Resolution 213(3)

**SECTION 15‑48‑30.** Appointment of arbitrators.

 If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. In the absence thereof, there shall be three arbitrators with one chosen by the party making the demand for arbitration, one chosen by the party against whom demand is made and third being chosen by those two chosen by the parties.

HISTORY: 1978 Act No. 492, Section 3.

CROSS REFERENCES

Acceptance of bribes by arbitrators, see Section 16‑9‑270.

Corrupting of arbitrators and the penalty for so doing, see Section 16‑9‑260.

Jurisdiction and procedure in magistrates’ courts, generally, see Sections 22‑3‑10 et seq.

LIBRARY REFERENCES

Westlaw Key Number Search: 33k26.

Arbitration 26.

C.J.S. Arbitration Sections 60, 62.

**SECTION 15‑48‑40.** Majority action by arbitrators.

 The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by this chapter.

HISTORY: 1978 Act No. 492, Section 4.

LIBRARY REFERENCES

Westlaw Key Number Search: 33k35.

Arbitration 35.

C.J.S. Arbitration Sections 81, 89 to 90.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arbitration Section 12, Requirement of Majority Action.

Forms

Am. Jur. Pl. & Pr. Forms Arbitration and Award Section 197 , Introductory Comments.

**SECTION 15‑48‑50.** Hearing; record thereof.

 Unless otherwise provided by the agreement:

 (a) The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than five days before the hearing. Appearance at the hearing waives such notice. The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause, or upon their own motion may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. The court on application may direct the arbitrators to proceed promptly with the hearing and determination of the controversy.

 (b) The parties are entitled to be heard, to present evidence material to the controversy and to cross‑examine witnesses appearing at the hearing.

 (c) The hearing shall be conducted by all the arbitrators but a majority may determine any question and render a final award. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.

 (d) Upon the request of any party or arbitrator, the arbitrators shall cause to be made a record of the testimony and evidence introduced at the hearing.

HISTORY: 1978 Act No. 492, Section 5.

LIBRARY REFERENCES

Westlaw Key Number Searches: 33k31.10; 33k34.

Arbitration 31.10, 34.

C.J.S. Arbitration Sections 79, 84 to 86.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arbitration Section 13, Notice.

S.C. Jur. Arbitration Section 18, Presentation of Evidence and Witnesses.

S.C. Jur. Arbitration Section 20, Determinations by Majority of Arbitrators.

S.C. Jur. Arbitration Section 21, Record.

S.C. Jur. Arbitration Section 28, Vacating an Award.

NOTES OF DECISIONS

Notice 1

1. Notice

Contractor received proper service of process under rules of arbitration group, which was selected by contractor and subcontractor, regarding subcontractor’s claim for mechanic’s lien, since subcontractor used regular mail for service of demand for arbitration, subsequent notices were sent by group by certified mail, regular mail, and facsimile, record indicated that facsimiles were transmitted properly, there was no evidence that regular mail was returned, and certified mail was returned because acceptance was refused or mail went unclaimed. Palmetto Homes, Inc. v. Bradley (S.C.App. 2004) 357 S.C. 485, 593 S.E.2d 480, rehearing denied, certiorari denied. Alternative Dispute Resolution 183

**SECTION 15‑48‑60.** Joinder of parties to arbitration.

 Upon application to the arbitration panel by a party, a person who is subject to service of process over the subject matter of the arbitration shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, (2) he claims an interest relating to the subject of the action and is so situate that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) lead any of the persons already parties subject to a substantial risk of incurred double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the arbitrators shall order that he be made a party. Any person joined as a party to the arbitration shall have the same time to answer which was given to the initial defendant in the case.

HISTORY: 1978 Act No. 492, Section 6.

LIBRARY REFERENCES

Westlaw Key Number Search: 33k31.

Arbitration 31.

C.J.S. Arbitration Sections 76 to 77, 89.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arbitration Section 14, Joinder of Parties and Consolidation of Proceedings.

Forms

Alternative Dispute Resolution with Forms App. C , Revised Uniform Arbitration Act.

NOTES OF DECISIONS

In general 1

1. In general

Arbitration proceedings were properly consolidated where in action by owner of apartment complex against architect and builder, contract between architect and owner provided for arbitration as did contract between builder and owner, and both architect and builder moved for arbitration and owner made motion to consolidate, where no prejudice would result from consolidation and consolidation would provide logical, expeditious method by which to enforce right to arbitration. Episcopal Housing Corp. v. Federal Ins. Co. (S.C. 1979) 273 S.C. 181, 255 S.E.2d 451. Alternative Dispute Resolution 255

**SECTION 15‑48‑70.** Representation by attorney.

 A party has the right to be represented by an attorney at any proceeding or hearing under this chapter. A waiver thereof prior to the proceeding or hearing is ineffective.

HISTORY: 1978 Act No. 492, Section 7.

LIBRARY REFERENCES

Westlaw Key Number Search: 33k32.6.

Arbitration 32.6.

C.J.S. Arbitration Sections 79, 84.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arbitration Section 16, Representation by Attorney.

**SECTION 15‑48‑80.** Witnesses; subpoenas; depositions.

 (a) The arbitrators may issue (cause to be issued) subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and shall have the power to administer oaths. Subpoenas so issued shall be served, and upon application to the court by a party or the arbitrators, enforced, in the manner provided by law for the service and enforcement of subpoenas in a civil action.

 (b) On application of a party and for use as evidence, the arbitrators may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.

 (c) All provisions of law compelling a person under subpoena to testify are applicable.

 (d) Fees for attendance as a witness shall be the same as for a witness in the circuit court.

HISTORY: 1978 Act No. 492, Section 8.

LIBRARY REFERENCES

Westlaw Key Number Search: 33k34.

Arbitration 34.

C.J.S. Arbitration Sections 84 to 86.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arbitration Section 15, Subpoenas.

S.C. Jur. Arbitration Section 18, Presentation of Evidence and Witnesses.

S.C. Jur. Arbitration Section 19, Use of Depositions.

**SECTION 15‑48‑90.** Award.

 (a) The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally or by registered mail, or as provided in the agreement.

 (b) An award shall be made within the time fixed therefor by the agreement or, if not so fixed, within such time as the court orders on application of a party. The parties may extend the time in writing either before or after the expiration thereof. A party waives the objection that an award was not made within the time required unless he notifies the arbitrators of his objection prior to the delivery of the award to him.

