

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM YORK COUNTY  
Court of Common Pleas

William A. McKinnon, Circuit Court Judge

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Case No. 2020-CP-46-03592

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Summerlake Townhomes Homeowners' Association, Inc. and Susan Hagy and Karin Fuentes, individually and on behalf of all others similarly situated, Respondents,

v.

True Homes, LLC; Carolina Development Services, LLC; Summerlake Properties, LLC; RJB Legacy Company f/k/a Barefoot & Company; BMC East, LLC; Airtron, Inc.; MPK Grading and Erosion Control, LLC; Southend Exteriors, LLC; McGee Brothers Company, Inc.; Alpha Omega Construction Group, Inc.; Pender-Pettus Insulating, Inc.; Charlotte Lanehart Electric Company, Inc.; C&C Plumbing, Inc.; Associated Materials, LLC a/k/a Alside, Inc.; T & A Excavating, LLC; Callahan Excavating, LLC a/k/a Callahan Grading & Hauling, Inc. a/k/a Callahan Grading, LLC; AHR Construction, Inc.; JJS Commercial Construction, Inc.; CDJ Construction, Inc.; Jimenez Contractors, LLC; J. Cov Roofing, LLC; Ayalas Window Installations, LLC; Atlanta Flooring Design Centers, Inc.; Pedro DeJesus Lopez d/b/a PJI Construction; and Pedro Villareal-Conception d/b/a CVP Construction, Defendants,

of which True Homes, LLC, is the Appellant.

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MOTION TO CORRECT THE NOTICE OF  
APPEAL, TO CORRECT THE CAPTION,  
AND TO STRIKE ALL REFERENCES TO  
SUMMERLAKE TOWNHOMES  
HOMEOWNERS' ASSOCIATION, INC.  
AND SUSAN HAGY AS RESPONDENTS

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Respondent Karin Fuentes ("Fuentes") and plaintiffs Summerlake Townhomes Homeowners' Association, Inc. ("Summerlake HOA") and Susan Hagy ("Hagy"), through counsel and in accordance with Rule 240 and Rule 267, SCACR, request the Court of

Appeals order the correction of the notice of appeal, the correction of the caption, and the removal of all references to Summerlake HOA and Hagy as respondents in this appeal.

The basis for this motion is that when Appellant True Homes, LLC filed the Notice of Appeal, it included a caption correctly indicating that there is one, singular “Respondent” in this appeal, but incorrectly and ambiguously referring to “Summerlake Townhomes Homeowners Association, Inc., et al.” as the “Respondent.” On August 19, 2022, the Clerk sent a letter to counsel for Appellant stating that the caption had been changed to read “Summer Lake [sic<sup>1</sup>] Townhomes Homeowners’ Association, Inc. and Susan Hagy and Karin Fuentes, individually and on behalf of all others similarly situated, Respondents.” Despite the Clerk’s August 19, 2022 letter, Appellant continues to include in its filings a caption referring to “Summerlake Townhomes Homeowners Association, Inc., et al.” as “Respondent,” including in Appellant’s Initial Brief and Designation of Matter to be Included in the Record on Appeal. Additionally, in Appellant’s Initial Brief, Appellant refers to Fuentes, Summerlake HOA, and Hagy as “Respondents,” stating: “On November 25, 2020, Plaintiffs Susan Hagy and Karin Fuentes, individually and on behalf of others similarly situated along with the Summerlake Townhomes Homeowners’ Association, Inc. (collectively ‘Respondents’), filed a Summons and Complaint against True Homes, LLC and several other defendants . . . .” (Initial Br. 1.)

Appellant’s designations of Summerlake HOA and Hagy as “Respondents” and the Clerk’s resulting confusion and designation of them as “Respondents” are erroneous and require correction. Rule 202 of the South Carolina Rules of Appellate Procedure provide that the “appellant” is the “party appealing” and the “respondent” is the “adverse party. No

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<sup>1</sup> The correct name of this entity is “Summerlake Townhomes Homeowners’ Association, Inc.,” not “Summer Lake Townhomes Homeowners’ Association, Inc.,” and this Motion requests correction of that scrivener’s error in the corrected caption.

ruling below as to Summerlake HOA or Hagy is on appeal here, and therefore, Summerlake HOA and Hagy are not respondents and are not parties to this appeal.

