The Supreme Court of South Carolina

In the Matter of J. Redmond Coyle, Deceased.

ORDER

Pursuant to Rule 31, RLDE, of Rule 413, SCACR, Commission Counsel seeks an order appointing an attorney to take action as appropriate to protect the interests of Mr. Coyle and the interests of Mr. Coyle's clients.

IT IS ORDERED that Robert Scott Dover, Esquire, is hereby appointed to assume responsibility for Mr. Coyle's client files, trust account(s), escrow account(s), operating account(s), and any other law office accounts Mr. Coyle may have maintained. Mr. Dover shall take action as required by Rule 31, RLDE, to protect the interests of Mr. Coyle's clients and may make disbursements from Mr. Coyle's trust, escrow, and/or operating account(s) as are necessary to effectuate this appointment.

This Order, when served on any bank or other financial institution maintaining trust, escrow and/or operating account(s) of J.

Redmond Coyle, Esquire, shall serve as notice to the bank or other financial institution that Robert Scott Dover, Esquire, has been duly appointed by this Court.

Finally, this Order, when served on any office of the United States Postal Service, shall serve as notice that Robert Scott Dover, Esquire, has been duly appointed by this Court and has the authority to receive Mr. Coyle's mail and the authority to direct that Mr. Coyle's mail be delivered to Mr. Dover's office.

Mr. Dover's appointment shall be for a period of no longer than nine months unless an extension of the period of appointment is requested.

IT IS SO ORDERED.

s/ Jean H. Toal C.J.
FOR THE COURT

Columbia, South Carolina
February 4, 2010

The Supreme Court of South Carolina

In the Matter of Melvin R. Roberts, Deceased.

ORDER

Pursuant to Rule 31, RLDE, of Rule 413, SCACR, Commission Counsel seeks an order appointing an attorney to take action as appropriate to protect the interests of Mr. Roberts and the interests of Mr. Roberts' clients.

IT IS ORDERED that Daniel D. D'Agostino, Esquire, is hereby appointed to assume responsibility for Mr. Roberts' client files, trust account(s), escrow account(s), operating account(s), and any other law office accounts Mr. Roberts may have maintained. Mr. D'Agostino shall take action as required by Rule 31, RLDE, to protect the interests of Mr. Roberts' clients and may make disbursements from Mr. Roberts' trust, escrow, and/or operating account(s) as are necessary to effectuate this appointment.

This Order, when served on any bank or other financial institution maintaining trust, escrow and/or operating account(s) of Melvin L.

Roberts, Esquire, shall serve as notice to the bank or other financial institution that Daniel D. D'Agostino, Esquire, has been duly appointed by this Court.

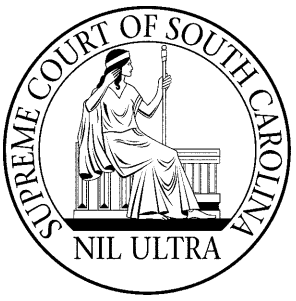
Finally, this Order, when served on any office of the United States Postal Service, shall serve as notice that Daniel D. D'Agostino, Esquire, has been duly appointed by this Court and has the authority to receive Mr. Roberts' mail and the authority to direct that Mr. Roberts' mail be delivered to Mr. D'Agostino's office.

Mr. D'Agostino's appointment shall be for a period of no longer than nine months unless an extension of the period of appointment is requested.

IT IS SO ORDERED.

s/ Jean H. Toal C.J.
FOR THE COURT

Columbia, South Carolina
February 5, 2010



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OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 6
February 8, 2010
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, Respondent,

v.

Garry L. Valentine, Appellant.

Appeal from Horry County
Steven H. John, Circuit Court Judge

Opinion No. 26765
Heard December 2, 2009 – Filed February 8, 2010

AFFIRMED

Appellate Defender M. Celia Robinson, of Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Salley W. Elliott, and Assistant Attorney General Deborah R.J. Shupe, all of Columbia, and John Gregory Hembree, of Conway, for Respondent.

