

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-1201

Filed 2 September 2026

Wake County, No. 21CVS017175-910

MOHAMMED AL DAJIH and AMANDA INTERBITZIN, on behalf of themselves and all others similarly situated, Plaintiffs,

v.

BFS OPERATIONS, LLC and BUILDERS FIRSTSOURCE HOLDINGS, LLC, Defendants.

Appeal by defendants from order entered 20 June 2025 by Judge G. Bryan Collins in Wake County Superior Court. Heard in the Court of Appeals 12 August 2026.

Lee Segui, PLLC, by Mark R. Sigmon, Matthew E. Lee, Jeremy R. Williams, and Eric G. Steber; Maginnis Howard, by Edward H. Maginnis and Karl S. Gwaltney, for plaintiffs-appellees.

Adams & Reese LLP, by Ashlee B. Poplin, for defendants-appellants.

ARROWOOD, Judge.

BFS Operations, LLC and Builders FirstSource Holdings, LLC (collectively “BFS”) appeal from an order denying their motion to compel arbitration. For the following reasons, we affirm the trial court’s order.

I. Background

On 30 November 2023, Mohammed Al Dajih and Amanda Interbitzin (collectively “plaintiffs”) filed a second amended class action complaint alleging the following facts: In recent years, global supply chains have seen an increased demand for new construction which has affected the availability of North American lumber. As a consequence, European lumber has grown as an economically attractive option for construction materials. However, European lumber is not as strong as North American lumber and cannot be used as a one-to-one substitute.

On 11 June 2021, the North Carolina Department of Insurance (“DOI”) issued a press release stating that the use of European lumber in the construction of homes and buildings “does not meet N.C. building code requirements and, in some cases, could cause catastrophic failures in wall, floor and roof framing.” The DOI issued updated guidance on 7 October 2021 which clarified that European lumber could be safely used as long as it is properly adjusted and engineered for. For example, a main concern with European lumber is that some species, including Norwegian Spruce, have a lower specific gravity compared to North American lumber which impacts its ability to hold fasteners. Thus, to satisfy the North Carolina Building Code (“the Code”), the use of Norwegian Spruce would require additional engineering to account for the low specific gravity.

Plaintiffs contracted with LGI Homes NC, LLC (“LGI”) for the purchase and construction of a new home. The contracts included a provision requiring that all disputes between plaintiffs and LGI relating to the purchase and construction of the

home be resolved by arbitration. LGI in turn contracted with BFS for the supply of lumber to construct the home. BFS was not a signatory to the contract between plaintiffs and LGI.

The plans for Plaintiffs Al Dajih and Interbitzin's homes called for Southern Yellow Pine, a species of North American Lumber. However, BFS supplied European lumber, including Norwegian Spruce, which LGI used in the framing of their homes. LGI also used European lumber in several other homes in plaintiffs' neighborhood. One of those homes failed an inspection in June 2021 due to the presence of European Lumber, after which LGI began making design changes in homes still in the framing phase to address the weaknesses of the European Lumber. At that time, plaintiffs' homes were already beyond the framing phase, so no design changes were implemented. Instead, the European lumber in plaintiffs' homes was used as a one-to-one substitute with no engineering or modifications to comply with the Code. Plaintiffs were not informed about the substitution of lumber.

After discovering the substitution, plaintiffs filed a class action complaint naming LGI and BFS as defendants that included six causes of action: 1) breach of contract or breach of express warranty against all defendants, 2) breach of implied warranty against all defendants, 3) violation of the Unfair and Deceptive Trade Practices Act ("UDTPA") against all defendants, 4) negligence against LGI, 5) negligence against BFS, and 6) negligent supervision against LGI. On 1 April 2024, BFS filed a motion to dismiss or, in the alternative, to stay and compel arbitration.

On 4 March 2025, plaintiffs voluntarily dismissed all of their claims against LGI. They also voluntarily dismissed their contract and warranty claims against BFS, leaving only their claims for negligence and violation of the UDTPA. The trial court denied BFS' motion to compel arbitration on 20 June 2025. BFS filed notice of appeal to this Court on 8 July 2025.

II. Discussion

On appeal, BFS argues that the trial court erred by denying its motion to compel arbitration and concluding that the equitable estoppel doctrine does not apply. For the following reasons, we disagree.