That Summerlake HOA and Hagy are not respondents is clear from the record. The June 20, 2022 Order included with the Notice of Appeal states that it is an order on “a Motion to Stay and Compel Arbitration . . . filed by Defendant True Homes, LLC . . . seeking to compel the claims of Plaintiffs Susan Hagy . . . and Karin Fuentes . . . into arbitration.” (Notice of Appeal, June 20, 2022 Order 2.) Moreover, Appellant’s Motion to Stay and Compel Arbitration (the “Arbitration Motion”)—the underlying motion giving rise to the June 20, 2022 Order, the August 1, 2022 Order, and this appeal and which is attached hereto as Exhibit A—sought only arbitration of the claims “between Susan Hagy and Karin Fuentes . . . and True Homes.” (Ex. A at 2.) Therefore, the Arbitration Motion, the June Order, and the August Order neither sought nor resulted in any ruling as to any right of Summerlake HOA, and Summerlake HOA is not a respondent in this appeal.

While the Motion and the June 20, 2022 Order did seek and result in a ruling on the right of Hagy to pursue her claims in court versus in arbitration, Appellant neither appealed nor sought reconsideration of the June 20, 2022 Order’s rulings as to Hagy. On June 30, 2022, Appellant filed its Motion to Reconsider the June 20, 2022 Order (“Motion to Reconsider”), a copy of which is attached hereto as Exhibit B. The Motion to Reconsider addresses only Fuentes and contains no mention of Hagy.

Additionally, that Fuentes is the sole Respondent in this appeal is clear from Appellant’s appellate filings. Appellant’s Initial Brief addresses only whether Fuentes is required to submit his claims to arbitration and seeks a reversal of the lower court’s orders only as to Fuentes. For example, at the conclusion of the statement of facts in its Initial

Brief, Appellant states: “True Homes now seeks the benefit of its bargain with Mr. Fuentes by asking this court to compel his individual claims to arbitration.” (Initial Br. 4.) Additionally, in a footnote to the statement of facts, Appellant states that Hagy’s claims have been voluntarily dismissed from the case. (Initial Br. 3 n.1.) The argument section of Appellant’s Initial Brief contains no reference to “Hagy” or “Respondents.” Finally, the conclusion section of Appellant’s Initial Brief states only that the “court should reverse the judgment of the circuit court and remand this matter with instructions to enter an order staying this matter until the claims by Mr. Fuentes, and the similarly situated putative class members, are determined through arbitration . . . .”<sup>2</sup> (Initial Br. 13.) Therefore, with Appellant not having sought reconsideration of the ruling as to Hagy, not having appealed the ruling within thirty days as required by Rule 203 of the South Carolina Appellate Court Rules, and not having raised the issue in its Initial Brief, the lower court’s ruling that Hagy’s claims are not subject to arbitration is the law of the case, and Hagy is not a respondent in this appeal. *See, e.g., Dreher v. S.C. Dep’t of Health & Env’t Control*, 412 S.C. 244, 250, 772 S.E.2d 505, 508 (2015) (“Thus, should the appealing party fail to raise all of the grounds upon which a lower court’s decision was based, those unappealed findings—whether correct or not—become the law of the case.”); *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) (“[A]n unappealed ruling, right or wrong, is the law of the case.”); *Biales v. Young*, 315 S.C. 166, 168, 432 S.E.2d 482, 484 (1993) (“Failure to argue is an abandonment of the issue and precludes consideration on appeal.”); Rule 211, SCACR (providing that the only changes that can be made to a brief

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<sup>2</sup> Respondent Fuentes and plaintiffs Summerlake HOA and Hagy contend the request for an instruction to the circuit court below to enter an order addressing arbitration of any claims of “similarly situated putative class members” is improper and not an issue properly before the Court, but the propriety of that request is not before the Court through this motion.

after submission of the initial brief are the insertion of references to the record and the correction of typographical errors and misspellings).

