

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-234

Filed 19 August 2026

Durham County, No. 23CVS003271-310

SNIPES CONCRETE AND HAULING, LLC, Plaintiff,

v.

BC CONSTRUCTION GROUP, INC., and TRAVELERS CASUALTY AND SURETY
COMPANY OF AMERICA, Defendants.

Appeal by defendant from order entered 23 May 2024 by Judge L. Lamont
Wiggins in Superior Court, Durham County. Heard in the Court of Appeals 9
September 2025.

*Anderson Jones, PLLC, by Lindsey E. Powell and Todd A. Jones, for plaintiff-
appellee.*

*Conner Gwyn Schenck PLLC, by Andrew L. Chapin and Daniel C. Watts, for
defendant-appellant.*

STROUD, Judge.

Defendant BC Construction Group, Inc. (BCCG) appeals an order compelling arbitration in North Carolina rather than in Michigan, the forum the parties' contract designates. Because the contract involves interstate commerce, the Federal Arbitration Act (FAA) applies and preempts North Carolina General Statute Section 22B-2. BCCG was therefore entitled to enforce the arbitration agreement as written, including its forum-selection clause. We reverse and remand.

I. Background

On 11 December 2023, Plaintiff Snipes Concrete and Hauling, LLC (Snipes), a North Carolina limited liability company, filed an amended complaint against BCCG; Kestrel Heights Facilities, LLC (Kestrel); and Corporation for Effective Schooling (CES).¹ BCCG is a “foreign corporation organized and existing under the laws of the State of Michigan” and is “authorized to do business in North Carolina.” Snipes alleged that Defendants Kestrel and CES (collectively, Owners) owned real property in Durham, North Carolina known as Kestrel Heights Charter School (Property or Project). BCCG, a construction company, entered into a contract with Owners to “serve as the general contractor for” the Property’s “construction or improvement.” Snipes entered into a subcontract (Contract) with BCCG to “provide labor, equipment, and materials” for concrete work on the Project, which included the installation of footings, floor slabs, and walls.

Snipes alleged that it performed its duties under the Contract but that BCCG failed to pay in full for the work, despite Snipes’s “repeated payment demands.” It further claimed that BCCG owed over \$108,000 under the Contract. Snipes asserted claims of breach of contract and, in the alternative, unjust enrichment or quantum meruit against all Defendants. It also sought interest from BCCG at the rate of 1%

¹ Snipes simultaneously filed a dismissal of Defendants Kestrel and CES. BCCG consented to the amendment of the complaint. The amended complaint added Travelers Casualty and Surety Company of America as a Defendant.

per month under the North Carolina Prompt Pay Act, *see* N.C. Gen. Stat. § 22C-5 (2025), and asserted a claim on the lien discharge bond and a claim for attorney's fees against BCCG and Defendant Travelers Casualty and Surety Company of America (Travelers).

On 5 February 2024, BCCG filed a motion to dismiss or, in the alternative, a motion to stay litigation and compel arbitration. BCCG alleged that the Contract between it and Snipes included the following arbitration provision:

Arbitration. The parties agree that all claims, disputes, and other matters arising out of or relating to this Subcontract shall be decided by binding arbitration pursuant to the Construction Industry Arbitration Rules of the American Arbitration Association. The arbitration shall be conducted in Brighton: Livingston County, Michigan. The arbitrator shall have the right to award reasonable attorney's fees to the prevailing party as well as taxation of the costs of the arbitration as part of the award. However, in the event of any dispute between Subcontractor and Contractor arising under or relating to this Subcontract, or the breach thereof, which in Contractor's judgment involves the correlative rights and duties of Owner or its agents, the dispute shall be decided in accordance with the Contract Documents, and Subcontractor and its sureties shall be bound to any decisions or determination made by an authorized person, board, court, or other tribunal. In Contractor's sole discretion, any arbitration or litigation between Contractor and Subcontractor under this Subcontract may be joined with and consolidated into any arbitration or litigation between the Owner and Contractor, and such arbitration or litigation shall bind Contractor and Subcontractor.

BCCG alleged that Snipes’s claims were subject to binding arbitration under the Contract and requested that Snipes’s complaint be dismissed or, in the alternative, stayed under Title 9 United States Code Section 4—*i.e.*, the FAA—and North Carolina General Statutes Sections 1-569.5 and 1-569.7, with arbitration compelled in accord with the Contract.

On 10 May 2024, Snipes filed the affidavit of Jordan Snipes—its vice president—in opposition to BCCG’s motion. Mr. Snipes averred that the Project was located entirely in North Carolina and that one of the Project’s Owners, Kestrel, was a limited liability company organized in North Carolina. His affidavit also stated that Snipes had (1) “received, reviewed, and executed” the Contract in North Carolina, (2) “performed all labor exclusively in North Carolina,” (3) “supplied all equipment” and “materials exclusively” in North Carolina, and (4) “sourced” all the materials it supplied from North Carolina entities. He further averred that all the laborers Snipes hired or contracted were residents of North Carolina, and they were hired to work on the Project site. No materials or personnel on the Project ever left North Carolina, and every permit, inspection, and other compliance activity was done or obtained in North Carolina. Mr. Snipes also averred that BCCG “holds itself out as having” offices in Raleigh and Charlotte, North Carolina. And he stated that Snipes “never contemplated that the performance of the [Contract] would involve multiple states.” A copy of the Contract was attached to the affidavit.