A. Appellate Jurisdiction

As a preliminary matter, we address our jurisdiction to hear this appeal. The trial court's order denying BFS' motion to stay and compel arbitration is interlocutory “ ‘because it does not determine all of the issues between the parties and directs some further proceeding preliminary to a final judgment.’ ” *Jackson v. Home Depot, U.S.A., Inc.*, 276 N.C. App. 349, 356 (2021) (quoting *Martin v. Vance*, 133 N.C. App. 116, 119 (1999)). Interlocutory orders are not ordinarily immediately appealable. *Id.* However, this Court has repeatedly held that an order denying a motion to compel arbitration may be immediately appealed because it involves a substantial right which may be lost if the appeal is delayed. *Id.*; see also *Smith Jamison Constr. v. APAC-Atlantic, Inc.*, 257 N.C. App. 714, 716 (2018). Accordingly, BFS' appeal is properly before us.

B. Standard of Review

“‘On appeal, findings of fact made by the trial court are binding upon the appellate court in the absence of a challenge to those findings.’” *Griffing v. Gray, Layton, Kersh, Solomon, Furr & Smith, P.A.*, 293 N.C. App. 243, 249 (2024) (quoting *Jackson*, 276 N.C. App. at 356). “‘The question of whether a dispute is subject to arbitration is an issue for judicial determination. A trial court’s conclusion as to whether a particular dispute is subject to arbitration is a conclusion of law, which this Court reviews de novo.’” *Id.* (quoting *Jackson*, 276 N.C. App. at 356). “Under de novo review, this Court considers the matter anew and is free to substitute its judgment for that of the trial court.” *Smith Jamison Constr.*, 257 N.C. App. at 716 (cleaned up).

C. Equitable Estoppel

“‘North Carolina has a strong public policy favoring the settlement of disputes by arbitration.’” *Griffing*, 293 N.C. App. at 249 (quoting *Johnston Cnty. v. R.N. Rouse & Co.*, 331 N.C. 88, 91 (1992)). Still, in order to compel arbitration, “‘there must first exist a valid agreement to arbitrate.’” *Id.* (quoting *Jackson*, 276 N.C. App. at 356). “‘The party seeking arbitration bears the burden of proving the parties mutually agreed to the arbitration provision.’” *Id.* (quoting *Jackson*, 276 N.C. App. at 356).

“The determination of whether a particular dispute is subject to arbitration ‘involves a two-step analysis requiring the trial court to ascertain both (1) whether the parties had a valid agreement to arbitrate, and also (2) whether the specific

dispute falls within the substantive scope of that agreement.’” *Jackson*, 276 N.C. App. at 356 (citation omitted). “The obligation and entitlement to arbitrate does not attach only to one who has personally signed the written arbitration provision.” *Smith Jamison Constr.*, 257 N.C. App. at 717 (cleaned up). “[A] nonsignatory to an arbitration clause may, in certain situations, compel a signatory to the clause to arbitrate the signatory’s claims against the nonsignatory despite the fact that the signatory and nonsignatory lack an agreement to arbitrate.’” *Id.* (alteration in original) (quoting *Am. Bankers Ins. Group, Inc. v. Long*, 453 F.3d 623, 627 (4th Cir. 2006)). “‘One such situation exists when the signatory is equitably estopped from arguing that a nonsignatory is not a party to the arbitration clause.’” *Id.* (quoting *Long*, 453 F.3d at 627).

“‘Equitable estoppel precludes a party from asserting rights “he otherwise would have had against another” when his own conduct renders assertion of those rights contrary to equity.’” *Ellen v. Schultes of Md., Inc.*, 172 N.C. App. 317, 321 (2005) (quoting *Int’l Paper Co. v. Schwabedissen Maschinen & Anlagen*, 206 F.3d 411, 417–18 (4th Cir. 2000)). In the context of arbitration, equitable estoppel may prevent a party from asserting that the lack of his or another party’s signature on a contract “precludes enforcement of the contract’s arbitration clause when he has consistently maintained that other provisions of the same contract should be enforced to benefit him.” *Id.* (quoting *Schwabedissen*, 206 F.3d at 418); *see also Griffing*, 293 N.C. App. at 250–51.

