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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Keith Kelly, Circuit Court Judge

Appellate Case No. 2023-000542

Case No. 2020-CP-10-03931

Royal Palms Property Owners Association, Inc.

Respondent,

v.

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. Desouza 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 Insulation of North Carolina, LLC a/k/a City Wide Insulation of Madison, Inc. a/b/a Builders Insulation; Tradition Builders, Inc.; Heaven Woodworks, Inc.; Bishop & Sons Plumbing & Piping, Inc.; Arteaga Roofing, LLC; Melinda Amador; James Bayles; Blanca Christina Lopez a/k/a Blanca Christina Chaves; Flavio Morales; Daniel Leon Ramos; Juan Garza Ramos; Fidel Morales; and City Wide Insulation of Madison, Inc. d/b/a Builders Insulation, Defendants,

Of Which Lennar Carolinas, LLC is the Appellant.

And

Builders Firstsource-Southeast Group, LLC, Third Party Plaintiff

v.

Hurley Services, LLC and Sunrise Windows and Doors, LLC and Sunrise Windows and Doors LLC, Third-Party Defendants

And

Sagehorn and Company, Inc. Third Party Plaintiff

v.

Henry's Construction Trucking, Inc., Charlotte Mechanical, LLC, Ethridge Electric Co., LLC, Builders Insulation of North Carolina, LLC, Tradition Builders, Inc., Heaven Woodworks, Inc., Bishop & Sons Plumbing & Piping, Inc. and John Doe 1-10, Third Party Defendants

And

Alpha Omega Construction Group, LLC, Third Party Plaintiff

v.

Arteaga Roofing, LLC, Melinda Amador, James Bayles, Blanca Christina Lopez, Flavio Morales, Daniel Leon Ramos, Juan Garza Ramos and Fidel Morales, Third Party Defendants

**RESPONDENT ROYAL PALMS PROPERTY OWNERS ASSOCIATION, INC.
MOTION TO DISMISS APPEAL**

The Respondent, Royal Palms Property Owners Association, Inc., pursuant to Rule 203(d)(1), SCACR, Rule 203(d)(3), SCACR and Rule 260(a), SCACR, moves the Court for an order dismissing the Notice of Appeal filed by the Appellant. In support of the motion, the respondent shows the following to the court:

1. The Notice of Appeal has not been pursued in conformity with applicable court rules because Appellant failed to file the Notice of Appeal with the clerk of the lower court within ten (10) days after the Notice of Appeal was served. Rule 203(d)(1)(B), SCACR.
2. The Motion is based on the following facts:
 - (a) The lower Court filed an Order Denying Defendant Lennar Carolinas LLC's Motion to Stay the Case and Compel Arbitration on February 10, 2023. Lennar Carolinas

filed a Motion to Alter or Amend the Order Denying the Stay and to Compel Arbitration on February 21, 2023. The Court filed an Order Denying Lennar's Motion to Alter or Amend on March 2, 2023.

(b) Appellant served its Notice of Appeal on Respondent on April 3, 2023 (*Exhibit 1 – Notice of Appeal / Proof of Service served on April 3, 2023*). Appellant filed its Notice of Appeal with the Court of Appeals on April 3, 2023. (*Exhibit 2-Transmittal Letter of Filing on April 3, 2023*).

(c) Appellant filed its Notice of Appeal with the clerk of the lower court on April 17, 2023 outside of the ten days. (*Exhibit 3 – Notice of Appeal – Charleston County file-stamped April 17, 2023 with NEF*). Rule 203(d)(1)(B), SCACR.

3. “Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court. A case shall not be reinstated except by leave of the court, upon good cause shown, after notice to all parties.” Rule 260(a), SCACR. Because the notice of appeal was not timely filed in accordance with Rule 203(d)(1), SCACR, the appeal should be dismissed pursuant to Rule 203(d)(1), SCACR Rule 203(d)(3), SCACR and Rule 260(a), SCACR.