On 13 May 2024, BCCG filed the affidavit of Heather Watkins, its Director of

Accounting. Her affidavit stated that BCCG is a Michigan corporation with its primary office in Brighton, Michigan. Ms. Watkins averred that BCCG is a licensed general contractor in several states, including North Carolina, and it served as the general contractor for the Project in Durham, North Carolina. She further asserted that “[m]uch of the preconstruction and design work” occurred outside of North Carolina, including in Michigan, and that “[a]ll bookkeeping and accounting records” for the project were kept in Michigan. And she stated that Snipes submitted its payment applications and invoices to BCCG in Michigan. Attached to the affidavit were the Contract, which BCCG’s vice-president executed in Michigan, and a Certificate of Insurance for the Project, which was provided to BCCG at its Michigan address.

On 14 May 2024, the trial court held a hearing on BCCG’s motion to dismiss or, in the alternative, to stay litigation and compel arbitration. The trial court considered the affidavits submitted by Snipes and BCCG. At the hearing, the parties stipulated that there was “an enforceable arbitration agreement between the parties and the scope of the disputes is covered by the arbitration agreement.” The parties also agreed that the issue in dispute was “the venue of that arbitration.” BCCG argued that the arbitration provision was binding and enforceable as written, and that the FAA applied because “the contract in question evidences a transaction involving interstate commerce.” Snipes argued that the Contract was performed entirely in North Carolina, so (1) the FAA would not preempt North Carolina General

Statute Section 22B-2, *see* N.C. Gen. Stat. § 22B-2 (2025) (Contracts to improve real property), and (2) the arbitration should be held in North Carolina instead of Michigan. In short, the only disputed issue at the hearing was whether the Contract “involved interstate commerce” as contemplated by the FAA.

On 28 May 2024, the trial court entered an Amended Order Staying Litigation and Compelling Arbitration (Order).² In the Order, the trial court did not separate its findings of fact from its conclusions of law. Instead, the findings, conclusions, and decree appear under a single section beginning: “Now, therefore, the court finds and orders as follows.” (Capitalization altered.) The Order granted BCCG’s motion to stay litigation and compel arbitration but required the arbitration to be held in North Carolina instead of Michigan.

The trial court made findings of fact about the Contract and the Project generally consistent with Mr. Snipes’s affidavit. Although BCCG is a Michigan company, it specifically found that it was “adopt[ing] the recital of . . . Snipes that the project that is the subject of th[e] action is wholly contained within North Carolina

² The trial court entered an initial Order Staying Litigation and Compelling Arbitration on 21 May 2024. The reason for the Amended Order Staying Litigation and Compelling Arbitration is not apparent in our record, but the initial order and the amended order are identical except for the filing dates. The notice of appeal is timely as to either order. *See Assoc. Behav. Servs., Inc. v. Smith*, 264 N.C. App. 277, 279, 826 S.E.2d 214, 216 (2019) (noting that our Rules of Appellate Procedure “require[] that parties to a civil action file and serve a notice of appeal within thirty days after entry of a final judgment” (citation omitted)). Trial courts generally have jurisdiction to make non-substantive corrections to orders before entry of a notice of appeal, and because the two orders are identical, the trial court had jurisdiction to enter the amended order. *See generally In re A.R.B.*, 289 N.C. App. 119, 124, 888 S.E.2d 402, 405 (2023) (allowing amendment for correction of clerical errors).

and the subcontract between BCCG and Snipes was wholly performed within North Carolina.” The court also found that there were “no issues of federal control that would invoke federal activity or interstate commerce.” And based on the arguments of counsel rather than the record or evidence, it found:

[O]ther subcontractors to BCCG have claims on the project that are subject to arbitration in North Carolina, and the [c]ourt, in the exercise of its legal and equitable jurisdiction, and for the purposes of judicial economy and efficiency, determines that all subcontractor arbitrations should take place in North Carolina.

The trial court ordered BCCG and Snipes to “submit all issues between them to binding arbitration,” and it ruled that the “venue for such arbitration shall be [in] North Carolina.” And the arbitration was to be completed no later than 25 February 2024. The court proceedings were “stayed pending (a) the conclusion of the arbitration ordered herein or (b) a joint stipulation of voluntary dismissal filed herein by BCCG and Snipes.”

BCCG filed a notice of appeal from the Order on 13 June 2024.