HISTORY: 1978 Act No. 492, Section 9.

LIBRARY REFERENCES

Westlaw Key Number Searches: 33k48 to 33k87.

Arbitration 48 to 87.

C.J.S. Arbitration Sections 91, 94 to 178.

NOTES OF DECISIONS

In general 1

Review 2

1. In general

Buyers of mobile homes did not assert claims against seller’s agents in the agents’ individual capacities, so as to allow for entry of an arbitration award imposing individual liability against the agents on buyers’ breach of contract and fraud claims; the buyers’ complaints asserted that the agents were, “at all times,” acting as agents or employees of the seller, and buyers’ sales contracts with seller were signed by the agents in their representative, not individual, capacities. Gissel v. Hart (S.C.App. 2007) 373 S.C. 281, 644 S.E.2d 772, rehearing denied, reversed 382 S.C. 235, 676 S.E.2d 320. Alternative Dispute Resolution 315

Contractor’s claims for breach of contract by a fraudulent act and negligence regarding subcontractor’s masonry work on contractor’s home building project involved matters properly included in subcontractor’s earlier arbitration claim for mechanic’s lien, and thus res judicata barred contractor’s claims in subsequent civil action against subcontractor; claims arose from subcontractor agreement, and thus contractor, upon commencement of arbitration proceedings, was procedurally required to arbitrate all claims arising therefrom or be barred by res judicata. Palmetto Homes, Inc. v. Bradley (S.C.App. 2004) 357 S.C. 485, 593 S.E.2d 480, rehearing denied, certiorari denied. Alternative Dispute Resolution 183

The trial court did not have authority, almost one year after an arbitration, to determine the amount of attorney fees awarded generally by the arbitrator since such would constitute a modification which occurred after the 90 days allowed for appeal had expired. Eatman’s, Inc. v. Martin Engineering, Inc. (S.C.App. 1993) 311 S.C. 282, 428 S.E.2d 736.

2. Review

Agents of a company that sold buyers their mobile homes failed to preserve for appellate review their claims that an arbitration award imposing punitive damages was outside the scope of the arbitration agreement and was a manifest disregard of the law, where such claims were not argued prior to their appeal. Gissel v. Hart (S.C.App. 2007) 373 S.C. 281, 644 S.E.2d 772, rehearing denied, reversed 382 S.C. 235, 676 S.E.2d 320. Alternative Dispute Resolution 371

**SECTION 15‑48‑100.** Change of award by arbitrators.

 On application of a party or, if an application to the court is pending under Sections 15‑48‑120, 15‑48‑130, 15‑48‑140, on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in paragraphs (1) and (3) of subdivision (a) of Section 15‑48‑140, or for the purpose of clarifying the award. The application shall be made within twenty days after delivery of the award to the applicant. Written notice thereof shall be given forthwith to the opposing party, stating he must serve his objections thereto, if any, within ten days from the notice. The award so modified or corrected is subject to the provisions of Sections 15‑48‑120, 15‑48‑130 and 15‑48‑140.

HISTORY: 1978 Act No. 492, Section 10.

LIBRARY REFERENCES

Westlaw Key Number Searches: 33k63 to 33k71.

Arbitration 63 to 71.

C.J.S. Arbitration Sections 94, 97, 105 to 106, 108, 117, 119, 150 to 155, 164 to 165, 168 to 174.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arbitration Section 23, Change of Award.

NOTES OF DECISIONS

In general 1

1. In general

In travel agent’s breach of contract action against resorts, issue of whether prior arbitration award arising out of breach of contract dispute between same parties had terminated contract between parties was not preserved for review, and, thus, res judicata did not bar agent from bringing action alleging continuing breach of contract and seeking damages incurred after arbitration award, where arbitration award did not clearly terminate contract between parties and resorts did not seek clarification of whether award terminated contract. Renaissance Enterprises, Inc. v. Ocean Resorts, Inc. (S.C. 1998) 330 S.C. 13, 496 S.E.2d 858. Alternative Dispute Resolution 380

If party submits issue for arbitration and arbitrators fail to clearly rule on issue in award, party must request that arbitrators address issue, and if party fails to do so, issue will not be preserved for further review and claim of res judicata on that issue will fail. Renaissance Enterprises, Inc. v. Ocean Resorts, Inc. (S.C. 1998) 330 S.C. 13, 496 S.E.2d 858. Alternative Dispute Resolution 342

Once a motion to confirm an arbitration award is filed, the Circuit Court resumes jurisdiction of the case; consequently, to request modification or clarification after the motion to confirm is filed, a party is required to move the Circuit Court to submit the award to the arbitrators for modification. Mills v. William Clarke Jeep Eagle, Inc. (S.C.App. 1996) 321 S.C. 150, 467 S.E.2d 268. Alternative Dispute Resolution 352; Alternative Dispute Resolution 355

**SECTION 15‑48‑110.** Fees and expenses of arbitration.

 Unless otherwise provided in the agreement to arbitrate, the arbitrators’ expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, shall be paid as provided in the award.

HISTORY: 1978 Act No. 492, Section 11.

LIBRARY REFERENCES

Westlaw Key Number Searches: 33k42; 33k52.

Arbitration 42, 52.

C.J.S. Arbitration Sections 99, 179 to 183.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arbitration Section 24, Fees and Expenses.

S.C. Jur. Attorney Fees Section 85, Arbitrators.

LAW REVIEW AND JOURNAL COMMENTARIES

Recovery of Attorneys’ Fees as Costs or Damages in South Carolina. 38 S.C. L. Rev. 823.

NOTES OF DECISIONS

In general 1

1. In general

Costs related to arbitration did not render unconscionable arbitration clause in contract between contractor and stucco subcontractor, although arbitration filing fee was $8,500 and case service fee was $2,500, and thus costs did not support subcontractor’s attempt to invalidate clause; contractor was responsible for filing fee, and case service fee would be split between five parties involved in underlying action and contractor’s third‑party action. Toler’s Cove Homeowners Ass’n, Inc. v. Trident Const. Co., Inc. (S.C. 2003) 355 S.C. 605, 586 S.E.2d 581. Alternative Dispute Resolution 134(6)

**SECTION 15‑48‑120.** Confirmation of an award.

 Upon application of a party, the court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in Sections 15‑48‑130 and 15‑48‑140.

