

Case No. 24-300

**HEARTLAND LEASING CO., LLC d/b/a BECKLEY HEALTHCARE CENTER,
WV LT CARE OP. CO., LLC,
HEALTH CARE FACILITY MANAGEMENT, LLC,
COMMUNICARE HEALTH SERVICES, INC.**
Defendants Below and Petitioners

v.

**STEPHEN VANDALL, as Administrator of the
Estate of KATHRYN SHUMAKER**
Plaintiff Below and Respondent

REPLY BRIEF OF PETITIONERS

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ARGUMENT

A straightforward application of the Federal Arbitration Act (FAA) and its severability rule makes quick work of this case. Mr. Vandall did not contest the Arbitration Agreement’s delegation provision, so it is presumed valid, irrevocable, and enforceable, and any challenge to the agreement *as a whole* must go to arbitration. To avoid this result, Mr. Vandall argues this is a case under Section 4 of the FAA over the “making of an arbitration agreement.” This argument was never raised, but regardless, it is irrelevant to the question before this Court. The Facility presented more than sufficient evidence it reasonably relied on Mr. Vandall’s apparent authority to sign the Arbitration Agreement, and Mr. Vandall failed to rebut it. This Court should, therefore, reverse the circuit court’s decision and direct entry of an order compelling arbitration.

1. The Arbitration Agreement’s delegation provision was left uncontested, so it is presumed valid and must be enforced.

To begin, Mr. Vandall twice failed to acknowledge—let alone sever—his challenge to the Arbitration Agreement’s delegation provision. Mr. Vandall’s response does not rebut this, so the Facility need not re-hash the fundamentals of delegation provisions and their severability. Worth addressing, however, is Mr. Vandall’s argument that delegation provisions fail if the “very existence” of an underlying agreement is disputed. This is wrong, and it misinterprets the clear-and-unmistakable standard applicable to delegation.

In broad terms, the clear-and-unmistakable standard forbids a presumption that parties “agreed to arbitrate arbitrability unless there is clear and unmistakable evidence that

they did so.” *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 944 (1995). Specifically, the standard is triggered when there is “silence” or genuine “ambiguity” about delegation in the agreement. *Id.* at 945. And it prohibits reading an agreement to arbitrate arbitrability into those gaps. *Id.* Here, Mr. Vandall does not—and cannot—argue the Arbitration Agreement is silent on delegation. Nor that its scope is ambiguous. *See* JA_053.

The clear-and-unmistakable standard is not, as Mr. Vandall suggests, triggered by a wholesale challenge to an arbitration agreement. For one, this position short-circuits application of the severability rule to delegation provisions. For another, it omits West Virginia precedent that expressly permits delegation of “validity, revocability, or enforceability” challenges “under general state contract law.” *Schumacher Homes of Circleville, Inc. v. Spencer (Schumacher II)*, 787 S.E.2d 650, 654 (W. Va. 2016). Even more, Mr. Vandall relies on two Supreme Court cases to support his position—*Steelworkers v. American Mfg. Co.*, 363 U.S. 564 (1960) and *AT&T Technologies, Inc. v. CWA*, 475 U.S. 643 (1986). But neither case does.

To begin, in *Steelworkers*, a bargaining agreement delegated *all* issues of contract interpretation to an arbitrator, so it was enforced. 363 U.S. at 568. The Court reasoned that when faced with such a broad delegation provision, courts have “no business weighing the merits” or “equity in a particular claim,” or whether “the written instrument will support the claim.” *Id.* Next, in *AT&T*, a collective bargaining agreement was ambiguous on whether it delegated certain labor disputes, so it was rejected. 475 U.S. 651. But important here, the Court echoed the same principle from *Steelworkers*—if a contract or delegation

clause assigns a matter to arbitration, “a court may not resolve the merits of a dispute even if the court thinks that a party’s claim on the merits is frivolous.” *Id.* at 649–50.