JUSTICE PLEICONES: Appellant was tried *in absentia* and convicted of trafficking cocaine more than ten grams but less than twenty-

eight. Subsequently, appellant appeared and his sealed sentence was opened. The three-year sealed sentence was imposed without objection. On appeal, appellant contends the trial judge erred in admitting drug evidence because the chain of custody was deficient. We find no error, and affirm.

FACTS

The police took a Confidential Informant (C.I.), who had been searched, wired, and provided with marked bills, to the apartment complex where appellant lived. They observed the C.I. and appellant speak outside the building, then enter appellant's apartment which they had under surveillance. They then listened to, but did not observe, an alleged drug transaction between the C.I. and appellant. When the C.I. exited appellant's apartment about ten minutes later, the officers observed him as he walked through the apartment complex to a parking lot. He met the police there, and provided them with cocaine.

As soon as the C.I. began to leave the scene, officers approached appellant's apartment. When he refused to answer the door after they knocked, the officers forcibly entered the residence where they found only appellant present. Appellant was arrested, a search warrant was obtained, and a search of appellant's apartment led to discovery of the marked bills given to the C.I., drug paraphernalia, and marijuana.

At trial, appellant's attorney objected to the admissibility of the cocaine, arguing that the State's failure to call the C.I. rendered the chain of custody fatally incomplete. The trial judge disagreed.

ISSUE

> Whether the trial judge erred in admitting the cocaine because the State failed to prove a sufficient chain of custody?

ANALYSIS

Appellant readily concedes that the chain of custody from the time the C.I. gave the drugs to the first officer is unassailable. He contends, however, that the State's failure to present evidence from the C.I. renders the cocaine the C.I. allegedly purchased from appellant inadmissible, and that the trial judge therefore abused his discretion in admitting it. State v. Sweet, 374 S.C. 1, 647 S.E.2d 202 (2007). We disagree.

In Sweet, the State did not call the C.I. at trial nor did it present an affidavit from him. Furthermore, the State did not reveal his identity. In reversing, we held:

> In other words, the State simply did not present proof of the chain of custody as far as practicable. For these reasons, the informant's possession of the drug evidence may not be reduced to an issue of mere credibility based solely on the officer's knowledge of the informant's name.
>
> Although our courts have been willing to fill in gaps in the chain of custody where other evidence reasonably demonstrates the identity of each individual in the chain of custody and the manner of handling of the evidence, such circumstances are not present here.
>
> Sweet, 374 S.C. at 8-9, 647 S.E.2d at 207.

Unlike Sweet, in this case the identity of the C.I. was known to the appellant, and the defense was able to fully explore the C.I.'s criminal history, and the terms of the deal by which the C.I. arranged to buy drugs from appellant, the C.I.'s cousin. Moreover, whereas the C.I. in Sweet was permitted to travel to and from the transaction site in his personal automobile, the C.I. here was under direct police observation except during the

approximately ten minutes he was in the apartment and only under audio surveillance.

As we explained in Sweet, "Where other evidence establishes the identity of those who have handled the evidence and reasonably demonstrates the manner of handling the evidence, our courts have been willing to fill gaps in the chain of custody due to an absent witness." 374 S.C. at 7, 647 S.E.2d at 206 (internal citation omitted). Here, the State established the C.I.'s identity, and reasonably demonstrated the manner in which the cocaine was handled.

We find no abuse of discretion in the trial judge's decision to admit this cocaine. State v. Sweet, *supra*. Appellant's conviction and sentence are

AFFIRMED.

WALLER, ACTING CHIEF JUSTICE, BEATTY, KITTREDGE, JJ., and Acting Justice Howard P. King, concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Former
Lee County Magistrate Alston
Wesley Woodham, Respondent.

Opinion No. 26766
Submitted January 20, 2010 – Filed February 8, 2010

PUBLIC REPRIMAND

Lesley M. Coggiola, Disciplinary Counsel, and Joseph P. Turner, Jr., Assistant Disciplinary Counsel, both of Columbia, for Office of Disciplinary Counsel.