HISTORY: 1978 Act No. 492, Section 12.

LIBRARY REFERENCES

Westlaw Key Number Search: 33k72.

Arbitration 72.

C.J.S. Arbitration Section 120.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arbitration Section 27, Court Confirmation of Award.

NOTES OF DECISIONS

In general 1

1. In general

If an arbitrator acted even arguably within the scope of his authority, even a serious error on his part does not warrant overturning his decision, under the Federal Arbitration Act (FAA). Bazzle v. Green Tree Financial Corp. (S.C. 2002) 351 S.C. 244, 569 S.E.2d 349, certiorari granted 123 S.Ct. 817, 537 U.S. 1098, 154 L.Ed.2d 766, vacated 123 S.Ct. 2402, 539 U.S. 444, 156 L.Ed.2d 414. Alternative Dispute Resolution 328

Factual and legal errors by arbitrators do not constitute an abuse of their powers, and a party may not attempt to relitigate the merits of the arbitrators’ resolution of the arbitrable issues under the guise of questioning the arbitrators’ power. Bazzle v. Green Tree Financial Corp. (S.C. 2002) 351 S.C. 244, 569 S.E.2d 349, certiorari granted 123 S.Ct. 817, 537 U.S. 1098, 154 L.Ed.2d 766, vacated 123 S.Ct. 2402, 539 U.S. 444, 156 L.Ed.2d 414. Alternative Dispute Resolution 329; Alternative Dispute Resolution 330; Alternative Dispute Resolution 374(3)

“Manifest disregard of the law,” as implied basis under the Federal Arbitration Act (FAA) for vacating an arbitrator’s award, occurs when the arbitrator knew of a governing legal principle yet refused to apply it, and the law disregarded was well defined, explicit, and clearly applicable to the case. Bazzle v. Green Tree Financial Corp. (S.C. 2002) 351 S.C. 244, 569 S.E.2d 349, certiorari granted 123 S.Ct. 817, 537 U.S. 1098, 154 L.Ed.2d 766, vacated 123 S.Ct. 2402, 539 U.S. 444, 156 L.Ed.2d 414. Alternative Dispute Resolution 329

Lender did not preserve appellate review of whether arbitrator’s class certification of the arbitration of homeowners’ claims against lender violated the due process rights of absent class members, where the lender raised the due process claim for the first time in a trial court motion to vacate the arbitrator’s award; lender did not give the arbitrator an opportunity to rule upon the due process issue. Bazzle v. Green Tree Financial Corp. (S.C. 2002) 351 S.C. 244, 569 S.E.2d 349, certiorari granted 123 S.Ct. 817, 537 U.S. 1098, 154 L.Ed.2d 766, vacated 123 S.Ct. 2402, 539 U.S. 444, 156 L.Ed.2d 414. Alternative Dispute Resolution 371

Once a motion to confirm an arbitration award is filed, the Circuit Court resumes jurisdiction of the case; consequently, to request modification or clarification after the motion to confirm is filed, a party is required to move the Circuit Court to submit the award to the arbitrators for modification. Mills v. William Clarke Jeep Eagle, Inc. (S.C.App. 1996) 321 S.C. 150, 467 S.E.2d 268. Alternative Dispute Resolution 352; Alternative Dispute Resolution 355

**SECTION 15‑48‑130.** Vacating an award.

 (a) Upon application of a party, the court shall vacate an award where:

 (1) The award was procured by corruption, fraud or other undue means;

 (2) There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;

 (3) The arbitrators exceeded their powers;

 (4) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of Section 15‑48‑50, as to prejudice substantially the rights of a party; or

 (5) There was no arbitration agreement and the issue was not adversely determined in proceedings under Section 15‑48‑20 and the party did not participate in the arbitration hearing without raising the objection;

 But the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

 (b) An application under this section shall be made within ninety days after delivery of a copy of the award to the applicant, except that, if predicated upon corruption, fraud or other undue means, it shall be made within ninety days after such grounds are known or should have been known.

 (c) In vacating the award on grounds other than stated in item (5) of subsection (a) the court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence thereof, by the court in accordance with Section 15‑48‑30, or, if the award is vacated on grounds set forth in items (3) and (4) of subsection (a) the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with Section 15‑48‑30. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

 (d) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

HISTORY: 1978 Act No. 492, Section 13.

LIBRARY REFERENCES

Westlaw Key Number Search: 33k75.

Arbitration 75.

C.J.S. Arbitration Sections 149, 175, 177.

RESEARCH REFERENCES

ALR Library

14 ALR 6th 491 , Adoption of Manifest Disregard of Law Standard as Nonstatutory Ground to Review Arbitration Awards Governed by Uniform Arbitration Act (UAA).

Encyclopedias

S.C. Jur. Arbitration Section 6, Application of Federal Arbitration Act.

S.C. Jur. Arbitration Section 27, Court Confirmation of Award.

S.C. Jur. Arbitration Section 28, Vacating an Award.

S.C. Jur. Arbitration Section 32, Appeals.

NOTES OF DECISIONS

In general 1

Basis for award 3

Bias 3.5

Disregarding law 4

Exceeding powers 2

Review 5

1. In general

In order to show evident partiality on the part of an arbitrator so as to warrant vacatur of arbitration award, a party is required to show partiality that is evident, namely, that which is direct, definite, and capable of demonstration. Crouch Const. Co., Inc. v. Causey (S.C. 2013) 405 S.C. 155, 747 S.E.2d 482. Alternative Dispute Resolution 335

In order to constitute evident partiality that warrants vacatur of an arbitration award, the arbitrator’s bias must be sufficiently obvious that a reasonable person would easily recognize it. Crouch Const. Co., Inc. v. Causey (S.C. 2013) 405 S.C. 155, 747 S.E.2d 482. Alternative Dispute Resolution 335

To come within the Uniform Arbitration Act’s strong language requiring a showing of evident partiality to warrant vacatur of an arbitration award, the undisclosed facts must be powerfully suggestive of bias on the part of the arbitrator. Crouch Const. Co., Inc. v. Causey (S.C. 2013) 405 S.C. 155, 747 S.E.2d 482. Alternative Dispute Resolution 335