Put simply, a court cannot use the merits of a dispute to reject arbitration agreements. This equally applies to delegation provisions and the merits of arbitrability, too. *See Henry Schein, Inc. v. Archer and White Sales, Inc.*, 586 U.S. 63, 70 (2019). But here, that is precisely what happened—the circuit court “skipped the appetizer and began gobbling up the main course.” *Smith Wilson Co. v. Trading and Dev. Estab.*, 744 F. Supp. 14, 18 (D.D.C. 1990). And so, Mr. Vandall’s argument regarding his authority is immaterial to the preliminary question of “who decides.”

All told, this Court’s inquiry can end here. Mr. Vandall did not specifically challenge the delegation provision below, and therefore, this Court must treat it as valid under Section 2 of the FAA. *See Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 70 (2010). Mr. Vandall’s position that a challenge to the underlying agreement destroys its delegation clause finds no support in law. This Court should, therefore, reverse the circuit court and direct entry of an order compelling arbitration.

2. The Court should reject Mr. Vandall’s formation challenge under Section 4 of the FAA because it was not raised below and is unsupported by evidence.

Mr. Vandall makes much ado about a new section of the FAA—Section 4. He now asks this court to re-label this action as a dispute over the “making of an arbitration agreement.” 9 U.S.C. § 4. But Mr. Vandall failed to raise this argument below or even cite Section 4 in his earlier briefing. This Court should, therefore, consider this argument waived. But regardless, the argument fails.

a. *Regardless of how Mr. Vandall frames his challenge, the delegation provision and the severability rule are still dispositive.*

Mr. Vandall’s use of Section 4 of the FAA is only an attempt to side-step the severability rule. But even re-labeling Mr. Vandall’s challenge to the Arbitration Agreement as one of “contract formation” has no effect on the delegation provision. The text of the FAA does *not* prevent parties from arbitrating and delegating matters of contract formation. And so, Mr. Vandall’s reliance on Section 4 doesn’t change the outcome here. If anything, the severability rule may require a court to determine that “the making of the” delegation clause *itself* “is not in issue.” 9 U.S.C. § 4. But without a challenge to the delegation clause *specifically*—whether contract formation or otherwise—the court must still enforce the delegation provision. In the end, no matter how Mr. Vandall labels his challenge, it can only apply to the Arbitration Agreement because he never addressed the delegation clause.

In other cases, a defect in contract formation may infect a contract, arbitration agreement, and delegation clause “equally.” *Rent-A-Ctr.*, 561 U.S. at 71. For instance, a party might allege “fraud in the inducement of the contract,” which taints the contract and all its components. *See Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 400 (1967). But even then, the party resisting arbitration must direct “the basis of challenge” “specifically” to the arbitration provision sought to be enforced. *Rent-A-Ctr.*, 561 U.S. at 71. Thus, unless the party resisting delegation articulates a specific challenge to the delegation clause, the court should enforce it.

All things considered, first in *Prima Paint* and then emphatically in *Rent-A-Center*, the Supreme Court told courts not to revise a challenge and apply it to other parts of a contract if the challenge was not first directed at the specific arbitration provision to be enforced. *Rent-A-Ctr.*, 561 U.S. at 71; *Prima Paint*, 388 U.S. at 403–04. And later the Supreme Court confirmed—in the context of nursing home arbitration agreements— that the FAA's fundamental rules apply to “contract formation issues,” too. *Kindred Nursing Centers Ltd. Partn. v. Clark*, 581 U.S. 246, 254 (2017).

This aligns with the FAA's strict pleading requirement—that a party must formally explain why the challenge applies to the specific arbitration provision to be enforced—and it also reflects the FAA's text, which is uncompromising. *See* 9 U.S.C. §§2, 4. Under the FAA, courts “shall hear the parties,” and may resolve an issue regarding “the making of the agreement for arbitration,” but only where “such an issue *is raised.*” *Id.* § 4 (emphasis added). Thus, if a party does not explicitly articulate a challenge to the “the making of the agreement for arbitration,” under Section 4, the FAA's severability rule does not permit a party to later rely on it. *Id.* The Court should, therefore, reverse the circuit court and direct entry of an order compelling arbitration.

b. *The distinction between void and voidable contracts is immaterial.*

Mr. Vandall claims there is a distinction between a challenge to a contract's validity and its formation—the former rendering a contract voidable, and the latter void. Resp. at 6. And the circuit court, Mr. Vandall argues, “was required to utilize state law contract principles to decide whether the parties formed an agreement to arbitration.” *Id.* Not so.