S. Bryan Doby, of Jennings and Jennings, PA, of Bishopville, for respondent.

PER CURIAM: In this judicial disciplinary matter, respondent and the Office of Disciplinary Counsel (ODC) have entered into an Agreement for Discipline by Consent (Agreement) pursuant to Rule 21, RJDE, Rule 502, SCACR. In the Agreement, respondent admits misconduct and consents to the imposition of a public reprimand pursuant to Rule 7(b), RJDE, Rule 502, SCACR.[1] The facts as set forth in the Agreement are as follows.

[1] Respondent resigned his magisterial position on October 16, 2009. Since respondent no longer holds judicial office, a public reprimand is the most severe sanction the Court can impose. See In re

FACTS

This matter was referred to ODC following an internal investigation at the Department of Public Safety (DPS). DPS had received information that State Transport police officers had been instructed through the chain of command to curtail or cease certain enforcement activity at the Lee County Landfill and to "nolle pros" or reduce tickets which had already been issued to county or municipal government trucks. Two State Transport officers also reported they had been approached by Lee County magistrates for "help" on tickets.

Respondent maintains he is contacted approximately five times per year by a legislator for help on tickets on behalf of constituents and that he, in turn, contacts the officers to see if help is available. Respondent also talks to officers if a violator calls and requests help on a ticket.

Respondent admits that, on one occasion, he was contacted by a county administrator regarding a weight ticket issued by the State Transport Police at the Lee County Landfill and that he approached the officer before court about the ticket. The officer declined to help, citing as the reason that the legislator had complained about the officer enforcing weight limits at the landfill. Respondent called the legislator about the officer's remark. The legislator responded that the only thing he had done was "call somebody in Columbia" about the weight tickets and told them (presumably the State Transport police) that they could write tickets anywhere in Lee County except at the entrance to the landfill.

Respondent acknowledges he was contacted by a county official for help on weight ticket W223647 and that he contacted the issuing officer. The officer told respondent to contact his supervisor;

O'Kelley, 361 S.C. 30, 603 S.E.2d 410 (2004); In re Gravely, 321 S.C. 235, 467 S.E.2d 924 (1996).

respondent contacted the officer's supervisor and the supervisor declined to intervene.

A State Transport police officer reported that he was contacted by respondent about help on weight ticket W210437 which had imposed a fine of $3,905.25. The officer stated he told respondent he could not help with the weight ticket, although he "didn't care" what respondent "did" with the ticket. Further, the officer reported that respondent asked the ticket be marked "not guilty" and the officer marked the ticket accordingly. Respondent informed ODC that he did not ask the officer for help on ticket W210437, but acknowledges that the trial officer's copy of the ticket indicates he was the presiding judge.

LAW

By his misconduct, respondent admits he has violated the following Canons of the Code of Judicial Conduct, Rule 501, SCACR: Canon 1 (judge shall uphold the integrity and independence of the judiciary); Canon 1A (judge should participate in establishing, maintaining, and enforcing high standards of conduct and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved); Canon 2 (judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities); Canon 2A (judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary); Canon 2B (judge shall not allow social, political or other relationships to influence the judge's judicial conduct or judgment; judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; judge shall not convey or permit others to convey the impression that they are in a special position to influence the judge); Canon 3 (judge shall perform the duties of judicial office impartially and diligently); and Canon 3(B)(7) (judge shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to judge outside the presence of the parties concerning a pending or impending proceeding). Respondent also admits his misconduct constitutes grounds for discipline pursuant to Rule 7(a)(1) (it shall be

ground for discipline for judge to violate the Code of Judicial Conduct) of Rule 502, SCACR.

We have already condemned the practice of ticket-fixing or attempted ticket-fixing by magistrates. In the Matter of White, 374 S.C. 372, 650 S.E.2d 73 (2007); In the Matter of English, 367 S.C. 297, 625 S.E.2d 919 (2006); In the Matter of Beckham, 365 S.C. 637, 620 S.E.2d 69 (2005). Ticket-fixing constitutes improper ex parte communication and severely undermines the public's confidence in a fair and impartial judicial system. Accordingly, again we emphasize that it is improper for a magistrate to engage in ex parte communications concerning any pending or impending judicial proceeding with an officer, alleged violator, or any third party, including a member of the legislature.