The application of equitable estoppel is not limited to claims explicitly for breach of contract. *See, e.g., Carter v. TD Ameritrade Holding Corp.*, 218 N.C. App. 222, 231–32 (2012). Rather, “[e]stoppel is appropriate if in substance the signatory’s underlying complaint is based on the nonsignatory’s alleged breach of the obligations and duties assigned to it in the agreement.’” *Griffing*, 293 N.C. App. at 250 (quoting *Smith Jamison Constr.*, 257 N.C. App. at 717). Put differently, the doctrine “‘applies when the signatory to a written agreement containing an arbitration clause must rely upon the terms of the . . . agreement in asserting its claims against the nonsignatory.’” *Smith Jamison Constr.*, 257 N.C. App. at 718 (quoting *Long*, 453 F.3d at 627). Thus, “‘a court should examine whether the plaintiff has asserted claims in the underlying suit that, either literally or obliquely, *assert a breach of a duty created by the contract containing the arbitration clause.*’” *Id.* (quoting *Carter*, 218 N.C. App. at 718).

This Court has, in several cases, distinguished between claims that arise from statutory or tort law and merely include a contract as a factual foundation and claims that, despite being phrased in tort law, are asserting a breach of duty created by the contract. *See, e.g., Smith Jamison Constr.*, 257 N.C. App. at 718–20; *Carter*, 218 N.C. App. at 230–33. The distinction often lies in the origin of the duty that is alleged to have been violated. *See Smith Jamison Constr.*, 257 N.C. App. at 718–20. For example, in *Smith Jamison Construction*, this Court held equitable estoppel did not apply where the parties’ contractual relationship as contractor and subcontractor

informed the claims, but the claims themselves did not rely on duties arising from the contract. *Id.* at 718–20. Rather, the complaint alleged violations of legal duties imposed by North Carolina statutory and common law, such as the common law duty not to intentionally harm others through deception. *See id.* at 718–19.

As we have done in the past, *see Carter*, 218 N.C. App. at 231–32, we find guidance in the Fourth Circuit’s opinions in *R.J. Griffin* and *Long*. In *R.J. Griffin & Co. v. Beach Club II Homeowners Ass’n*, 384 F.3d 157, 159 (4th Cir. 2004), a homeowners association discovered construction defects in its condominium building and sued the general contractor (“Griffin”) for negligence and breach of the implied warranty of good workmanship. Griffin moved to force arbitration under clauses in the general construction contract and the master deed. *Id.* The homeowners association was not a signatory of the general construction contract and Griffin was not a signatory of the master deed. *Id.* However, Griffin argued that equitable estoppel bound the homeowners association to both arbitration provisions. *Id.* at 160. Specifically, Griffin argued that because the general construction contract was the source of both the duty of care and the warranty that Griffin allegedly breached, the homeowners association was essentially seeking a direct benefit from the contract. *Id.* at 162.

The Fourth Circuit rejected Griffin’s argument and distinguished between Griffin’s contractual duties and Griffin’s duties under statute or common law. *Id.* The court explained that South Carolina law imposes extra-contractual duties on

builders such as the duty to perform the work in a “careful, diligent, workmanlike manner.” *Id.* at 162–63. The duties imposed by law are not dependent on the actual terms of the agreement. *Id.* A builder may perform in a way that violates both contractual and legal duties, but the duties still remain separate. *Id.* Because the homeowners association’s claims were premised only out of the set of duties that arose out of Griffin’s role as a builder, and not out of the terms of the contract, equitable estoppel could not be used to force arbitration. *Id.* at 163–64.

Notably, the court emphasized that arbitration could not be avoided by “artful pleading” that alleged a violation of legal duties while in substance holding a party to the terms of an agreement. *Id.* at 164. The court gave an example of a homeowners association bringing a negligence or breach of implied warranty claim because a developer received brown paint when the contract called for blue paint. *Id.* In that case, the duty violated would be created solely by the contract and equitable estoppel would apply. *Id.*

The Fourth Circuit revisited and further clarified the distinctions between contractual and legal duties in *American Bankers Ins. Group, Inc. v. Long*, 453 F.3d 623 (4th Cir. 2006).¹ There, the Longs had purchased a promissory note from Thaxton

¹ The court in *Long* also recognized that the Fourth Circuit applied two different tests for determining whether equitable estoppel applied. *Long*, 453 F.3d at 629. When the issue was whether a signatory to the contract should be estopped, it used the “rely on” test, whereas it used *R.J. Griffin*’s “direct benefit” test to determine whether a nonsignatory should be estopped. *Id.* However, the court stated that where “the issue is whether the underlying claims are such that the party asserting them should