II. Appellate Jurisdiction

BCCG acknowledges that this is “an interlocutory appeal from the trial court’s order denying [its] motion to compel arbitration.” Under North Carolina General Statute Section 7A-27(b)(3)a, an interlocutory order may be appealed as of right if it “[a]ffects a substantial right.” N.C. Gen. Stat. § 7A-27(b)(3)a (2025). The “denial of a motion to compel arbitration, although interlocutory, is . . . immediately

appealable,” because “it affects a substantial right.” *King v. Bryant*, 225 N.C. App. 340, 343, 737 S.E.2d 802, 805 (2013) (citation and quotation marks omitted). But the Order does not deny arbitration; it compels arbitration. And it moves the arbitration from Michigan, the forum the Contract specifies, to North Carolina.

Still, this Court has determined that an order “addressing the validity of a forum-selection clause also affect[s] a substantial right.” *Earnhardt Plumbing, LLC v. Thomas Builders, Inc.*, 291 N.C. App. 1, 4, 893 S.E.2d 564, 567 (2023) (citation omitted). The Contract designates Michigan as the arbitration’s venue; the Order overrides that designation. Thus, citing *Jeffreys v. Raleigh Oaks Joint Venture*, 115 N.C. App. 377, 380, 444 S.E.2d 252, 254 (1994), BCCG contends that it would lose its “substantial right to arbitrate in Michigan ‘absent a review prior to a final determination on the merits.’” BCCG is correct. Because the Order affects a substantial right, we have appellate jurisdiction under Section 7A-27(b)(3)a. *See Earnhardt Plumbing*, 291 N.C. App. at 4, 893 S.E.2d at 567.

III. Standard of Review

“Whether a particular dispute is subject to arbitration is a conclusion of law,” which this Court reviews *de novo* on appeal. *Id.* (citation omitted). We likewise review *de novo* “issues relating to the interpretation of terms in an arbitration clause.” *Id.* (citations, quotation marks, and brackets omitted). As noted above, the Order did not separately set out its findings of fact, conclusions of law, and decree provisions. We consider each finding and conclusion based on its substance and

review them accordingly. *See In re K.J.M.*, 288 N.C. App. 332, 339, 886 S.E.2d 589, 595 (2023) (“As a general rule, the labels ‘findings of fact’ and ‘conclusions of law’ employed by the lower tribunal in a written order do not determine the nature of our standard of review because if the lower tribunal labels as a finding of fact what is in substance a conclusion of law, we review that ‘finding’ as a conclusion *de novo*.” (citation and quotation marks omitted)).

IV. The FAA’s Application

BCCG argues that “the trial court erred by failing to determine whether the [FAA] applied to the arbitration provision at issue and preempted state law.” In its view, the FAA applies and preempts Section 22B-2, which provides that

[a] provision in any contract, subcontract, or purchase order for the improvement of real property in this State, or the providing of materials therefor, is void and against public policy if it makes the contract, subcontract, or purchase order subject to the laws of another state, or provides that the exclusive forum for any litigation, arbitration, or other dispute resolution process is located in another state.

N.C. Gen. Stat. § 22B-2.

BCCG notes that the trial court “failed to directly address the FAA, either in the hearing itself or in its subsequent orders.” (Capitalization altered.) And BCCG asserts that the court applied the “wrong test” to determine whether interstate commerce was affected.

The trial court found, based on Mr. Snipes’s affidavit, that the Project was

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performed in North Carolina. In so doing, it essentially ignored the undisputed fact that BCCG is a Michigan corporation and that the Contract requires certain financial and administrative matters to be handled in Michigan. In fact, the court found that there were “no issues of federal control that would invoke federal activity or interstate commerce.” At the hearing, however, the parties had agreed that the *only issue* in dispute was whether the Contract involved interstate commerce, such that the FAA applies and preempts North Carolina law.

Snipes responds that

[i]t is well-established that the determination of whether a transaction involves interstate commerce such that the FAA will apply is a question of fact for the trial court. *Eddings v. S. Orthopedic & Musculoskeletal Assocs., P.A.*, 147 N.C. App. 375 385, 555 S.E.2d 649, 656 (2001) (Greene, J., dissenting), *rev’d per curiam for reasons stated in the dissent*, 356 N.C. 285, 286, 569 S.E.2d 645, 645 (2002); *Sillins v. Ness*, 164 N.C. App. 755, 758, 596 S.E.2d 874, 876 (2004); *King v. Bryant*, 225 N.C. App. 340, 344, 737 S.E.2d 802, 806 (2013); *Earnhardt Plumbing v. Thomas Builders*, 291 N.C. App. 1, 5, 893 S.E.2d 564, 568 (2023).

As Snipes notes, the trial court has the initial responsibility to make findings of fact, and if the findings are supported by the record, the appellate court is bound by them. Despite finding that “there are no issues of federal control that would invoke federal activity or interstate commerce,” the court granted BCCG’s motion to compel arbitration, which explicitly relied on “the [FAA], 9 [United States Code Section] 1 *et seq.*, and the North Carolina Revised Uniform Arbitration Act, [North Carolina General Statute Section] 1-569.1 *et seq.*” Because the trial court *granted* BCCG’s

motion to compel arbitration under the FAA, the Order is (in fact) based on the FAA, even if it does not mention it.