CONCLUSION

We accept the Agreement for Discipline by Consent and issue a public reprimand. Respondent shall not apply for, seek, or accept any judicial position whatsoever in this State without the prior express written authorization of this Court after due notice in writing on ODC of any petition seeking the Court's authorization. Respondent is hereby reprimanded for his misconduct.

PUBLIC REPRIMAND.

TOAL, C.J., PLEICONES, BEATTY, KITTREDGE and HEARN, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Greenville County Magistrate James E. Hudson, Respondent.

Opinion No. 26767
Submitted January 20, 2010 – February 8, 2010

DEFINITE SUSPENSION

Lesley M. Coggiola, Disciplinary Counsel, and Joseph P. Turner, Jr., Assistant Disciplinary Counsel, both of Columbia, for Office of Disciplinary Counsel.

Beattie B. Ashmore, Beattie B. Ashmore, PA, of Greenville.

PER CURIAM: In this judicial disciplinary matter, respondent and the Office of Disciplinary Counsel (ODC) have entered into an Agreement for Discipline by Consent pursuant to Rule 21, RJDE, Rule 502, SCACR. In the agreement, respondent admits misconduct and consents to the imposition of any sanction up to a ninety (90) days suspension pursuant to Rule 7(b), RJDE, Rule 502, SCACR. We accept the agreement and impose a ninety (90) day suspension, retroactive to September 11, 2009, the date of respondent's

interim suspension. The facts as set forth in the agreement are as follows.

FACTS

Respondent's clerk was arrested and charged with forgery and embezzlement in excess of $5,000.00. As a result, respondent relied on another staff member to reconcile his civil and criminal accounts. Respondent believed the accounts were being properly reconciled. Respondent has since learned the accounts were not properly reconciled in accordance with the South Carolina Supreme Court's Orders on Financial Accounting. In particular, respondent learned that, on a number of occasions, the deposit slip totals and daily deposit totals did not match, cash was removed from deposits and replaced with checks, checks were not always included on the daily deposit slip, and money and checks were not always promptly deposited. When respondent became aware of the financial discrepancies, he reported the matter for investigation.

Respondent submits he believed the reports were being properly reconciled because he was never contacted by anyone from the Treasurer's Office or the County Finance Office about the reports. Respondent is remorseful and realizes that, if he had taken a more pro-active role in reviewing the documentation regarding his accounts, he might have noticed the discrepancies sooner. Respondent submits that, in the future, he will be more involved in seeing that his office properly complies with the South Carolina Supreme Court's Orders on Financial Accounting.

LAW

By his misconduct, respondent admits he has violated the following Canons of the Code of Judicial Conduct: Canon 3 (judge shall perform the duties of judicial office diligently); Canon 3(C)(1) (judge shall diligently discharge his administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration and should cooperate with other judges and court officials in the administration of court business); and Canon

3(C)(2) (judge shall require staff to observe the standards of fidelity and diligence that apply to the judge). By violating the Code of Judicial Conduct, respondent admits he has violated Rule 7(a)(1) of the Rules for Judicial Disciplinary Enforcement, Rule 502, SCACR.

CONCLUSION

We find respondent's misconduct warrants a suspension from judicial office. We therefore accept the Agreement for Discipline by Consent and suspend respondent from his judicial duties for ninety (90) days, retroactive to September 11, 2009, the date of his interim suspension.

DEFINITE SUSPENSION.

TOAL, C.J., PLEICONES, BEATTY, KITTREDGE and HEARN, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Amos Keith Partain, Petitioner,

v.

Upstate Automotive Group, Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Anderson County
Perry M. Buckner, Circuit Court Judge

Opinion No. 26768
Heard November 5, 2009 – Filed February 8, 2010

REVERSED

W. N. Epps, Jr., and W. N. Epps, III, both of Epps, Nelson and Epps, of Anderson, for Petitioner.

Hannah Rogers Metcalfe and Troy A. Tessier, both of Wyche, Burgess, Freeman & Parham, of Greenville, and John C. Moylan, III, of Wyche, Burgess, Freeman & Parham, of Columbia, for Respondent.