A party seeking vacatur of an arbitration award based upon the arbitrator’s alleged evident partiality is required, pursuant to the Uniform Arbitration Act, to demonstrate that a reasonable person would have to conclude that an arbitrator was partial to the other party to the arbitration. Crouch Const. Co., Inc. v. Causey (S.C. 2013) 405 S.C. 155, 747 S.E.2d 482. Alternative Dispute Resolution 335

Whether statute of limitations defense to contract claim also barred, on limitations grounds, a quantum meruit claim emanating from the contract was not a well‑defined legal principle, and thus, arbitrator’s finding that quantum meruit claim was not barred by limitations did not show manifest disregard of the law, as would warrant vacation of arbitration award; the parties themselves vigorously debated the propriety of the limitations defense. Weimer v. Jones (S.C.App. 2005) 364 S.C. 78, 610 S.E.2d 850. Alternative Dispute Resolution 329

Absent grounds under the Uniform Arbitration Act for vacating or modifying an arbitration award, an arbitration award will be vacated only on the non‑statutory ground of manifest disregard or perverse misconstruction of the law. Weimer v. Jones (S.C.App. 2005) 364 S.C. 78, 610 S.E.2d 850. Alternative Dispute Resolution 329

Review of an arbitration award is limited and the decision of the arbitrator will be vacated only under certain grounds as provided by statute, or upon the non‑statutory ground of manifest disregard or perverse misconstruction of the law. Lauro v. Visnapuu (S.C.App. 2002) 351 S.C. 507, 570 S.E.2d 551, rehearing denied, certiorari denied. Alternative Dispute Resolution 329; Alternative Dispute Resolution 362(2)

If an issue is within the scope of the arbitration agreement, the court need not review the merits of the decision. Harris v. Bennett (S.C.App. 1998) 332 S.C. 238, 503 S.E.2d 782, rehearing denied. Alternative Dispute Resolution 363(7)

Party may not attempt to relitigate the merits of the arbitrators’ resolution of the arbitrable issues under the guise of questioning the arbitrators’ power. Harris v. Bennett (S.C.App. 1998) 332 S.C. 238, 503 S.E.2d 782, rehearing denied. Alternative Dispute Resolution 316

Party may not attempt to relitigate merits of arbitrators’ resolution of arbitrable issues under guise of questioning arbitrators’ power. Pittman Mortg. Co., Inc. v. Edwards (S.C. 1997) 327 S.C. 72, 488 S.E.2d 335. Alternative Dispute Resolution 316

Sections 15‑48‑130 and 15‑48‑140 provide the exclusive procedures for vacating or modifying awards where arbitrators exceed their powers or award upon a matter not properly submitted to them. Where a party to arbitration filed no motion to vacate or modify within 90 days of delivery of a copy of the award, the award became the law of the case. Sentry Engineering and Const., Inc. v. Mariner’s Cay Development Corp. (S.C. 1985) 287 S.C. 346, 338 S.E.2d 631.

2. Exceeding powers

An arbitrator’s award may be vacated when the arbitrator exceeds his powers and/or manifestly disregards or perversely misconstrues the law. Gissel v. Hart (S.C. 2009) 382 S.C. 235, 676 S.E.2d 320. Alternative Dispute Resolution 316; Alternative Dispute Resolution 329

An arbitrator’s “manifest disregard of the law,” as basis for vacating an arbitration award, occurs when the arbitrator knew of a governing legal principle yet refused to apply it, and the law disregarded was well defined, explicit, and clearly applicable to the case. Weimer v. Jones (S.C.App. 2005) 364 S.C. 78, 610 S.E.2d 850. Alternative Dispute Resolution 329

Question of whether arbitrators have exceeded their powers relates to the arbitrability of the issue they have attempted to resolve, and arbitrators exceed their powers only if the issue resolved by them is not within the scope of the agreement to arbitrate. Harris v. Bennett (S.C.App. 1998) 332 S.C. 238, 503 S.E.2d 782, rehearing denied. Alternative Dispute Resolution 316

Factual and legal errors by arbitrators do not constitute an abuse of their powers, and the court is not required to review the merits of the decision so long as the arbitrators do not exceed their powers. Harris v. Bennett (S.C.App. 1998) 332 S.C. 238, 503 S.E.2d 782, rehearing denied. Alternative Dispute Resolution 329; Alternative Dispute Resolution 330; Alternative Dispute Resolution 374(3)

Arbitrators’ award holding individual guarantors liable for contribution to issuer of letter of credit following default on loan did not exceed scope of their powers, even if they erroneously applied state corporation law, where purpose of arbitration was to determine liabilities of parties after letter of credit was called. Harris v. Bennett (S.C.App. 1998) 332 S.C. 238, 503 S.E.2d 782, rehearing denied. Alternative Dispute Resolution 316

Arbitrators exceed their powers only if issue resolved by them is not within scope of agreement to arbitrate. Pittman Mortg. Co., Inc. v. Edwards (S.C. 1997) 327 S.C. 72, 488 S.E.2d 335. Alternative Dispute Resolution 316

Factual and legal errors by arbitrators do not constitute abuse of their powers, and court is not required to review merits of decision so long as arbitrators do not exceed their powers. Pittman Mortg. Co., Inc. v. Edwards (S.C. 1997) 327 S.C. 72, 488 S.E.2d 335. Alternative Dispute Resolution 329; Alternative Dispute Resolution 330

Arbitration panel exceeded its powers by awarding respondent value of her shareholder’s equity, where employee did not request either her shareholder’s equity or rescission of contract for issuance of stock and return of her contribution to the corporation, but rather only sought issuance of stock and her share of income owed to her from the business. Pittman Mortg. Co., Inc. v. Edwards (S.C. 1997) 327 S.C. 72, 488 S.E.2d 335. Alternative Dispute Resolution 316

The question of whether arbitrators have exceeded their powers under Section 15‑48‑130(a)(3) relates to the arbitrability of the issue they have attempted to resolve. Arbitrators exceed their powers when they attempt to resolve an issue that is not arbitrable because it is outside the scope of the arbitration agreement. Conversely, if an issue resolved by arbitrators is within the scope of the arbitration agreement, the statutory language does not require the court to review the merits of their decision. Factual and legal errors by arbitrators would not constitute an abuse of their powers under Section 15‑48‑130(a)(3). Batten v. Howell (S.C.App. 1990) 300 S.C. 545, 389 S.E.2d 170.