The FAA provides:

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

9 U.S.C. § 3.

No one disputes that BCCG is a Michigan corporation. Snipes’s amended complaint alleges as much, and the attached Contract lists BCCG’s Michigan address in several places. And the parties’ affidavits do not contradict each other; they address different facts. Mr. Snipes’s affidavit focuses on the physical work performed under the Contract—concrete work to construct a school building—in North Carolina. BCCG’s affidavit addresses its status as a Michigan corporation and the planning, administrative, and financial tasks done in Michigan. Neither party disputes the other’s facts. At the hearing, Snipes argued only that BCCG’s Michigan presence and business were irrelevant because the *Project* was in North Carolina and Section 22B-2 voided the arbitration clause, at least in part.

At the hearing, Snipes argued that it was “not [t]here opposing arbitration

itself” but was “opposing the venue or the forum selection of [arbitration] pursuant to both common law in North Carolina and [Section] 22B-2.” Citing North Carolina law,³ it contended that the Contract’s arbitration provision—“The arbitration shall be conducted in Brighton, Livingston County, Michigan”—was not mandatory. In Snipes’s view, then, the trial court could enforce the arbitration provision while relocating the arbitration under North Carolina law.

This Court has twice addressed an arbitration provision under similar facts.⁴ See *Earnhardt Plumbing, LLC v. Thomas Builders, Inc.*, 291 N.C. App. at 1, 893 S.E.2d at 564 (*Earnhardt I*); see also *Earnhardt Plumbing, LLC v. Thomas Builders, Inc.*, 301 N.C. App. 586, 924 S.E.2d 844 (2025) (*Earnhardt II*).

Earnhardt Plumbing, LLC, a North Carolina limited liability company, subcontracted to install plumbing and gas line systems for a hotel under construction in Fayetteville, North Carolina. *Earnhardt I*, 291 N.C. App. at 2, 893 S.E.2d at 566.

³ The Contract also includes a choice-of-law provision, which states that it “shall be interpreted under the laws of the State of Michigan without consideration of conflicts of laws rules.” Neither party has cited any Michigan law, and neither has raised any argument on appeal about the Contract’s interpretation.

⁴ We note that Snipes invokes Section 22B-2 rather than Section 22B-3, the statute at issue in *Earnhardt*. Section 22B-2 voids a provision in a contract “for the improvement of real property in this State” that “provides that the exclusive forum for any litigation, arbitration, or other dispute resolution process is located in another state.” N.C. Gen. Stat. § 22B-2. The Contract’s Michigan designation falls within those terms. As we explain below, Section 2 of the FAA preserves only state grounds “for the revocation of any contract”—defenses like fraud or duress, which ask whether a party should be held to the agreement at all. 9 U.S.C. § 2. Section 22B-2 supplies no defense of that kind. It leaves a construction contract wholly enforceable and strikes a single term, the one selecting the forum. That is the defect that doomed Section 22B-3, which, we said, “applies to one type of provision only.” *Earnhardt Plumbing, LLC v. Thomas Builders, Inc.*, 301 N.C. App. 586, 595, 924 S.E.2d 844, 852 (2025). The FAA thus preempts Section 22B-2 as applied to the Contract’s forum-selection clause.

Thomas Builders, Inc., the general contractor, was a Tennessee corporation with a registered office in Wake County. *Id.* As here, an in-state subcontractor—Earnhardt Plumbing—sued an out-of-state general contractor—Thomas Builders—to collect payment for work performed in North Carolina. *Id.*

The contract required arbitration of claims arising “out of or related to this Subcontract” and provided that “[t]he Arbitration shall be held at the discretion of the Contractor either at Contractor’s principle [sic] place of business or where the Project is located.” *Id.* Thomas Builders wanted arbitration to “take place in Tennessee”—its principal place of business. And as here, the parties did not dispute that the claims were arbitrable—only whether the arbitration would occur in a different state or in North Carolina. *Id.* at 3, 893 S.E.2d at 566.

The trial court stayed the proceedings and compelled arbitration. *Id.* at 3, 893 S.E.2d at 566–67. It concluded that the provision allowing Thomas Builders “to require Tennessee be the forum for arbitration was unenforceable” under North Carolina General Statute Section 22B-3, and it ordered that arbitration be conducted in North Carolina. *Id.* at 3, 893 S.E.2d at 567; *see also* N.C. Gen. Stat. § 22B-3 (2023) (“[A]ny provision in a contract entered into in North Carolina that requires the prosecution of any action or the arbitration of any dispute that arises from the contract to be instituted or heard in another state is against public policy and is void and unenforceable.”). It also ruled that the FAA did not preempt Section 22B-3. *Earnhardt I*, 291 N.C. App. at 4, 893 S.E.2d at 567.