PER CURIAM: In this case we consider whether a tort claim premised on an alleged "bait and switch" is subject to an arbitration clause. Because we find the alleged conduct was not within the contemplation of the parties when they entered into the agreement, we find that the arbitration clause does not apply and we reverse the Court of Appeals opinion to the contrary.

FACTS

In March 2006, Petitioner Amos Keith Partain met with Mikel Gadoran, an employee of Respondent Upstate Automotive Group (Upstate Auto) and discussed the purchase of a 2006 Nissan truck. After negotiations over the sale price, Gadoran phoned Partain and informed him that Gadoran's sales manager had authorized the sale at Partain's offered price. Shortly thereafter, Partain visited Upstate Auto for a test drive. Days later Partain received a phone call from Gadoran telling him that he could come pick up the truck.

Partain returned to Upstate Auto where he completed paperwork and Upstate Auto employees walked him through the "vehicle introduction" process with a Nissan truck. During the "vehicle introduction" Partain noticed that a truck bed extension previously affixed to the truck was missing. Upstate Auto employees explained that the extension had been removed but would be reinserted. Partain drove the truck home and eventually came to the conclusion that the truck was not the same vehicle he had negotiated to buy or taken for a test drive at Upstate Auto.

Partain filed suit against Upstate Auto alleging that he had been the victim of a "bait and switch" in violation of the South Carolina Unfair Trade Practices Act. Consequently, Partain alleged he was entitled to three times his actual damages plus interest, costs, and attorney’s fees. Upstate Auto asserted three affirmative defenses in its Answer, including an arbitration agreement with Partain. Based on the arbitration agreement, Upstate Auto moved to dismiss Partain's claim. The circuit court denied Upstate Auto's

Motion to Dismiss and Motion for Reconsideration. Upstate Auto appealed and the Court of Appeals reversed. Partain v. Upstate Automotive Group, 378 S.C. 152, 662 S.E.2d 426 (Ct. App. 2008). This Court granted certiorari. We now reverse the Court of Appeals.

STANDARD OF REVIEW

The question of arbitrability of a claim is an issue for judicial determination unless the parties provide otherwise. See Zabinski v. Bright Acres Associates, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001). The determination whether a claim is subject to arbitration is subject to de novo review. See Gissel v. Hart, 382 S.C. 235, 240, 676 S.E.2d 320, 323 (2009). Nevertheless, a circuit court's factual findings will not be reversed on appeal if any evidence reasonably supports the findings. See Aiken v. World Fin. Corp. of South Carolina, 373 S.C. 144, 148, 644 S.E.2d 705, 707 (2007).

ISSUES

Partain raises the following issues on certiorari:

I. Did the Court of Appeals err in holding that a "significant relationship" exists between Partain's Complaint and the contract between Partain and Upstate Auto?

II. Did the Court of Appeals err in holding that Upstate Auto's alleged conduct does not constitute "illegal and outrageous acts" unforeseeable to a reasonable consumer in the context of normal business dealings?

DISCUSSION

I. Did the Court of Appeals err in finding a "significant relationship" between Partain's claim and the contract?

The policy of the United States and of South Carolina is to favor arbitration of disputes. Zabinski, 346 S.C. at 596, 553 S.E.2d at 118. Unless a court can say with positive assurance that the arbitration clause is not susceptible to any interpretation that covers the dispute, arbitration should generally be ordered. Aiken, 373 S.C. at 149, 644 S.E.2d at 708, citing Zabinski, 346 S.C. at 596-97, 553 S.E.2d at 118-19. Regardless of the label the plaintiff uses, when deciding whether an arbitration agreement encompasses a dispute, a court must determine whether the factual allegations underlying the claim are within the scope of the broad arbitration clause. Zabinski, 346 S.C. at 597, 553 S.E.2d at 118. Moreover, even if the court finds that a claim is outside of the scope of the arbitration clause, the clause may still apply. "A broadly-worded arbitration clause applies to disputes that do not arise under the governing contract when a 'significant relationship' exists between the asserted claims and the contract in which the arbitration clause is contained." Zabrinksi, 346 S.C. at 598, 553 S.E.2d at 119, citing Long v. Silver, 248 F.3d 309 (4th Cir. 2001). Thus, a claim falls within the scope of an arbitration clause if it is encompassed by the language of the clause or if a "significant relationship" exists between the claim and the contract.