For the reasons set forth herein, Summerlake HOA and Hagy are not respondents in this appeal, and Appellant's and the Clerk's references to them as respondents are erroneous. The caption for this appeal and the designation of the parties to this appeal should be the following:

Summerlake Townhomes Homeowners' Association, Inc. and Susan Hagy and Karin Fuentes, individually and on behalf of all others similarly situated,

of which Karin Fuentes is the Respondent,

v.

True Homes, LLC; Carolina Development Services, LLC; Summerlake Properties, LLC; RJB Legacy Company f/k/a Barefoot & Company; BMC East, LLC; Airtron, Inc.; MPK Grading and Erosion Control, LLC; Southend Exteriors, LLC; McGee Brothers Company, Inc.; Alpha Omega Construction Group, Inc.; Pender-Pettus Insulating, Inc.; Charlotte Lanehart Electric Company, Inc.; C&C Plumbing, Inc.; Associated Materials, LLC a/k/a Alside, Inc.; T & A Excavating, LLC; Callahan Excavating, LLC a/k/a Callahan Grading & Hauling, Inc. a/k/a Callahan Grading, LLC; AHR Construction, Inc.; JJS Commercial Construction, Inc.; CDJ Construction, Inc.; Jimenez Contractors, LLC; J. Cov Roofing, LLC; Ayalas Window Installations, LLC; Atlanta Flooring Design Centers, Inc.; Pedro DeJesus Lopez d/b/a PJP Construction; and Pedro Villareal-Conception d/b/a CVP Construction, Defendants,

of which True Homes, LLC, is the Appellant.

Accordingly, Respondent Fuentes and plaintiffs Summerlake HOA and Hagy move the Court for an order requiring the correction of the Notice of Appeal to reflect that Respondent Fuentes is the sole respondent in this appeal and striking and requiring the correction of the caption and all references to Summerlake HOA or Hagy as a respondent in Appellant's Initial Brief and Designation of Matter to be Included in the Record on Appeal.

/s/Elliotte Quinn

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*Attorneys for Respondent Karin Fuentes and Plaintiffs  
Summerlake Townhomes Homeowners' Association, Inc.  
and Susan Hagy*

# Exhibit A

Motion to Correct the Notice of Appeal, to Correct  
the Caption, and to Strike All References to  
Summerlake Townhomes Homeowners'  
Association, Inc. and Susan Hagy as Respondents

Appellate Case No.: 2022-001144



CONCEPCION d/b/a CVP )  
CONSTRUCTION, )  
 )  
Defendants. )

**TO: PLAINTIFFS AND THEIR ATTORNEYS, ELLIOTTE QUINN, ESQ. AND RACHEL IGDAL, ESQ.**

PLEASE TAKE NOTICE that Defendant True Homes, LLC (“True Homes”) will, on the tenth day after service hereof, move the Court, Pursuant to 9 U.S.C. § 3, for an Order staying “the trial of this action until . . . arbitration has been had in accordance with the terms of the agreement” between Susan Hagy and Karin Fuentes (“Plaintiffs”) and True Homes. In support of this Motion, True Homes would show the following:

1. True Homes sells homes to members of the public using a standard purchase agreement.
2. The following notice appeared on the agreement signed by Karin Fuentes, in all capital letters when her home, now known as 2006 Firefly Lane, was sold:

SELLER AND BUYER KNOWINGLY AND VOLUNTARILY AGREE TO SUBMIT ANY WARRANTY DISPUTES FOR RESOLUTION IN ACCORDANCE WITH THE PROCESS DESCRIBED IN THE LIMITED WARRANTY BOOKLET, INCLUDING WITHOUT LIMITAITON, BINDING ARBITRATION, AND, AS TO SUCH DISPUTES, BUYER AND SELLER WAIVES THEIR RESPECTIVE RIGHT TO TRIAL BEFORE A JUDGE OR JURY.