Life Partners (“TLP”). *Id.* at 625. The promissory note incorporated a subscription agreement containing an arbitration clause. *Id.* The Longs alleged that the promissory note was issued as part of a larger fraudulent scheme in which TLP offered worthless promissory notes in order to fund automobile insurance policies. *Id.* The insurance policies were underwritten by the American Bankers Insurance Group (“ABIG”); the promissory notes were structured so that ABIG was in the position of first priority in the event of a default. *Id.* However, ABIG was not a signatory to the promissory notes or the subscription agreements. *Id.* The Longs brought several tort and statutory claims, including negligence and violation of the South Carolina Unfair Trade Practices Act, against ABIG. *Id.* ABIG sought to compel arbitration, arguing that the Longs were equitably estopped from claiming that the arbitration clause contained in the subscription agreement did not apply. *Id.* at 626.

The Fourth Circuit held that equitable estoppel applied because, though the Longs’ claims were “phrased in tort,” they ultimately relied on the terms of the promissory note. *Id.* at 630. The court compared the claims in *Long* to those in *R.J. Griffin*, explaining that in *R.J. Griffin*, even “if the builder and landowner had never entered into the building contract, the builder could have been liable in tort to the

be estopped from denying the application of the arbitration clause, any difference in the two tests is more semantic than substantive.” *Id.* The central inquiry being examined in both tests is “whether the plaintiff has asserted claims in the underlying suit that, either literally or obliquely, assert a breach of a duty created by the contract containing the arbitration clause.” *Id.* Similarly, we find cases seeking estoppel against a signatory and against a nonsignatory to both still be instructive.

owners.” *Id.* Whereas in *Long*, each claim was “dependent upon [the] allegation that ABIG breached a duty created ‘solely by [the promissory note]’, for without the alleged breach of the [n]ote, the Longs would have no cause to complain.” *Id.* (citations omitted).

Here, while plaintiffs’ contract with LGI informs the factual foundation of plaintiffs’ claims against BFS, the claims themselves do not rely on the contract terms. The core of plaintiffs’ claim is that BFS supplied a lumber which failed to meet the Code requirements, thereby violating a common law duty of reasonable care and violating the UDTPA by engaging in unfair or deceptive acts or practices. This Court has previously upheld the validity of a negligence claim in a similar situation. See *Lord v. Customized Consulting Specialty, Inc.*, 182 N.C. App 635, 637 (2007) (holding that the economic loss rule did not bar a negligence claim brought by homeowners against a lumber company that supplied defective trusses to the contractor of the home). As in *R.J. Griffin*, even without this contract or its specific terms, plaintiffs could have a legal claim for the supply of materials that are unfit or damaging to the construction of their home.

BFS argues that plaintiffs’ claims rely on the contract because the complaint repeatedly asserts that the use and sale of European lumber violated their contractual rights. Because plaintiffs did not amend their complaint after dismissing their other claims, the complaint still includes references to defendants’ contractual duties under its factual allegations, class action allegations, and breach of contract

claim. Under their claims against BFS for violation of UDTPA and negligence, plaintiffs incorporated by reference all preceding paragraphs, including the allegations of breach of contract. Besides incorporating preceding paragraphs, UDTPA and negligence claims have few references to the construction contract. The UDTPA claim expressly includes an allegation that BFS acted in reckless disregard for the specifications of the building plans for plaintiffs' homes. Paragraph 146 of the negligence claim states that BFS had a duty to exercise reasonable and ordinary care that included "ensuring that the materials provided were in conformance with all applicable standards, including the Code, local building codes, industry standards, and in accordance with the plans and specifications"

We decline to consider plaintiffs' references to a contract breach in other areas of the unamended complaint as dispositive. One action can violate both legal and contractual duties, so the mere fact that an alleged action could also give rise to a claim for contract breach does not mean that other statute or tort claims rely on that breach. Thus, the fact that plaintiffs had originally brought claims for breach of contract, and the complaint was not amended once those claims were dropped, does not mean that the remaining claims must be asserting contract breach. Accordingly, we focus on the allegations that actually make up the remaining claims. *See R.J. Griffin*, 384 F.3d at 162.