Apparently, the Court of Appeals found that the claim is not within the scope of the arbitration agreement as it proceeded directly to finding a "significant relationship" between Partain's claim and the contract. Because we find that the factual allegations underlying Partain's claim are encompassed by the terms of the arbitration clause, we need not reach the "significant relationship" question. Nevertheless, while we disagree with the reasoning of the Court of Appeals, we agree that, at least on its face, the arbitration clause applies.

The arbitration clause in the contract for sale between Partain and Upstate Auto provides in relevant part:

> Buyer/Lessee acknowledges and agrees that all claims, demands, disputes, or controversies of every kind or nature that may arise between them concerning any of the negotiations leading to the

> sale, lease or financing of the vehicle terms and provisions of the sale, lease or financing shall be settled by binding arbitration conducted pursuant to the provision[s] of 9 U.S.C. section 1, et. [s]eq. and according to the Commerical Rules of the American Arbitration Association[.] Without limiting the generality of the forgoing, it is the intention of the buyer/lessee and the dealer to resolve by binding arbitration all disputes between them concerning the vehicle its sale, lease or financing and its condition including disputes concerning the terms and condition of the sale, lease or financing, the condition of the vehicle, any damage to the vehicle, the terms and meaning of any of the documents signed or given in connection with the sale, lease or financing, any representations, promises, or omissions made in connection with the negotiations for the sale, lease or financing, credit life insurance, disability insurance and vehicle extended warranty or service contract purchased or obtained in connection with the vehicle.

Partain's complaint alleges that, upon completion of the sale, Upstate Auto presented a truck to him that "was not the same truck that [Partain] had test driven . . . and was not the same truck that he had negotiated to buy . . . ." His claim is therefore encompassed by the following language: "Buyer/Lessee acknowledges and agrees that all claims, demands, disputes, or controversies of every kind or nature that may arise between them concerning any of the negotiations leading to the sale . . . of the vehicle and provisions of the sale . . . shall be settled by binding arbitration . . . ." Consequently, the factual allegations underlying Partain's claim fall within the language of the arbitration clause and the Court of Appeals did not err in finding a "significant relationship" between the contract and Partain's claim.

II. Did the Court of Appeals err in holding that Upstate Auto's alleged conduct does not constitute "illegal and outrageous acts" unforeseeable to a reasonable consumer in the context of normal business dealings?

Partain argues that even if his claim is encompassed by language of the arbitration clause, the clause does not apply because the alleged actions of Upstate Auto constitute "illegal and outrageous acts" unforeseeable to a reasonable consumer in the context of normal business dealings. We agree.

In Aiken, a majority of this Court noted that, "[b]ecause even the most broadly-worded arbitration agreements still have limits founded in general principles of contract law, this Court will refuse to interpret any arbitration agreement as applying to outrageous torts that are unforeseeable to a reasonable consumer in the context of normal business dealings." Aiken, 373 S.C. at 151, 644 S.E.2d at 709. The Court provided that it did not seek to exclude all intentional torts from the scope of arbitration, but only "those outrageous torts, which although factually related to the performance of the contract, are legally distinct from the contractual relationship between the parties." Id. at 152, 644 S.E.2d at 709. After all, arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed to submit. Aiken, 373 S.C. at 149, 644 S.E.2d at 708, citing Zabinski, 346 S.C. at 596-97, 553 S.E.2d at 118-19.