The Supreme Court considered and rejected this exact argument in *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 446 (2006). There, the Florida Supreme Court “relied on the distinction between void and voidable contracts” to conclude that its state contract laws did not permit severability “of a contract found illegal and void under Florida law.” *Id.* The Supreme Court reversed because “*Prima Paint* makes this conclusion irrelevant.” *Id.*

To start, the Court noted that *Prima Paint* “rejected application of state severability rules to the arbitration agreement *without discussing* whether the challenge at issue would have rendered the contract void or voidable.” *Id.* (emphasis original). Even more, the Court noted it previously declined to consider whether challenges to an arbitration agreement “would render the contract void or voidable.” *Id.* In the end, the Court “simply rejected the proposition that enforceability of the arbitration agreement turned on” state contract law. *Id.*

In the end, *Buckeye Check Cashing* ultimately affirmed, once again, that “because respondents challenge the Agreement, but not specifically its arbitration provisions, those provisions are enforceable apart from the remainder of the contract. The challenge should therefore be considered by an arbitrator, not a court.” *Id.*

But even if the void-voidable distinction were relevant to the delegation provision (it’s not), the Eleventh Circuit addressed this distinction in the context of apparent authority, and this Court should adopt its analysis. See *Landcastle Acq. Corp. v. Renasant Bank*, 57 F.4th 1203 (11th Cir. 2023).

In particular, the *Landcastle* decision established that if an agent without authority signs a written contract on behalf of a principal, the resulting contract is “voidable” by the principal—not “void.” 2A C.J.S. Agency § 163 (Nov. 2022 Update) (“Acts or transactions in excess of the agent’s authority ordinarily do not bind the principal, subject to ratification by the principal, and are generally voidable but not void.”); *id.* § 56 (same); 3 Am. Jur. 2d Agency § 164 (2d ed. & Nov. 2022 Update) (explaining that an agent’s execution of a contract “that exceeds the scope of the agency” is “merely voidable, not void,” and that “without the principal’s subsequent ratification, the contract must be set aside”). These principles cut directly against Mr. Vandall’s argument that the Arbitration Agreement is “void,” and therefore, the delegation provision is, too.

All things considered, any distinction between void and voidable contracts does not support Mr. Vandall’s position—it hurts it. The Facility has continuously maintained that basic agency principles govern this action and demand a ruling in the Facility’s favor. And this Court should agree.

c. Mr. Vandall’s blanket assertions on his authority did not properly place the “making of an arbitration agreement” in issue.

Mr. Vandall’s wholesale challenge to formation doesn’t work, regardless. All told, he offers only blanket assertions that he lacked authority, and this fails to satisfy the standard required to put “the making of an arbitration agreement” in issue. 9 U.S.C. § 4.

Where the formation of an arbitration agreement is disputed, a motion to compel arbitration is treated as one for summary judgment. *Berkeley Cty. Sch. Dist. v. Hub Int’l Ltd.*, 944 F.3d 225, 234 (4th Cir. 2019) (“To decide whether ‘sufficient facts’ support a party’s

denial of an agreement to arbitrate, the district court is obliged to employ a standard such as the summary judgment test.”); *see also Chorley Enters. v. Dickey’s Barbecue Rests.*, 807 F.3d 553, 564 (4th Cir. 2015) (“This standard is akin to the burden on summary judgment.”).

A party opposing summary judgment must “do more than simply show that there is some metaphysical doubt as to the material facts.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). Moreover, a court may rely only on facts supported in the record, not simply assertions in the pleadings. *Bouchat v. Balt. Ravens Football Club Inc.*, 346 F.3d 514, 522 (4th Cir. 2003). This is because a dispute of material fact is “genuine” only if sufficient evidence favoring the nonmoving party exists. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248–49 (1986). Accordingly, “if the party seeking arbitration”—like the Facility—“has substantiated the entitlement by showing of evidentiary facts, the party opposing may not rest on a denial but must submit evidentiary facts showing that there is a dispute of fact to be tried.” *Oppenheimer & Co. v. Neidhardt*, 56 F.3d 352, 358 (2d Cir. 1995), *cited by Chorley Enters.*, 807 F.3d at 564. Where a moving party, for example, presents evidence that an arbitration agreement was emailed, the burden shifts to the non-moving party to present evidence rebutting the presumption of receipt, and a “general denial” is insufficient to sustain the non-moving party’s burden. *Hughes v. Charter Commc’ns Inc.*, No. 3:19-CV-01703, 2020 WL 1025687 (D.S.C. Mar. 2, 2020).