3. Basis for award

Arbitrators need not specify their reasoning or the basis of the award so long as the factual inferences and legal conclusions supporting the award are barely colorable, and if the grounds for the award can be inferred from the facts, the award should be confirmed. Harris v. Bennett (S.C.App. 1998) 332 S.C. 238, 503 S.E.2d 782, rehearing denied. Alternative Dispute Resolution 307

Arbitrators need not specify their reasoning or basis of award so long as factual inferences and legal conclusions supporting award are “barely colorable”; if grounds for award can be inferred from facts, award should be confirmed. Pittman Mortg. Co., Inc. v. Edwards (S.C. 1997) 327 S.C. 72, 488 S.E.2d 335. Alternative Dispute Resolution 307

An arbitration award was valid, even though one party claimed that the arbitrator had considered only one of his 2 claims, where the arbitrators merely awarded a sum without discussing how they arrived at the sum, and they denied the party’s counter‑claim without indicating the validity of its general denial or affirmative defenses. Renaissance Enterprises, Inc. v. Ocean Resorts, Inc. (S.C.App. 1992) 310 S.C. 395, 426 S.E.2d 821.

3.5. Bias

A party asserting bias on the part of the arbitrator must establish specific factsthat indicate improper motives on the part of an arbitrator in order to warrant vacatur of the arbitrator’s award. Crouch Const. Co., Inc. v. Causey (S.C. 2013) 405 S.C. 155, 747 S.E.2d 482. Alternative Dispute Resolution 335

A court should examine four factors to determine if a claimant has demonstrated evident partiality of an arbitrator so as to warrant vacatur of arbitrator’s award: (1) the extent and character of the personal interest, pecuniary or otherwise, of the arbitrator in the proceeding; (2) the directness of the relationship between the arbitrator and the party he is alleged to favor; (3) the connection of that relationship to the arbitration; and (4) the proximity in time between the relationship and the arbitration proceeding. Crouch Const. Co., Inc. v. Causey (S.C. 2013) 405 S.C. 155, 747 S.E.2d 482. Alternative Dispute Resolution 335

When considering a claim of evident partiality on the part of an arbitrator, so as to warrant vacatur of arbitrator’s award, a court should determine whether the asserted bias is direct, definite and capable of demonstration rather than remote, uncertain or speculative and whether the facts are sufficient to indicate improper motives on the part of the arbitrator. Crouch Const. Co., Inc. v. Causey (S.C. 2013) 405 S.C. 155, 747 S.E.2d 482. Alternative Dispute Resolution 335

A party asserting evident partiality of an arbitrator as a basis for vacatur need not prove that the arbitrator, in fact, had improper motives; to do so would make the standard for evident partiality equivalent to proving actual bias. Crouch Const. Co., Inc. v. Causey (S.C. 2013) 405 S.C. 155, 747 S.E.2d 482. Alternative Dispute Resolution 335

A party seeking vacatur based upon the evident partiality of an arbitrator must put forward facts that objectively demonstrate such a degree of partiality that a reasonable person could assume that the arbitrator had improper motives. Crouch Const. Co., Inc. v. Causey (S.C. 2013) 405 S.C. 155, 747 S.E.2d 482. Alternative Dispute Resolution 335

An arbitrator’s failure to investigate material facts may be probative of evident partiality when asserting partiality as a basis for vacatur, but it is not dispositive of the issue. Crouch Const. Co., Inc. v. Causey (S.C. 2013) 405 S.C. 155, 747 S.E.2d 482. Alternative Dispute Resolution 335

For a relationship to be material, and therefore require disclosure by an arbitrator so as to not constitute evident partiality, it must be such that a reasonable person would have to conclude that an arbitrator who failed to disclose it was partial to one side. Crouch Const. Co., Inc. v. Causey (S.C. 2013) 405 S.C. 155, 747 S.E.2d 482. Alternative Dispute Resolution 222

In determining whether a relationship is material such that it establishes evident partiality on the part of the arbitration, courts must focus on the question of how strongly that undisclosed relationship tends to indicate the possibility of bias in favor of or against one party, and not on how closely that relationship appears to relate to the facts of the arbitration. Crouch Const. Co., Inc. v. Causey (S.C. 2013) 405 S.C. 155, 747 S.E.2d 482. Alternative Dispute Resolution 335

Even if a particular relationship with the arbitrator might be thought to be relevant to the arbitration at issue, that relationship will nevertheless not constitute a material conflict of interest if it does not itself tend to show that the arbitrator might be predisposed in favor of one (or more) of the parties. Crouch Const. Co., Inc. v. Causey (S.C. 2013) 405 S.C. 155, 747 S.E.2d 482. Alternative Dispute Resolution 335

Undisclosed fact that brother of law partner of arbitrator was employed by engineering and environmental consulting company that conducted soil testing on property did not establish arbitrator’s evident partiality so as to warrant vacatur of arbitration award in contractual dispute between property owner and general contractor; although engineering recommendations related to the crux of the parties’ construction dispute, there was no indication in the record of any direct social, professional or financial connection between the arbitrator and the brother of his law partner or any other employee of engineering company at any time, and arbitrator was unaware of relationship until several months after the award was made. Crouch Const. Co., Inc. v. Causey (S.C. 2013) 405 S.C. 155, 747 S.E.2d 482. Alternative Dispute Resolution 335

In inquiring whether the burden of establishing an arbitrator’s evident partiality so as to warrant vacatur of the arbitrator’s award has been satisfied, the court employs a case‑by‑case approach in preference to dogmatic rigidity. Crouch Const. Co., Inc. v. Causey (S.C. 2013) 405 S.C. 155, 747 S.E.2d 482. Alternative Dispute Resolution 335

4. Disregarding law

Court of Appeals, in vacating portion of arbitration award in favor of mobile home buyers in their dispute with seller’s agents ordering agents, in their individual capacities, to pay damages to buyers, was not justified in looking to complaint filed by buyers against agents to determine whether agents were individual parties to action; complaint was irrelevant to determination of whether arbitrator manifestly disregarded the law, agents did not dispute that they were named as defendants in complaint, and there was nothing preventing agents from being held independently liable for torts committed in scope of their employment. Gissel v. Hart (S.C. 2009) 382 S.C. 235, 676 S.E.2d 320. Alternative Dispute Resolution 374(1)