On appeal, this Court vacated and remanded. We explained that the FAA applies “if the contract evidences a transaction involving interstate commerce,” and whether it does is a question of fact an appellate court should not decide in the first instance. *Id.* at 5, 893 S.E.2d at 568 (quoting *Hobbs Staffing Servs., Inc. v. Lumbermens Mut. Cas. Co.*, 168 N.C. App. 223, 226, 606 S.E.2d 708, 711 (2005)). The Court also noted that where a contract does “involve[] commerce among the States,” the FAA preempts North Carolina’s statute and public policy on forum selection. *Id.* (citing *Goldstein v. Am. Steel Span, Inc.*, 181 N.C. App. 534, 538, 640 S.E.2d 740, 743 (2007)). The trial court had found only that a valid arbitration agreement existed and that the dispute fell within its scope. *See id.* It made no findings “as to whether the parties’ [c]ontract evidence[d] a transaction involving interstate commerce,” and without such findings, we could not evaluate whether the FAA applied. *Id.* at 5–6, 893 S.E.2d at 568.

On remand, the trial court found that the contract involved interstate commerce and concluded that the FAA preempted Section 22B-3 as applied to the forum-selection clause. *Earnhardt II*, 301 N.C. App. at 588, 924 S.E.2d at 848. It nonetheless determined the clause was permissive rather than mandatory, held it unenforceable under North Carolina law, and again directed arbitration in North Carolina. *Id.* Thomas Builders appealed, and this Court reversed in *Earnhardt II*. *Id.*

Our analysis began with whether the FAA applied at all. Earnhardt Plumbing claimed that the trial court had to “find there was ‘substantial’ interstate commerce.” *Id.* at 590, 924 S.E.2d at 849. This Court rejected that argument as resting on “preempted precedent.” *Id.* The FAA, we said, applies if the transaction “in fact involve[s] interstate commerce, even if the parties did not contemplate an interstate commerce connection.” *Id.* (quoting *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 270, 281 (1995)). Indeed, the United States Supreme Court interprets the FAA’s reach “to the limits of Congress’ Commerce Clause power.” *Id.* So we determined that the trial court needed only to “find facts supporting [the] conclusion the transaction involved interstate commerce.” *Id.*

We also agreed with Earnhardt Plumbing that the “mere diversity of [the] parties” did not establish “that [the] agreement involved interstate commerce.” *Id.* at 591, 924 S.E.2d at 849. The trial court, however, had also found that payment requests crossed state lines and that Thomas Builders’ employees traveled across state lines in connection with the contract. *Id.* Those findings sufficed, and they matched the connections our state courts and the federal courts had held sufficient elsewhere. *Id.* at 591, 924 S.E.2d at 849–50 (citations omitted).

We then addressed who bears the burden on the interstate-commerce question. The FAA, we noted, does not “require proof by affidavit or other specific evidence of the nexus to interstate commerce.” *Id.* at 591, 924 S.E.2d at 849 (citation omitted). Where the party seeking arbitration alleges the transaction falls within the FAA’s

scope and the opposing party offers no evidence rebutting jurisdiction under the federal statute, the FAA demands nothing further. *Id.* Thomas Builders had alleged that the contract involved interstate commerce, and Earnhardt Plumbing identified no contrary evidence,

except that [Earnhardt] used only materials from North Carolina and the labor of North Carolina employees. Th[at] evidence d[id] not rebut [Thomas Builders'] allegation because the origins of material and labor involved are not the only factors by which interstate commerce may be evidenced.

Id.

With the FAA in play, the Court turned to whether Section 22B-3 could still void the forum-selection clause. It could not. *Id.* at 595, 924 S.E.2d at 852. The FAA does not “completely preempt state contract law because it does not ‘reflect a congressional intent to occupy the entire field of arbitration.’” *Id.* at 592, 924 S.E.2d at 850 (citation omitted). But where federal and state law conflict, we observed, the Supremacy Clause requires that “we give effect to federal law.” *Id.* Section 2 of the FAA makes arbitration agreements enforceable save “upon such grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2. That provision preserves “generally applicable contract defenses, such as fraud, duress, or unconscionability,” but not “defenses that apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue.” *Earnhardt II*, 301 N.C. App. at 594, 924 S.E.2d at 852 (citation omitted).

Earnhardt Plumbing claimed that Section 22B-3 was such a general defense because it reaches every contract formed in North Carolina and voids litigation and arbitration forum clauses alike. *Id.* at 595, 924 S.E.2d at 852. This Court rejected that claim. While Section 22B-3 “explicitly applies to all contracts, it applies to one type of provision only, forum-selection provisions,” and so is “not a general contract defense like ‘fraud, coercion, lack of consideration’ or lack of meeting of the minds.” *Id.* at 595, 924 S.E.2d at 852 (citation omitted). Reading it otherwise, we said, would sit “directly at odds” with the Supreme Court’s holding that the FAA “preempts state laws” requiring “a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration.” *Id.* (quoting *Southland Corp. v. Keating*, 465 U.S. 1, 10 (1984)). This Court’s decision in *Goldstein* had held as much already, and that holding bound the panel. *Id.* at 593, 924 S.E.2d at 851 (citing *Goldstein*, 181 N.C. App. at 538, 640 S.E.2d at 743; *In re Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989)).