WHEREFORE, Respondent respectfully requests that the Notice of Appeal be dismissed and for such other and further relief as the court deems just and appropriate.

Respectfully Submitted,

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April 26, 2023
Charleston, SC

EXHIBIT 1

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In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Keith Kelly, Circuit Court Judge

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Respondent,

v.

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 Desouza 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 Insulation of North Carolina, LLC a/k/a City Wide Insulation of Madison, Inc. a/b/a Builders' Insulation; Tradition Builders, Inc.; Heaven Woodworks, Inc.; Bishop & Sons Plumbing & Piping, Inc.; Arteaga Roofing, LLC; Melinda Amador; James Bayles; Blanca Christina Lopez a/k/a Blanca Christina Chaves; Flavio Morales; Daniel Leon Ramos; Juan Garza Ramos; Fidel Morales; and City Wide Insulation of Madison, Inc. d/b/a Builders Insulation; Defendants

Of which Lennar Carolinas, LLC is the Appellant.

And

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v.

Hurley Services, LLC and Sunrise Windows and Doors, LLC and Sunrise Windows and Doors LLC, Third-Party Defendants

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Alpha Omega Construction Group, LLC, Third Party Plaintiff

v.

Arteaga Roofing, LLC, Melinda Amador, James Bayles, Blanca Christina Lopez, Flavio Morales, Daniel Leon Ramos, Juan Garza Ramos and Fidel Morales, Third Party Defendants.

NOTICE OF APPEAL

Lennar Carolinas, LLC ("Lennar") appeals the Honorable Keith Kelly's order denying Lennar's Motion to Compel Arbitration, filed on February 21, 2023, and the Honorable Keith Kelly's order denying Lennar's Motion to Alter or Amend, filed on March 2, 2023. Lennar received notice of the circuit court's denial of the Motion to Alter or Amend on March 2, 2023. The order denying the Motion to Compel Arbitration and the Order denying the Motion to Alter or Amend are attached hereto as **Exhibit 1**.

s/Katon E. Dawson Jr.

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April 3, 2023

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The undersigned hereby certifies that on April 3, 2023, copies of **NOTICE OF APPEAL** were served on all counsel of record via email to counsels' individual AIS email addresses:

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EXHIBIT 2

EXHIBIT 2



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Via E-Mail [ctappfilings@sccourts.org] and U.S. Mail

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: ***Royal Palms Property Owner Association, on behalf of themselves and similarly situated, v. Lennar Carolinas, LLC, et al.***
Case No. 2020-CP-10-03931

Dear Mrs. Kitchings:

Enclosed for filing please find Appellant Lennar Carolinas, LLC's Notice of Appeal in the above referenced matter. Also enclosed please find copies of the orders to be challenged on appeal, the Proof of Service, and this Firm's check in the amount of \$250.00 in satisfaction of the Court of Appeal's filing fee.

By copy of this correspondence, we are serving all counsel of record with a copy of the Notice of Appeal. A copy of this Notice of Appeal will also be filed electronically with the Charleston County Clerk of Court. Should you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

Katon E. Dawson, Jr.

KED
Enclosures

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The Honorable Jenny Abbott Kitchings
April 3, 2023
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EXHIBIT 3

EXHIBIT 3

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Keith Kelly, Circuit Court Judge

Case No. 2020-CP-10-03931

Royal Palms Property Owners Association, Inc.,

Respondent,

v.

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 Desouza 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 Insulation of North Carolina, LLC a/k/a City Wide Insulation of Madison, Inc. a/b/a Builders' Insulation; Tradition Builders, Inc.; Heaven Woodworks, Inc.; Bishop & Sons Plumbing & Piping, Inc.; Arteaga Roofing, LLC; Melinda Amador; James Bayles; Blanca Christina Lopez a/k/a Blanca Christina Chaves; Flavio Morales; Daniel Leon Ramos; Juan Garza Ramos; Fidel Morales; and City Wide Insulation of Madison, Inc. d/b/a Builders Insulation; Defendants

Of which Lennar Carolinas, LLC is the Appellant.