To be sure, Mr. Vandall’s responses acknowledge the evidentiary burden demanded of him. *See e.g.*, Resp. at 8 (“the court is obliged to conduct a factual inquiry when a party

unequivocally denies ‘that an arbitration agreement exists,’ and ‘*show[s] sufficient facts in support thereof.*’ (citing *Chorley Enters.*, 807 F.3d at 564)) (emphasis supplied).

Here, the Facility offered a plethora of evidence to the circuit court to show apparent authority, including “statements, conduct, lack of ordinary care, or other manifestations of the principal’s consent.” *Clint Hurt & Assoc., v. Rare Earth Energy*, 480 S.E.2d 529, 536 (W. Va. 1996). In total, the Facility presented: four medical assessments indicating Ms. Shumaker had decision making capacity, one affidavit from the Admissions Coordinator who completed Ms. Shumaker’s admission, two certifications from Mr. Vandall that he was authorized to act on his mother’s behalf, *and* twelve contracts signed by Mr. Vandall affecting his mother’s legal, financial, privacy, and medical rights.

In response, Mr. Vandall submitted two documents: the Arbitration Agreement and a health care surrogate form completed weeks after the Arbitration Agreement was signed. He offered no evidence to dispute the affidavit of Admissions Coordinator, nor an affidavit of his own. Mr. Vandall persists, however, in making an argument that he did not have authority to sign and enter the Arbitration Agreement on his mother’s behalf. And he does so without offering even a modicum of evidence to support that conclusion.

Instead, the evidence supports the Facility’s reliance on Mr. Vandall’s affirmative representation—which he now disclaims—that he had “the authorization to sign on behalf of” his mother “by virtue of...*informal agreement* between” the two. JA_51–55. The Court should, therefore, reverse the circuit court and direct entry of an order compelling arbitration.

3. Mr. Vandall failed to rebut evidence supporting the Facility’s reasonable reliance on his apparent authority.

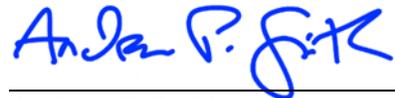
Two things are “clear” to Mr. Vandall. Resp. at 7. First, the arbitration agreement is riddled by a “disputed question of material fact” over his authority. *Id.* And second, there is “no evidence” of his authority “apart from ... a self-serving squib.” *Id.* at 14. To the Facility, that is clear as mud.

Mr. Vandall cannot have it both ways—to rely on “disputed evidence” of authority and argue there is “no evidence” of authority. Mr. Vandall did not rebut—nor produce—*any* evidence beyond general denials of authority in his briefing. Nor did he address the Facility’s arguments involving this Court’s precedent on arbitration agreements between nursing facilities and a resident’s caretaker. He had every opportunity to tell the court what transpired with his mother that day—he chose not to.

CONCLUSION

Put simply, when Ms. Shumaker arrived at Beckley Healthcare Center, she was of sound and capable mind to enter an agency relationship. She did so, and her son, Stephen Vandall, signed an Arbitration Agreement as her agent. The Facility reasonably relied on Mr. Vandall’s apparent authority, and therefore, the Arbitration Agreement is valid and enforceable. But even so, this Court doesn’t have to decide whether Mr. Vandall was his mother’s agent because the Arbitration Agreement contained an uncontested delegation provision, which delegated all gateway issues of enforceability to an arbitrator or three-person arbitration panel. This Court should, therefore, reverse the circuit court’s decision and direct entry of an order compelling arbitration.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

A copy of the foregoing “*Reply Brief of Petitioners*” was served upon the following counsel of record this 23rd day of October 2024 through the File & ServeXpress electronic filing system and email:

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