3. The contract between True Homes and Karin Fuentes is attached as Exhibit A.
4. True Homes sold lot 88, now known as 923 Summerlake Drive to Alex Fresco by contract dated October 16, 2015.
5. That contract contains a similar provision, indicating:

**SELLER AND BUYER KNOWINGLY AND VOLUNTARILY AGREE TO SUBMIT ANY AND ALL DISPUTES WHATSOEVER TO BINDING ARBITRATION, INCLUDING WITHOUT LIMITATION, DISPUTES ARISING FROM THE WARRANTY, THE HOME PURCHASE AGREEMENT, THE HOME, OR THE RELATIONSHIP BETWEEN THE PARTIES. AS TO SUCH DISPUTES, BUYER AND SELLER EACH WAIVES THEIR RESPECTIVE RIGHT TO TRIAL BEFORE A JUDGE OR JURY.**

6. The Fresco contract is attached as Exhibit B.
7. Alex Fresco transferred his interests in the property to Opendoor Property C LLC by deed dated November 6, 2018. Exhibit C.
8. Opendoor Property C LLC transferred its interests in the property to Susan Tourigny Hagy by deed dated April 9, 2019. Exhibit D.
9. These contracts and their arbitration provisions are enforceable.
10. The construction and sale of Plaintiffs' homes affected interstate commerce such that the agreement is governed by the Federal Arbitration Act (FAA).
11. Plaintiffs have brought claims sounding in contract against True Homes for alleged construction defects.
12. True Homes is entitled to have those claims compelled to arbitration pursuant to the contract. *See Damico v. Lennar Carolinas, LLC*, 430 S.C. 188, 195, 844 S.E.2d 66, 70 (Ct. App. 2020) (noting a successor homeowner, who did not sign an arbitration agreement, may still be compelled to arbitration where the homeowner seeks to enforce rights pursuant to the contract).
13. True Homes may file a memorandum of law in support of its motion to compel arbitration as provided in the South Carolina Rules of Civil Procedure.

WHEREFORE, True Homes respectfully requests that the Court grant its Motion to Stay and Compel Arbitration with respect to claims brought by Plaintiffs to provide each party the benefit of its bargain.

**WOLFE, CAMPBELL, GUNST & HINSON, PLLC**

/s/ Joshua R. Hinson  
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*Attorneys for Defendant True Homes, LLC*

# Exhibit B

Motion to Correct the Notice of Appeal, to Correct  
the Caption, and to Strike All References to  
Summerlake Townhomes Homeowners'  
Association, Inc. and Susan Hagy as Respondents

Appellate Case No.: 2022-001144

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT  
CASE NO.: 2020-CP-46-03592

SUMMERLAKE TOWNHOMES )  
HOMEOWNERS' ASSOCIATION, )  
INC. and KARIN FUENTES, ROBIN )  
DANIEL, and LISA SHER, individually )  
and on behalf of all others similarly )  
situated, )

Plaintiffs, )

v. )

TRUE HOMES, LLC; CAROLINA )  
DEVELOPMENT SERVICES, LLC; )  
SUMMERLAKE PROPERTIES, LLC; )  
RJB LEGACY COMPANY f/k/a )  
Barefoot & Company; BMC EAST, )  
LLC; AIRTRON, INC.; MPK )  
GRADING AND EROSION )  
CONTROL, LLC; SOUTHEND )  
EXTERIORS, LLC; MCGEE )  
BROTHERS COMPANY, INC.; )  
ALPHA OMEGA CONSTRUCTION )  
GROUP, INC.; PENDER-PETTUS )  
INSULATING, INC.; CHARLOTTE )  
LANEHART ELECTRIC COMPANY, )  
INC.; C&C PLUMBING, INC.; )  
ASSOCIATED MATERIALS, LLC a/k/a )  
Alside, Inc.; T&A EXCAVATING, LLC; )  
CALLAHAN EXCAVATING, LLC )  
a/k/a Callahan Grading & Hauling, Inc. )  
a/k/a Callahan Grading, LLC; AHR )  
CONSTRUCTION, INC.; JJS )  
COMMERCIAL CONSTRUCTION, )  
INC.; CDJ CONSTRUCTION, INC.; )  
JIMENEZ CONTRACTORS, LLC; J. )  
COV ROOFING, LLC; AYALAS )  
WINDOW INSTALLATIONS, LLC; )  
ATLANTA FLOORING DESIGN )  
CENTERS, INC.; PEDRO DEJESUS )  
LOPEZ d/b/a PJL CONSTRUCTION; )  
PEDRO VILLAREAL-CONCEPCION )