An arbitrator’s “manifest disregard of the law” as a basis for vacating an arbitration award occurs when the arbitrator knew of a governing legal principle yet refused to apply it. Gissel v. Hart (S.C. 2009) 382 S.C. 235, 676 S.E.2d 320. Alternative Dispute Resolution 329

Court, in determining whether to vacate an arbitration award based upon an arbitrator’s manifest disregard of the law, focuses on the conduct of the arbitrator and presupposes something beyond a mere error in construing or applying the law. Gissel v. Hart (S.C. 2009) 382 S.C. 235, 676 S.E.2d 320. Alternative Dispute Resolution 329

In order for a court to set aside arbitration award on basis of manifest disregard of the law, there must be something beyond a mere error in construing or applying the law, and even a clearly erroneous interpretation of the contract cannot be disturbed. Gissel v. Hart (S.C. 2009) 382 S.C. 235, 676 S.E.2d 320. Alternative Dispute Resolution 329

For a court to vacate an arbitration award based upon an arbitrator’s manifest disregard of the law, the governing law ignored by the arbitrator must be well defined, explicit, and clearly applicable. Gissel v. Hart (S.C. 2009) 382 S.C. 235, 676 S.E.2d 320. Alternative Dispute Resolution 329

5. Review

The circuit court’s adoption of a legal standard for evaluating claims of evident partiality when considering vacatur of an arbitration award is a question of law which the Supreme Court reviews de novo. Crouch Const. Co., Inc. v. Causey (S.C. 2013) 405 S.C. 155, 747 S.E.2d 482. Alternative Dispute Resolution 374(7)

Contractor failed to preserve for appellate review assertion that underlying construction contract involved interstate commerce, such that the Federal Arbitration Act (FAA) controlled in determining whether vacatur of award was warranted in contractual dispute with property owner, where property owners’ motion to vacate the arbitration award and trial court’s order vacating award relied upon “evident partiality” standard of state law. Crouch Const. Co., Inc. v. Causey (S.C. 2013) 405 S.C. 155, 747 S.E.2d 482. Alternative Dispute Resolution 371

**SECTION 15‑48‑140.** Modification or correction of award.

 (a) Upon application made within ninety days after delivery of a copy of the award to the applicant, the court shall modify or correct the award where:

 (1) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;

 (2) The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

 (3) The award is imperfect in a matter of form, not affecting the merits of the controversy.

 (b) If the application is granted, the court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the court shall confirm the award as made.

 (c) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

HISTORY: 1978 Act No. 492, Section 14.

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Arbitration 73.9.

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S.C. Jur. Arbitration Section 27, Court Confirmation of Award.

S.C. Jur. Arbitration Section 28, Vacating an Award.

S.C. Jur. Arbitration Section 29, Modification or Correction of Award.

NOTES OF DECISIONS

In general 1

1. In general

Absent grounds under the Uniform Arbitration Act for vacating or modifying an arbitration award, an arbitration award will be vacated only on the non‑statutory ground of manifest disregard or perverse misconstruction of the law. Weimer v. Jones (S.C.App. 2005) 364 S.C. 78, 610 S.E.2d 850. Alternative Dispute Resolution 329

In arbitration of dispute between homeowners and mechanic’s lien holder, arbitrator did not commit mathematical error in calculating interest on $39,074 award in favor of lien holder pursuant to an implied contract for work performed outside scope of original home restoration contract, and thus Circuit Court did not have grounds to modify interest award; arbitrator clearly stated that he declined to award interest for the entire period in question, based on fact that he found value of the work was not clearly transmitted to homeowners. Lauro v. Visnapuu (S.C.App. 2002) 351 S.C. 507, 570 S.E.2d 551, rehearing denied, certiorari denied. Alternative Dispute Resolution 330

Although Family Court has subject matter jurisdiction to review whether parties freely and voluntarily agreed to submit equitable apportionment claims to binding arbitration, Arbitration Act precludes Family Court from exercising its general power to review and approve substantive fairness of such agreements; rather, family court presented with arbitration agreement and award pertaining to equitable apportionment may set aside agreement only upon proof of “grounds as exist at law or in equity for the revocation of any contract,” may correct or modify award only in accordance with Arbitration Act, and may vacate award only upon establishment of ground set forth in Act, or rarely applied non‑statutory ground of “manifest disregard or perverse misconstruction of the law.” Swentor v. Swentor (S.C.App. 1999) 336 S.C. 472, 520 S.E.2d 330, rehearing denied. Alternative Dispute Resolution 329; Alternative Dispute Resolution 362(2)

Arbitrators need not specify their reasoning or the basis for the award as long as the factual inference and legal conclusions supporting the award are “barely colorable”; thus, if a ground for the award can be inferred from the facts, the award should be confirmed. Mills v. William Clarke Jeep Eagle, Inc. (S.C.App. 1996) 321 S.C. 150, 467 S.E.2d 268.

The trial court did not have authority, almost one year after an arbitration, to determine the amount of attorney fees awarded generally by the arbitrator since such would constitute a modification which occurred after the 90 days allowed for appeal had expired. Eatman’s, Inc. v. Martin Engineering, Inc. (S.C.App. 1993) 311 S.C. 282, 428 S.E.2d 736.

Sections 15‑48‑130 and 15‑48‑140 provide the exclusive procedures for vacating or modifying awards where arbitrators exceed their powers or award upon a matter not properly submitted to them. Where a party to arbitration filed no motion to vacate or modify within 90 days of delivery of a copy of the award, the award became the law of the case. Sentry Engineering and Const., Inc. v. Mariner’s Cay Development Corp. (S.C. 1985) 287 S.C. 346, 338 S.E.2d 631.

**SECTION 15‑48‑150.** Judgment or decree on award.

 Upon the granting of an order confirming, modifying or correcting an award, judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent thereto, and disbursements may be awarded by the court.

HISTORY: 1978 Act No. 492, Section 15.

LIBRARY REFERENCES

Westlaw Key Number Searches: 33k72; 33k73.8; 33k73.9.

Arbitration 72, 73.8, 73.9.

C.J.S. Arbitration Sections 120, 161.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arbitration Section 27, Court Confirmation of Award.

**SECTION 15‑48‑160.** Judgment roll; docketing.

 (a) On entry of judgment or decree, the clerk of court shall prepare the judgment roll consisting, to the extent filed, of the following:

 (1) The agreement and each written extension of the time within which to make the award;

 (2) The award;

 (3) A copy of the order confirming, modifying or correcting the award; and

 (4) A copy of the judgment or decree.