Despite brief references to the "plans and specifications" for the construction, the allegations under plaintiffs' negligence and UDTPA claims are centered around

how the substitution of European lumber without any notice or any modifications to ensure safety and compliance with the Code violated BFS' legal duties. For example, though plaintiffs alleged that BFS had a duty to act in accordance with the plans and specifications in paragraph 146, plaintiffs clarified in paragraph 147 of the complaint that BFS breached its duty not by merely using materials outside of what was called for in the contract but by providing "defective" materials. Notably, the complaint in *R.J. Griffin* included a similar allegation that the defendant failed to follow the plans and specifications. *R.J. Griffin*, 384 F.3d at 163. The court there held that the allegation did not demonstrate that the plaintiff was asserting a breach of contract because it was not the basis of the claim and the description of wrongdoing in the complaint was premised on violations of legal duties. *Id.*

BFS also points to the complaint's references to the "plans and specifications" to argue that the underlying claims rely on the terms of the contract because the European lumber supplied was only defective when "placed in the contractual context of use within the framing of the home." BFS further asserts that even if the installation of the European lumber violated the Code, supplying the lumber did not. However, the "contractual context" is simply laying the factual foundation of the claim. The duty to supply lumber for the framing of the home arose from the formation of the contract and BFS' agreement to act as supplier for LGI, but BFS' duty to exercise reasonable and ordinary care and refrain from unfair or deceptive trade practices while acting as the supplier, are still legal duties. To the extent that

BFS asserts that they should not be held liable because they were merely the supplier of the lumber, that is an issue to be decided later in the proceedings.

BFS next argues that plaintiffs' claims are analogous to the example of artful pleading in *R.J. Griffin* where a developer receives the wrong color of paint. We disagree. The critical difference between the paint example and this case is that supplying the wrong color paint poses no threat to the safety or durability of the home and could not reasonably give rise to the violation of legal duties. Whereas here, plaintiffs have alleged that BFS supplied a type of lumber that made the construction no longer compliant with the Code and increased risk of structural failures. Plaintiffs' claim may have been analogous to the paint example if BFS had substituted the Southern Yellow Pine called for in the contract with a different type of North American lumber that could act as a safe one-to-one substitution, but that is not the case here.

Finally, BFS urges this court to follow *Klopper v. Queens Gap Mountain, LLC*, 816 F. Supp. 2d 281 (W.D.N.C. 2011) and *Piasek v. Biomass Controls PBC*, No. 20-CV-26, 2020 WL 2735385 (E.D.N.C. May 26, 2020). In both cases, each court held that equitable estoppel applied to prevent the plaintiffs from arguing that the arbitration provision did not apply in part because the plaintiffs' complaints alleged "concerted misconduct" between the defendants. *Klopper*, 816 F. Supp. 2d at 292–95; *Piasek*, 2020 WL 2735385, at *4–5. In *Klopper*, the nonsignatory defendants were owners, managers, and members of the signatory defendant, and the plaintiffs

alleged that the defendants acted on behalf of each other and entered into fraudulent schemes together. *Klopper*, 816 F. Supp. 2d at 292–93. In *Piascik*, the nonsignatory defendants were officers of the signatory company and the claims against them were for actions they took on behalf of the signatory company. *Piascik*, 2020 WL 2735385, at *1, 5.

We note that *Klopper* and *Piascik* are not binding here and, unlike *R.J. Griffin* and *Long*, they have not been embraced by this Court. Nor has BFS provided any of our caselaw incorporating the same reasoning for applying equitable estoppel based on “concerted misconduct.” However, even accepting these cases, BFS’ argument fails. LGI and BFS are completely separate entities and their only relationship is that LGI contracted with BFS for the supply of lumber. Additionally, the complaint alleges separate violations for each defendant—the installation of the European lumber versus the supply of the European lumber. While there are obvious similarities in those allegations, they are separate acts and the complaint does not allege that they were done as one mutual scheme.

In sum, plaintiffs’ negligence and UDTPA claims arise solely from BFS’ legal duties and do not obliquely assert a breach of contract. Accordingly, equitable estoppel does not apply and BFS cannot compel arbitration as a nonsignatory to the contract. Because we hold that the parties do not have a valid agreement to arbitrate, we do not consider whether this specific dispute falls within the substantive scope of the contract’s arbitration clause.

III. Conclusion

For the foregoing reasons, we affirm the trial court's order denying BFS' motion to compel arbitration.

AFFIRMED.

Judges CARPENTER and FREEMAN concur.