

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ROYAL PALMS PROPERTY OWNERS  
ASSOCIATION, INC.

Plaintiff,

vs.

ALPHA PRIME, LLC, ALPHA PRIME  
CONSTRUCTION, LLC, SAGEHORN AND  
COMPANY, INC., ROYAL PALMS HOLDING,  
LLC, LENNAR CAROLINAS, LLC, ALPHA  
OMEGA CONSTRUCTION GROUP, INC.,  
VALMAR NUNES, INDIVIDUALLY, BRUZA  
CONSTRUCTION, LLC, SIMONS  
CONSTRUCTION COMPANY, LLC, CESAR E. DE  
SOUZA A/K/A CESAR DESOUZA,  
INDIVIDUALLY, RAUL MARTINEZ MASONRY,  
LLC, MARK WOLVERTON, INDIVIDUALLY,  
DVS, INC., CAROLINA FOUNDATION, INC.,  
CEBS CONSTRUCTION, LLC A/K/A CEBS  
CUSTOM HOMES, LLC, ARCHER  
EXTERIORS, INC., JAS CONSTRUCTION  
SERVICES, LLC, HENRY PALMER,  
INDIVIDUALLY AND D/B/A PALMER'S  
CONSTRUCTION SERVICES, LLC,  
ANGELO DE SOUZA, INDIVIDUALLY AND  
D/B/A SUNRISE SIDING, LLC, WW  
PEREIRA CONSTRUCTION, LLC, GC  
GENERAL CONSTRUCTION, LLC, SIDING  
CONSTRUCTION, LLC, BUILDERS  
FIRSTSOURCE – SOUTHEAST GROUP,  
LLC, ASSOCIATED MATERIALS,  
INCORPORATED A/K/A AND D/B/A  
ALSIDE; COHEN'S DRYWALL COMPANY, INC.;  
GUARANTEED FRAMING, LLC, HURLEY  
SERVICES, LLC; SUNRISE WINDOWS AND  
DOORS, LLC; PEREIRA CONSTRUCTION, LLC;  
DELLA PUTTI CONSTRUCTION; J. PLITZ  
CONSTRUCTION, LLC; CMAC CONSTRUCTION,  
LLC; HENRY'S CONSTRUCTION & TRUCKING,  
INC.; CHARLOTTE MECHANICAL, LLC;  
ETHRIDGE ELECTRIC CO., LLC; BUILDERS

) IN THE COURT OF COMMON PLEAS

)  
) CIVIL ACTION NO. 2020-CP-10-03931

)  
) **ORDER DENYING DEFENDANT**  
) **LENNAR CAROLINAS LLC'S**  
) **MOTION TO STAY THE CASE**  
) **AND COMPEL ARBITRATION**

**RECEIVED**  
**Apr 03 2023**  
**SC Court of Appeals**

INSULATION OF NORTH CAROLINA, LLC a/k/a )  
CITY WIDE INSULATION OF MADISON, INC. )  
d/b/a BUILDERS' INSULATION; TRADITION )  
BUILDERS, INC.; HEAVIN WOODWORKS, INC.; )  
BISHOP & SONS PLUMBING & PIPING, INC.; )  
ARTEAGA ROOFING, LLC; MELINDA AMADOR; )  
JAMES BAYLES; BLANCA CHRISTINA LOPEZ )  
A/K/A BLANCA CHRISTINA CHAVEZ; FLAVIO )  
MORALES; DANIEL LEON RAMOS; JUAN )  
GARZA RAMOS; FIDEL MORALES and CITY )  
WIDE INSULATION OF MADISON, INC. d/b/a )  
BUILDERS' INSULATION; )

Defendants. )

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BUILDERS FIRSTSOURCE-SOUTHEAST GROUP, )  
LLC, )

Defendant/Third-Party Plaintiff, )

vs. )

HURLEY SERVICES, LLC and SUNRISE )  
WINDOWS AND DOORS, LLC, )

Third-Party Defendants. )

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SAGEHORN AND COMPANY, INC., )

Third-Party Plaintiff, )

VS. )

HENRY'S CONSTRUCTION TRUCKING, INC., )  
CHARLOTTE MECHANICAL, LLC, ETHRIDGE )  
ELECTRIC CO., LLC, BUILDERS INSULATION OF )  
NORTH CAROLINA, LLC, TRADITION )  
BUILDERS, INC., HEAVIN WOODWORKS, INC., )  
BISHOP & SONS PLUMBING & PIPING, INC. and )  
JOHN DOE 1-10, )

Third-Party Defendants. )

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ALPHA OMEGA CONSTRUCTION GROUP, INC., )

Third-Party Plaintiff, )



parties, including general contractors, subcontractors and suppliers, who also performed work for the construction and development of the Royal Palms project.

As a planned community, Royal Palms is governed by a Declarations of Covenants and Restrictions. This Declaration contains an arbitration provision.