 (b) The judgment or decree may be docketed as if rendered in an action.

HISTORY: 1978 Act No. 492, Section 16.

LIBRARY REFERENCES

Westlaw Key Number Search: 33k73.8.

Arbitration 73.8.

C.J.S. Arbitration Section 161.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arbitration Section 30, Judgment Roll; Docketing.

**SECTION 15‑48‑170.** Applications to court.

 Except as otherwise provided, an application to the court under this chapter shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action.

HISTORY: 1978 Act No. 492, Section 17.

LIBRARY REFERENCES

Westlaw Key Number Searches: 33k23.1; 33k23.11; 33k31.10; 33k72.3; 33k73.8.

Arbitration 23.1, 23.11, 31.10, 72.3, 73.8.

C.J.S. Arbitration Sections 43, 79, 122, 161.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arbitration Section 31, Method of Making Applications to Court.

**SECTION 15‑48‑180.** Court; jurisdiction; questions of law and fact.

 The term “court” means any court of competent jurisdiction of this State. The making of an agreement described in Section 15‑48‑10 providing for arbitration in this State confers jurisdiction on the court to enforce the agreement under this chapter and to enter judgment on an award thereunder. Unless otherwise provided by the arbitration agreement, when a dispute is submitted to arbitration, the arbitrators shall determine questions of both law and fact.

HISTORY: 1978 Act No. 492, Section 18.

LIBRARY REFERENCES

Westlaw Key Number Searches: 33k23.8; 33k72.2.

Arbitration 23.8, 72.2.

C.J.S. Arbitration Sections 40, 121.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arbitration Section 25, Definition and Jurisdiction of Court.

NOTES OF DECISIONS

In general 1

1. In general

South Carolina courts lacked subject matter jurisdiction to consider motion to review arbitration award issued in a proceeding conducted in New York pursuant to the parties’ written agreement. Ashley River Properties I, LLC v. Ashley River Properties II, LLC (S.C.App. 2007) 374 S.C. 271, 648 S.E.2d 295. Alternative Dispute Resolution 367

**SECTION 15‑48‑190.** Venue.

 An initial application shall be made to the court of the county in which the agreement provides the arbitration hearing shall be held or, if the hearing has been held, in the county in which it was held. Otherwise the application shall be made in the county where the adverse party resides or has a place of business or, if he has no residence or place of business in this State, to the court of any county. All subsequent applications shall be made to the court hearing the initial application unless the court otherwise directs.

HISTORY: 1978 Act No. 492, Section 19.

LIBRARY REFERENCES

Westlaw Key Number Searches: 33k23.8; 33k72.3.

Arbitration 23.8, 72.3.

C.J.S. Arbitration Sections 40, 122.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arbitration Section 10, Forum for Arbitration Application.

S.C. Jur. Arbitration Section 26, Venue.

**SECTION 15‑48‑200.** Appeals.

 (a) An appeal may be taken from:

 (1) An order denying an application to compel arbitration made under Section 15‑48‑20;

 (2) An order granting an application to stay arbitration made under Section 15‑48‑20(b);

 (3) An order confirming or denying confirmation of an award;

 (4) An order modifying or correcting an award;

 (5) An order vacating an award without directing a rehearing; or

 (6) A judgment or decree entered pursuant to the provisions of this chapter.

 (b) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

HISTORY: 1978 Act No. 492, Section 20.

LIBRARY REFERENCES

Westlaw Key Number Searches: 33k23.17; 33k73; 33k85.70.

Arbitration 23.17, 73, 85.70.

C.J.S. Arbitration Sections 44, 161.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Appeal and Error Section 22, Matters of Preliminary Relief.

S.C. Jur. Arbitration Section 32, Appeals.

S.C. Jur. South Carolina Rules of Civil Procedure Section 54.2, Discussion.

NOTES OF DECISIONS

In general 1

Jurisdiction 4

Order compelling arbitration 3

Preservation of issues 2

1. In general

Order denying arbitration is immediately appealable. Cape Romain Contractors, Inc. v. Wando E., LLC (S.C. 2013) 405 S.C. 115, 747 S.E.2d 461. Alternative Dispute Resolution 213(3)

Order dismissing action without prejudice and allowing the parties to pursue arbitration finally determined rights of the parties and was immediately appealable, although Uniform Arbitration Act did not include order dismissing action among list of orders from which appeal could be taken. Widener v. Fort Mill Ford (S.C.App. 2009) 381 S.C. 522, 674 S.E.2d 172. Alternative Dispute Resolution 213(3)

Arbitrator’s award in dispute over ownership of real property was not court order that could be subject to appeal, and thus Court of Appeals properly dismissed appeal from arbitrator’s award, where, once circuit court ordered case to be sent to arbitrator it was divested of jurisdiction over case, and, because parties did not move circuit court to confirm award, vacate award, or modify award, circuit court never regained jurisdiction. Main Corp. v. Black (S.C. 2004) 357 S.C. 179, 592 S.E.2d 300. Alternative Dispute Resolution 368

The denial of a motion to compel arbitration, based on a finding of waiver, is reviewed on appeal de novo. Rich v. Walsh (S.C.App. 2003) 357 S.C. 64, 590 S.E.2d 506, rehearing denied. Alternative Dispute Resolution 213(5)

Litigant could appeal trial court’s order denying its motion to compel arbitration; trial court’s order favored litigation over arbitration, and order favoring litigation over arbitration is immediately appealable, even if interlocutory. Towles v. United HealthCare Corp. (S.C.App. 1999) 338 S.C. 29, 524 S.E.2d 839. Alternative Dispute Resolution 213(3)

All orders relating to arbitration not mentioned in Section 15‑48‑200(a) are not immediately appealable. Heffner v. Destiny, Inc. (S.C. 1995) 321 S.C. 536, 471 S.E.2d 135.