**TRUE HOMES' MOTION TO  
RECONSIDER THIS COURT'S JUNE  
20, 2022 ORDER**



v. )  
 )  
S. SALLOUM CONTRACTORS, INC. )  
d/b/a SALOMON & ASSOCIATES, )  
 )  
Third-Party Defendant. )

**TO: PLAINTIFFS AND THEIR ATTORNEYS, ELLIOTTE QUINN, ESQ. AND RACHEL IGDAL, ESQ.**

PLEASE TAKE NOTICE that Defendant True Homes, LLC (“True Homes”) will, on the tenth day after service hereof, move the Court, pursuant to Rule 59 of the South Carolina Rules of Civil Procedure for an order reconsidering this Court’s Order Denying Defendant True Homes, LLC’s Motion to Stay and Compel Arbitration filed on June 20, 2022 (the “Order”). In support of this Motion, True Homes would show the following:

(1) True Homes and Mr. Fuentes agreed the Federal Arbitration Act applies to their contractual relationship;

(2) the True Homes Purchase Agreement (“PA”) anticipates Mr. Fuentes’ townhome was not constructed at the time of contracting;

(3) the only facts provided to this Court demonstrate Mr. Fuentes’ entered into the initial agreement with True Homes prior to True Homes completing construction of his townhome;

(4) Mr. Fuentes communicated with True Homes’ representatives in North Carolina and requested warranty work by North Carolina subcontractors; and

(5) The Court’s holding in *Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 730 S.E.2d 312 (2012) is no longer supported by the nature of the housing industry in South Carolina, where regional home builders are providing an extensive supply of inventory homes using out-of-state suppliers and contractors.

In support of this motion, True Homes relies upon the pleadings, the evidence on the record

in this case, the South Carolina Rules of Civil Procedure, the law of South Carolina, a memorandum in support of the motion filed contemporaneously herewith, any memoranda submitted by the parties, and any oral arguments the Court shall hear.

This the 30th day of June, 2022.

**WOLFE, CAMPBELL, GUNST & HINSON, PLLC**

/s/ Joshua R. Hinson  
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**RECEIVED**  
**Dec 28 2022**  
**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM YORK COUNTY  
Court of Common Pleas

William A. McKinnon, Circuit Court Judge

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Case No. 2020-CP-46-03592

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Summerlake Townhomes Homeowners' Association, Inc. and Susan Hagy and Karin Fuentes, individually and on behalf of all others similarly situated, Respondents,

v.

True Homes, LLC; Carolina Development Services, LLC; Summerlake Properties, LLC; RJB Legacy Company f/k/a Barefoot & Company; BMC East, LLC; Airtron, Inc.; MPK Grading and Erosion Control, LLC; Southend Exteriors, LLC; McGee Brothers Company, Inc.; Alpha Omega Construction Group, Inc.; Pender-Pettus Insulating, Inc.; Charlotte Lanehart Electric Company, Inc.; C&C Plumbing, Inc.; Associated Materials, LLC a/k/a Alside, Inc.; T & A Excavating, LLC; Callahan Excavating, LLC a/k/a Callahan Grading & Hauling, Inc. a/k/a Callahan Grading, LLC; AHR Construction, Inc.; JJS Commercial Construction, Inc.; CDJ Construction, Inc.; Jimenez Contractors, LLC; J. Cov Roofing, LLC; Ayalas Window Installations, LLC; Atlanta Flooring Design Centers, Inc.; Pedro DeJesus Lopez d/b/a P JL Construction; and Pedro Villareal-Conception d/b/a CVP Construction, Defendants,

of which True Homes, LLC, is the Appellant.

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PROOF OF SERVICE

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I certify that on December 27, 2022, I served the attached Motion to Correct the Notice of Appeal, to Correct the Caption, and to Strike All References to Summerlake Townhomes Homeowners' Association, Inc. and Susan Hagy as Respondents, pursuant to Rule 262, SCACR, and the Supreme Court's May 6, 2022, amended order establishing the methods for electronic filing and service of documents, by emailing a copy to Appellant's counsel of record:

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December 27, 2022

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Plaintiffs Summerlake Townhomes  
Homeowners' Association, Inc. and Susan  
Hagy*