### Analysis

When questions of arbitrability arise, the trial court, not the arbitrator, decides whether a matter should be resolved through arbitration. *See Oxford Health Plans, LLC v. Sutter*, 569 U.S. 564 (2013). This determination involves a two-step inquiry: (1) whether a valid arbitration agreement exists; and (2) whether the specific dispute falls within the substantive scope of the arbitration agreement. *See Simpson v. MSA of Myrtle Beach, Inc.* 373 S.C. 14, 644 S.E.2d 663

The Arbitration Provision, in Section 14.1 lists, claims which ***shall not*** be considered a Claim subject to the arbitration provision:

Notwithstanding the above, the following shall not be considered “Claims” unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 14.2:

- (i) Any Association action to collect assessments or other amounts due from any Owner;
- (ii) any Association action to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association’s ability to enforce the provisions of Part Two of this Amended Declaration (relating to creation and maintenance of community standards);
- (iii) any suit in which any indispensable party is not a Bound Party; and***
- (iv) any suit as to which the applicable statute of limitations would expire within 180 days of giving the Notice required by Section 14.2(a), unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim’s statute of limitations to comply with this Article.

The term indispensable party is not defined.

It is clear that there are in excess of forty-seven (47) Defendants in this action who are not “Bound Parties” under the Declaration of Covenants and who have not agreed to submit themselves to Section 14.2 of the Declaration of Covenants. Those Defendants are not bound to arbitration and the Declaration does not allow this matter to be arbitrated without those parties who are indispensable.

In determining whether a party is indispensable, SCRCF Rule 19 mandates that a party shall be joined in an action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest related to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations by reason of his claimed interest and the court shall order that he be made a party. SCRCF Rule 19. First Citizens Bank v. Strable, 292 S.C. 146, 148, 355 S.E.2d 278, 279 (Ct. App. 1987) (stating that the prerequisites for compulsory joinder of parties is contained in Rule 19 and requires that a party be joined if in his absence complete relief cannot be accorded among the parties).

“It is a fundamental principle of law that the plaintiff is the master of his own complaint and is the sole decider of whom to sue for his injuries.” Damico v. Lennar Carolinas, LLC, et. al., 437 S.C. 596, 879 S.E.2d 746 (2022); Myles v. United States, 416 F.3d 551, 552 (7<sup>th</sup> Cir. 2005)(“[L]itigants are masters of their own complaints and may choose who to sue – or not sue”). Plaintiff brought suit against the Royal Palms developers, contractors, subcontractors and suppliers which all worked on the project.

Not only does the arbitration provision deny Plaintiff’s right to be the master of its own complaint and choose who to sue or not to sue, but the provision also transfers the power of choice

to Lennar. It allows Lennar to be the only party in an arbitration or assuming Defendant Lennar has arbitration provisions within its subcontracts, Lennar can choose which subcontractors to include in the arbitration. Damico, 437 S.C. 596, 879 S.E.2d 746 (2022) (“Giving Lennar the ‘sole election’ to include or exclude subcontractors in the arbitration proceeding strips Petitioners of that right and overturns a firmly entrenched legal principle.”).

Plaintiff, subcontractors, general contractors and the developers all have claims and an interest in the outcome of this construction defects case. Allowing separate actions gives both Defendant Lennar and the remaining Defendants’ unfair advantages by creating empty chair defenses in both the arbitration forum and in the jury trial matter. Forcing separate actions allows Defendant Lennar to create a “procedural defense to liability” which would be wholly unreasonable and oppressive” to Plaintiff. *See Damico v. Lennar Carolinas, LLC*, et. al., 437 S.C. 596, 879 S.E.2d 746 (2022).

The subcontractors and suppliers are necessary and indispensable to this action to protect their interests and the interests of Plaintiff. SCRCP Rule 19. The forty-seven (47) other parties are so integral to the lawsuit the action cannot proceed in a just or fair manner without them. Being forced to arbitrate a case in an arbitration forum against Defendant Lennar while litigating the same case in circuit court against another developer and against contractors, subcontractors and vendors most of whom were hired by Defendant Lennar would be fundamentally unfair, judicially inefficient, and would subject the same suit to different or conflicting outcomes.

It is clear that this lawsuit has parties who are not and cannot be bound by the arbitration provision set forth in the Declaration of Covenants. All parties currently in this litigation need to be joined in one forum at the same time in order to try the case on the merits and to get adequate and complete relief for all interested parties.

Because the absence of the subcontractors and suppliers from the arbitration would leave any of the persons already parties, such as the Plaintiff and the subcontractors/suppliers, subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations, the subcontractors and suppliers are indispensable parties. Because these indispensable parties are not “Bound Parties” under the Declaration, the express language of Section 14.1 provides that the present lawsuit shall not be considered a claim subject to the arbitration provision. Therefore, the Motion to Stay the Case and Compel Arbitration is DENIED.

**AND IT IS SO ORDERED.**

***(JUDGE’S SIGNATURE PAGE TO FOLLOW)***



Charleston Common Pleas

**Case Caption:** Royal Palms Property Owners Association Inc , plaintiff, et al VS  
Alpha Prime Llc , defendant, et al  
**Case Number:** 2020CP1003931  
**Type:** Order/Other

It is so Ordered.

s/ R. Keith Kelly - 2165