The trial court did not err in refusing to apply Section 14‑3‑330 to the determination of the appealability of an order staying an action and compelling arbitration under the Federal Arbitration Act, 9 USCA Sections 1‑16; to apply the general appealability provisions of Section 14‑3‑330 would conflict with the more specific provision of Section 15‑48‑200 regarding the appealability of orders relating to arbitration. Heffner v. Destiny, Inc. (S.C. 1995) 321 S.C. 536, 471 S.E.2d 135. Alternative Dispute Resolution 213(3)

The trial court did not have authority, almost one year after an arbitration, to determine the amount of attorney fees awarded generally by the arbitrator since such would constitute a modification which occurred after the 90 days allowed for appeal had expired. Eatman’s, Inc. v. Martin Engineering, Inc. (S.C.App. 1993) 311 S.C. 282, 428 S.E.2d 736.

An order denying an application to consolidate pending arbitration proceedings is not immediately appealable. St. Francis Xavier Hosp. v. Ruscon/Abco (S.C.App. 1985) 285 S.C. 584, 330 S.E.2d 548. Alternative Dispute Resolution 213(3)

2. Preservation of issues

In appealing denial of motion to vacate arbitration award that was entered in favor of subcontractor on claim for mechanic’s lien, contractor failed to preserve for appellate review its claims that subcontractor was required to file motion to compel arbitration prior to proceeding with arbitration in contractor’s absence, that award was obtained through undue means, that award was rendered by partial arbitrator, and that arbitrator refused to postpone proceedings for good cause, where claims were not ruled on by trial court, and contractor did not raise claims in post‑trial motion. Palmetto Homes, Inc. v. Bradley (S.C.App. 2004) 357 S.C. 485, 593 S.E.2d 480, rehearing denied, certiorari denied. Evidence 22(1)

3. Order compelling arbitration

Order compelling arbitration of claims against non‑signatories and staying the remaining claims was not immediately appealable. Carolina Care Plan, Inc. v. United HealthCare Services, Inc. (S.C. 2004) 361 S.C. 544, 606 S.E.2d 752, rehearing denied. Alternative Dispute Resolution 213(3)

State procedural rule on appealability of arbitration orders, rather than rule under Federal Arbitration Act (FAA), applied to contractor’s motion to compel arbitration in third‑party action against stucco subcontractor regarding alleged construction defects in condominium complex, and thus trial court’s order compelling arbitration was not immediately appealable, although trial court determined that arbitration agreement between contractor and subcontractor involved interstate commerce; there was no federal policy favoring arbitration under certain set of procedural rules, and state law did not undermine goals and policies of FAA. Toler’s Cove Homeowners Ass’n, Inc. v. Trident Const. Co., Inc. (S.C. 2003) 355 S.C. 605, 586 S.E.2d 581. Alternative Dispute Resolution 213(3)

Supreme Court would address claims of stucco subcontractor regarding whether contractor waived right to enforce arbitration clause in construction contract and whether arbitration costs rendered arbitration clause unconscionable, in contractor’s third‑party action against subcontractor concerning alleged construction defects in condominium complex, although Supreme Court had concluded that trial court’s order compelling arbitration was not immediately appealable, because issues were capable of repetition and needed to be addressed. Toler’s Cove Homeowners Ass’n, Inc. v. Trident Const. Co., Inc. (S.C. 2003) 355 S.C. 605, 586 S.E.2d 581. Alternative Dispute Resolution 213(1)

4. Jurisdiction

Court of Appeals lacked jurisdiction over appeal from arbitrator’s denial of motion to reconsider in employment contract dispute, where employer only appealed the order of the arbitrator denying its motion to reconsider, not the order of the trial court confirming the arbitrator’s award, and it was the type of order appealed from that triggered jurisdiction, not the fact that the trial court had resumed jurisdiction and issued an order. Steinmetz v. American Media Services, LLC (S.C.App. 2011) 393 S.C. 72, 709 S.E.2d 708. Alternative Dispute Resolution 372

**SECTION 15‑48‑210.** Chapter not retroactive.

 This chapter applies only to agreements made subsequent to the effective date of this chapter.

HISTORY: 1978 Act No. 492, Section 21.

LIBRARY REFERENCES

Westlaw Key Number Search: 361k267.

Statutes 267.

C.J.S. Statutes Section 421.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arbitration Section 5, Retroactivity of Act.

NOTES OF DECISIONS

In general 1

1. In general

The Uniform Arbitration Act cannot be applied retroactively, and is therefore inapplicable to contracts entered into before May 8, 1978. Trident Technical College v. Lucas & Stubbs, Ltd. (S.C. 1985) 286 S.C. 98, 333 S.E.2d 781, certiorari denied 106 S.Ct. 803, 474 U.S. 1060, 88 L.Ed.2d 779. Alternative Dispute Resolution 114

**SECTION 15‑48‑220.** Mechanics liens not precluded.

 Nothing in this chapter shall preclude the filing and perfecting of a mechanics lien by any party to an arbitration agreement.

HISTORY: 1978 Act No. 492, Section 22.

LIBRARY REFERENCES

Westlaw Key Number Searches: 33k10.20; 257k5.

Arbitration 10.20.

Mechanics’ Liens 5.

C.J.S. Mechanics’ Liens Sections 5 to 6.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arbitration Section 3, Uniform Act Generally.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law: Contract Law. 38 S.C. L. Rev. 59 (Autumn 1986).

NOTES OF DECISIONS

In general 1

1. In general

Section 15‑48‑220 demonstrates a legislative intent to promote arbitration of contract disputes. Sentry Engineering and Const., Inc. v. Mariner’s Cay Development Corp. (S.C. 1985) 287 S.C. 346, 338 S.E.2d 631.

**SECTION 15‑48‑230.** Uniformity of interpretation.

 This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

HISTORY: 1978 Act No. 492, Section 23.

LIBRARY REFERENCES

Westlaw Key Number Search: 33k2.

Arbitration 2.

C.J.S. Arbitration Section 4.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arbitration Section 3, Uniform Act Generally.

**SECTION 15‑48‑240.** Short title.

 This chapter may be cited as the “Uniform Arbitration Act”.

HISTORY: 1978 Act No. 492, Section 24.

LIBRARY REFERENCES

Westlaw Key Number Search: 33k2.

Arbitration 2.

C.J.S. Arbitration Section 4.

RESEARCH REFERENCES

Encyclopedias

70 Am. Jur. Proof of Facts 3d 379, Proof that an Arbitration Clause in a Commercial Transaction Agreement is Properly Challenged as Inapplicable to or Unenforceable Against the Parties.

Treatises and Practice Aids

41 Causes of Action 2d 1, Cause of Action for Enforcement of Arbitration Clause in Long‑Term Care Agreement.