Aiken involved a tort action based on the theft of the plaintiff's personal information by employees of a consumer finance company. Id. at 146, 644 S.E.2d at 706. The company sought to enforce a broadly-worded arbitration clause to which plaintiff had agreed in applying for a loan. Id. at 147, 644 S.E.2d at 707. The plaintiff submitted the information in applying for loans and paid off the last of the loans in 2000. Id. at 146, 644 S.E.2d at 707. The misuse forming the basis for the claim occurred over two years later. Id. at 147, 644 S.E.2d at 707. This Court held that the theft of personal information was "outrageous conduct that [plaintiff] could not possibly have foreseen when he agreed to do business with [finance company]." Id. at 151, 644 S.E.2d at 709. Consequently, the plaintiff could not have intended to submit the dispute to arbitration. Id.

We find this case is controlled by Aiken. Partain cannot be held to have foreseen that Upstate Auto, after completing a sale, would substitute an

entirely different vehicle in place of the truck he had agreed to purchase.[1] Moreover, Partain cannot be held to have contemplated that, in signing the arbitration clause, he was agreeing to arbitrate claims arising from allegedly fraudulent conduct. We therefore disagree with the Court of Appeals holding that the conduct alleged by Partain does not meet the Aiken standard.

We emphasize that this case should not be read as providing an "end-run" around arbitration clauses. Where parties have contractually agreed to arbitrate a claim, a party may not escape its commitment simply by presenting his claim as a tort. Only where the claim presented was clearly not within the contemplation of the parties will a court decline to enforce an otherwise proper arbitration agreement.

CONCLUSION

Though the terms of the arbitration clause may be interpreted to encompass Partain's claim we find that the parties did not intend to submit the alleged "bait and switch" to arbitration. We therefore reverse the Court of Appeals.

WALLER, ACTING CHIEF JUSTICE, PLEICONES, BEATTY, KITTREDGE, JJ., and Acting Justice James E. Moore, concur.

[1] Though the circuit court did not address the Aiken standard, it found that Partain could not have reasonably foreseen the alleged tortious conduct.

The Supreme Court of South Carolina

In the Matter of Brian D. Coker, Respondent.

ORDER

The Office of Disciplinary Counsel has filed a petition asking this Court to place respondent on interim suspension pursuant to Rule 17(b), RLDE, Rule 413, SCACR. Respondent consents to the issuance of an order of interim suspension in this matter.

IT IS ORDERED that respondent's license to practice law in this state is suspended until further order of the Court.

s/ Jean H. Toal C. J.
FOR THE COURT

Columbia, South Carolina
February 3, 2010

The Supreme Court of South Carolina

In the Matter of Michael James Sarratt, Respondent.

ORDER

The Office of Disciplinary Counsel asks this Court to place respondent on interim suspension pursuant to Rule 17(b), RLDE, Rule 413, SCACR. The petition also seeks appointment of an attorney to protect the interests of respondent's clients pursuant to Rule 31, RLDE, Rule 413, SCACR.

IT IS ORDERED that respondent's license to practice law in this state is suspended until further order of this Court.

IT IS FURTHER ORDERED that Carlos Johnson, Esquire, is hereby appointed to assume responsibility for respondent's client files, trust account(s), escrow account(s), operating account(s), and any other law office accounts respondent may maintain. Mr. Johnson shall take action as required by Rule 31, RLDE, Rule 413, SCACR, to protect the interests of respondent's clients. Mr. Johnson may make disbursements from

respondent's trust account(s), escrow account(s), operating account(s), and any other law office accounts respondent may maintain that are necessary to effectuate this appointment.

This Order, when served on any bank or other financial institution maintaining trust, escrow and/or operating account(s) of respondent, shall serve as an injunction to prevent respondent from making withdrawals from the account(s) and shall further serve as notice to the bank or other financial institution that Carlos Johnson, Esquire, has been duly appointed by this Court.

Finally, this Order, when served on any office of the United States Postal Service, shall serve as notice that Carlos Johnson, Esquire, has been duly appointed by this Court and has the authority to receive respondent's mail and the authority to direct that respondent's mail be delivered to Mr. Johnson's office.

Mr. Johnson's appointment shall be for a period of no longer than nine months unless an extension of the period of appointment is requested.

s/ Jean H. Toal C. J.

s/ Donald W. Beatty J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

Pleicones, J., not participating

Columbia, South Carolina
February 4, 2010