Finally, the Court assessed whether the trial court erring in ruling that the arbitration clause was permissive and thus unenforceable. As a reminder, that clause let Thomas Builders choose between two forums: “either” its principal place of business “or” the Project site. *See id.* at 587, 924 S.E.2d at 847. A forum-selection clause is mandatory when it contains words “which indicate that the contracting parties intended to make jurisdiction exclusive,” and no particular modifier—“only,” “solely,” “exclusively”—is required. *Id.* at 598, 924 S.E.2d at 854 (quoting *Cable Tel*

Servs., Inc. v. Overland Cont., Inc., 154 N.C. App. 639, 644, 574 S.E.2d 31, 34–35 (2002)). We held that the disjunctive “either . . . or” construction marked the designated fora as the only available ones, and that the grant of discretion to one party to choose between them made the parties’ intent plain.⁵ *Id.* at 597–98, 924 S.E.2d at 853–54.

The facts here closely track *Earnhardt I* and *II*, but as we explain below, the trial court erred differently. BCCG’s arguments focus on both the findings of fact and the conclusions of law, but the substance of its position is that the trial court acted under a misapprehension of law. BCCG contends that “[w]hile the trial court made findings consistent with the parties’ stipulations, it failed to make any [sic] findings to support any conclusion of law that would permit it to [] ignore the uncontroverted evidence contained in” Ms. Watkins’s affidavit “that corroborates the existence and validity of the [Contract] and its effects on interstate commerce.”

The trial court made no findings about BCCG’s status as a Michigan corporation or Snipes’s submission of payment requests to Michigan. It found instead

⁵ The provision at issue here names a single forum—Michigan—with no alternative and no discretion in either party. And Snipes has not argued that it is permissive. Still, the Contract does provide that “In Contractor’s sole discretion, any arbitration or litigation between Contractor and Subcontractor under this Subcontract may be joined with and consolidated into any arbitration or litigation between the Owner and Contractor, and such arbitration or litigation shall bind Contractor and Subcontractor.” But even this portion of the provision does not address changing the arbitration’s *venue*. The Contract states that the arbitration “shall” be held in Michigan. Under basic rules of contract interpretation in both North Carolina and Michigan, the term “shall” is mandatory. *See Internet E., Inc. v. Duro Commc’ns, Inc.*, 146 N.C. App. 401, 405–06, 553 S.E.2d 84, 87 (2001); *Oakland-Macomb Interceptor Drain Drainage Dist. v. Ric-Man Const., Inc.*, 304 Mich. App. 46, 56, 850 N.W.2d 498, 504 (2014).

that “[t]here are no issues of federal control that would invoke federal activity or interstate commerce.” This finding is confusing, because the parties agreed that the existence of “interstate commerce” was the sole issue. And the parties agreed that the dispute must go to binding arbitration—again, Snipes argued only that the arbitration should occur in North Carolina under Section 22B-2.

The trial court appears to have treated BCCG’s status as a Michigan corporation and the administrative and financial matters handled in Michigan as irrelevant to the FAA’s application. Under *Earnhardt II*, they are not. BCCG invoked the FAA and alleged that the Contract involved interstate commerce. That allegation shifted to Snipes—“the party opposing [the FAA’s] application”—the burden of producing “evidence to rebut jurisdiction under the federal statute.” *Id.* at 591, 924 S.E.2d at 849.

Snipes did not carry that burden. Its affidavit spoke only to the location of the Project and the origins of the material and labor—the exact showing *Earnhardt II* held insufficient to rebut an allegation of interstate commerce. *Id.* The facts as found by the trial court are not entirely irrelevant, but the trial court simply did not address the undisputed facts regarding BCCG’s status as a Michigan corporation and the administrative and financial matters conducted in Michigan by BCCG.⁶ To the extent

⁶ The trial court implicitly addressed BCCG’s presence in Michigan in two findings: “BCCG has sufficient contacts with North Carolina and is doing business in North Carolina, with offices in Charlotte and Raleigh. Additionally, BCCG has applied for and has been granted a Certificate of

the trial court overlooked these facts, it was acting under a misapprehension of the law. As stated earlier, those facts have been held to require a conclusion that a contract “involv[es] interstate commerce” for purposes of the FAA. *Hobbs*, 168 N.C. App. at 226, 606 S.E.2d at 711.

That leaves the question of remedy. *Earnhardt I* remanded for findings, and we consider whether this case calls for the same course. It does not—and the line of authority behind *Earnhardt I* explains why.

In *Earnhardt I*, the Court drew its remand instruction from *Hobbs*. See *Earnhardt I*, 291 N.C. App. at 5, 893 S.E.2d at 568. In *Hobbs*, the question presented was whether the dispute fell within the parties’ arbitration agreement; this Court affirmed the trial court’s ruling that it did. *Hobbs*, 168 N.C. App. at 226–27, 606 S.E.2d at 711. In their briefs to this Court, the parties tried to raise an additional question the trial court had never taken up—whether the agreement fell under the North Carolina Uniform Arbitration Act or the FAA. *Id.* at 226, 606 S.E.2d at 711. This Court declined to examine those arguments. We held that whether a contract evidences a transaction involving interstate commerce “is a question of fact, which an appellate court should not initially decide.” *Id.* at 226–27, 606 S.E.2d at 711 (relying

Authority to transact business in North Carolina by the Secretary of State and maintains a registered agent and office in North Carolina.” There would be no reason to address BCCG’s contacts with North Carolina if BCCG was in North Carolina. And the purpose of this finding is not clear because there was no question of personal jurisdiction over BCCG. The trial court also found that “BCCG has diversity of citizenship and substantial contacts in North Carolina, Michigan, and other states.” But again, BCCG’s “substantial contacts” in North Carolina are irrelevant to the arbitration question.

on *Eddings v. S. Orthopedic & Musculoskeletal Assocs. Inc.*, 356 N.C. 285, 569 S.E.2d 645 (2002) (*per curiam*)). The question therefore belonged to the trial court on remand. *Id.* at 227, 606 S.E.2d at 711.

Hobbs took that principle from *Eddings*, where our Supreme Court had applied it the year before. *See id.* The plaintiff in *Eddings* was a physician who had been practicing in Chattanooga. *Eddings v. S. Orthopedic & Musculoskeletal Assocs., P.A.*, 147 N.C. App. 375, 376, 555 S.E.2d 649, 650 (2001), *rev'd per curiam*, 356 N.C. at 285, 569 S.E.2d at 645 (adopting dissenting opinion in the Court of Appeals). He came to North Carolina to interview with a medical practice, entered negotiations over possible employment, and signed an employment agreement. *Id.* This Court concluded that the agreement memorialized “a transaction . . . by which [the] plaintiff [had] left his practice in Chattanooga and crossed state lines to begin practicing in North Carolina,” and that “[s]uch a transaction clearly involve[d] interstate commerce.” *Id.* at 382–83, 555 S.E.2d at 654. Judge Greene dissented. *Id.* at 385, 555 S.E.2d at 656 (Greene, J., dissenting).

On appeal, our Supreme Court reversed, adopting Judge Greene’s dissent. *See Eddings*, 356 N.C. at 286, 569 S.E.2d at 645 (“For the reasons stated in the dissenting opinion, the decision of the Court of Appeals is reversed.”). Judge Greene did not doubt that the agreement might fall under the FAA. *Eddings*, 147 N.C. App. at 385, 555 S.E.2d at 656 (Greene, J., dissenting). His objection centered on the record. *Id.* (Greene, J., dissenting). Neither party, he observed, had argued the FAA applied or

that the agreement evidenced a transaction involving commerce. *Id.* (Greene, J., dissenting). Beyond the single fact that the plaintiff had lived in Tennessee before moving to North Carolina, the record held “no evidence . . . that the transaction involved multiple states”—indeed, it was “devoid of any evidence” that the “[e]mployment [a]greement or [the] plaintiff’s employment” involved interstate commerce within the FAA’s scope. *Id.* at 385–86, 555 S.E.2d at 656 (Greene, J., dissenting). An appellate court “may speculate on what may have been the nature of the performance required by the contract,” he wrote, but on such a record he thought it “impossible for us to determine on appeal whether the [FAA] applies.” *Id.* at 386, 555 S.E.2d at 656 (Greene, J., dissenting). So he thought the Court should have remanded for the trial court to make that determination first. *Id.* (Greene, J., dissenting).

One feature unites *Eddings*, *Hobbs*, and *Earnhardt I*: in each, the facts bearing on interstate commerce remained unsettled. In *Eddings*, no party had argued the FAA applied, so no one developed the record on it, and the only interstate fact before the Court was where the plaintiff had lived before. *Id.* at 385–86, 555 S.E.2d at 656 (Greene, J., dissenting). In *Hobbs*, the parties raised the FAA for the first time on appeal, leaving the trial court no occasion to hear any evidence on the question. *Hobbs*, 168 N.C. App. at 226, 606 S.E.2d at 711. And in *Earnhardt I*, the parties did litigate the FAA, but the trial court ruled without finding the facts its ruling required. *Earnhardt I*, 291 N.C. App. at 5, 893 S.E.2d at 568. In none of the three could an

appellate court resolve the question without supplying facts the record did not contain.

Here, the facts are settled. BCCG raised the FAA in the trial court, the parties agreed that its applicability was the only issue at the hearing, and the operative facts appear on the face of the Contract and its attachments. Snipes has never contested BCCG's Michigan incorporation, the Contract's requirement that payment applications go to Michigan, or BCCG's administrative and financial duties there. Simply put, nothing requires us to speculate about whether "the contract in question involve[es] interstate commerce." *Eddings*, 147 N.C. App. at 386, 555 S.E.2d at 656 (Greene, J., dissenting).

Moreover, the United States Supreme Court has interpreted the FAA's "involving commerce" language broadly. *See Allied-Bruce*, 513 U.S. at 273–77. It reads that language to reach as far as the Commerce Clause itself—that is, to the full extent of Congress's power. *Id.* at 273–74. A narrower reading, the Court has warned, would strand courts in a "no man's land" between "in commerce" and "affecting commerce," complicating the law and breeding the very litigation the FAA seeks to avoid. *Id.* at 275.

The Contract here clears that standard. BCCG is a Michigan corporation. The Contract required Snipes to submit its payment applications and invoices to BCCG in Michigan, and it assigned certain administrative and financial duties to BCCG there. Snipes disputes none of this. That the Project was built in North Carolina

with North Carolina labor and materials does not resolve the question, because the origins of material and labor are not the only indicia of interstate commerce. *Earnhardt II*, 301 N.C. App. at 590, 924 S.E.2d at 849. And beyond the parties' obvious diversity, the cross-border payment requests and BCCG's Michigan obligations under the Contract are precisely the connections *Earnhardt II* found sufficient. *Id.* at 591, 924 S.E.2d at 849–50. The Contract thus evidences a transaction involving interstate commerce, and the FAA applies.

In sum, our standard of review is *de novo*. *Goldstein*, 181 N.C. App. at 536, 640 S.E.2d at 742. Under the findings of fact and the undisputed facts included in Snipes's complaint and BCCG's motion, both of which include the Contract and its attachments, the Contract "involv[es] interstate commerce." *Hobbs*, 168 N.C. App. at 226, 606 S.E.2d at 711. Because the FAA preempts Section 22B-2, the arbitration provision requires the parties to arbitrate in Michigan, not North Carolina. *Goldstein*, 181 N.C. App. at 538, 640 S.E.2d at 743.

V. Alternative Basis for Ruling

We have already held that the trial court erred by failing to apply the FAA when it ordered arbitration in North Carolina. But paragraph 12 of the Order sets out what appears to be an independent basis for the same result. And BCCG argues that the trial court erred by ordering arbitration based on that paragraph. Paragraph 12 provides:

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The [c]ourt further finds that other subcontractors to BCCG have claims on the project that are subject to arbitration in North Carolina, and the [c]ourt, in the exercise of its legal and equitable jurisdiction, and for the purposes of judicial economy and efficiency, determines that all subcontractor arbitrations should take place in North Carolina.

According to BCCG, in this paragraph, the trial court “improperly consider[ed] other subcontracts” and “interpos[ed] its own standard of ‘judicial economy and efficiency’ into the analysis of interstate commerce.”

Paragraph 12 contains a finding of fact followed by what appears to be an alternative legal basis for the Order. We start with the supposed “finding” that other subcontractors have claims on the Project subject to arbitration in North Carolina. BCCG correctly asserts that there is simply no evidence to support it: the pleadings say nothing about other subcontractors or other disputes arising from the Project, and neither affidavit mentions them. At the hearing, counsel did refer to other pending disputes that would be arbitrated here. But “it is axiomatic that arguments of counsel are not evidence.” *Reynolds v. Burks*, 295 N.C. App. 515, 521, 906 S.E.2d 508, 512 (2024). Snipes does not contest the absence of evidence. It argues instead that “[e]ven assuming that particular finding was not supported by competent evidence, the finding is inapplicable to and not determinative of the issue,” and that the trial court’s remaining findings support the Order. They do not, for the reasons already given.

The remainder of paragraph 12 rests on the trial court’s “legal and equitable jurisdiction” and “the purposes of judicial economy and efficiency.” No party argued about any such authority below; the argument focused on Section 22B-2 alone. And on appeal, neither party identifies a statute or decision supporting this “legal and equitable jurisdiction,” and we have found none.

Nor could such authority survive the FAA. As we explained in *Earnhardt II*:

In enacting [Section] 2 of the [FAA], Congress declared a national policy favoring arbitration and withdrew the power of the states to require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration. This preemption is in accord with the purpose of the FAA. Congress enacted the FAA in 1925 in response to widespread judicial hostility to arbitration agreements. The Supreme Court of the United States has described the Act as reflecting a liberal federal policy favoring arbitration, and the fundamental principle that arbitration is a matter of contract. The principal purpose of the FAA is to ensure that private arbitration agreements are enforced according to their terms.

301 N.C. App. at 592–93, 924 S.E.2d at 850–51 (internal citations, quotation marks, and brackets omitted). A state court’s equitable interest in consolidating related arbitrations is not among the grounds on which the FAA permits a forum-selection clause to be set aside.

We appreciate the trial court’s concern for judicial economy. Arbitrating all Project disputes in one state may well be more efficient. But efficiency was not the issue before the court. BCCG and Snipes agreed to arbitrate in Michigan, and under the FAA, that agreement governs.

VI. Conclusion

For the reasons discussed above, we reverse the trial court’s Order and remand “for entry of an order allowing the parties to pursue arbitration in accordance with the terms of the Contract, including the forum-selection clause.” *Id.* at 598, 924 S.E.2d at 854.

REVERSED AND REMANDED.

Judges ARROWOOD and STADING concur.