And

Builders Firstsource-Southeast Group, LLC, Third Party Plaintiff

v.

Hurley Services, LLC and Sunrise Windows and Doors, LLC and Sunrise Windows and Doors LLC, Third-Party Defendants

And

Sagehorn and Company, Inc., Third Party Plaintiff

v.

Henry's Construction Trucking, Inc., Charlotte Mechanical, LLC, Ethridge Electric Co., LLC, Builders Insulation of North Carolina, LLC, Tradition Builders, Inc., Heaven Woodworks, Inc., Bishop & Sons Plumbing & Piping, Inc., and John Doe 1-10, Third Party Defendants

And

Alpha Omega Construction Group, LLC, Third Party Plaintiff

v.

Arteaga Roofing, LLC, Melinda Amador, James Bayles, Blanca Christina Lopez, Flavio Morales, Daniel Leon Ramos, Juan Garza Ramos an Fidel Morales, Third Party Defendants.

NOTICE OF APPEAL

Lennar Carolinas, LLC (“Lennar”) appeals the Honorable Keith Kelly’s order denying Lennar’s Motion to Compel Arbitration, filed on February 21, 2023, and the Honorable Keith Kelly’s order denying Lennar’s Motion to Alter or Amend, filed on March 2, 2023. Lennar received notice of the circuit court’s denial of the Motion to Alter or Amend on March 2, 2023. The order denying the Motion to Compel Arbitration and the Order denying the Motion to Alter or Amend are attached hereto as **Exhibit 1**.

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EXHIBIT 1

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**

FILED FROM LOCALITY FILED - 2020231 Filed 11/17/20 10:26:33 AM - CHARRLESTON - COMMONS ONLINE - CASE# 2020CP1003931

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.

BUILDERS FIRSTSOURCE-SOUTHEAST GROUP,
LLC,

Defendant/Third-Party Plaintiff,

vs.

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

Third-Party Defendants.

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.

ALPHA OMEGA CONSTRUCTION GROUP, INC.,

Third-Party Plaintiff,

FILED FROM COALITION FILED - 2023 Fwd 107 03263FAM1 - CHARLESTON - COMMONWEALTH COURTS - CASE# 202200071 0033331

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, SCRPC 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. SCRPC 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 (7th 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. SCRC 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)

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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

EXHIBIT 2

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
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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 ALTER OR AMEND**

FILED FROM CALLY RHEED - 2/22/23 10:07 AM - CHARLESTON - COMMON PLEAS - CASE # 2020CP1003931

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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
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MORALES; DANIEL LEON RAMOS; JUAN
GARZA RAMOS; FIDEL MORALES and CITY
WIDE INSULATION OF MADISON, INC. d/b/a
BUILDERS' INSULATION;

Defendants.

BUILDERS FIRSTSOURCE-SOUTHEAST GROUP,
LLC,

Defendant/Third-Party Plaintiff,

vs.

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

Third-Party Defendants.

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.

ALPHA OMEGA CONSTRUCTION GROUP, INC.,

Third-Party Plaintiff,



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

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Keith Kelly, Circuit Court Judge

Case No. 2020-CP-10-03931

Royal Palms Property Owners Association, Inc.,

Respondent,

v.

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 Desouza 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 Insulation of North Carolina, LLC a/k/a City Wide Insulation of Madison, Inc. a/b/a Builders' Insulation; Tradition Builders, Inc.; Heaven Woodworks, Inc.; Bishop & Sons Plumbing & Piping, Inc.; Arteaga Roofing, LLC; Melinda Amador; James Bayles; Blanca Christina Lopez a/k/a Blanca Christina Chaves; Flavio Morales; Daniel Leon Ramos; Juan Garza Ramos; Fidel Morales; and City Wide Insulation of Madison, Inc. d/b/a Builders Insulation; Defendants

Of which Lennar Carolinas, LLC is the Appellant.

And

Builders Firstsource-Southeast Group, LLC, Third Party Plaintiff

v.

Hurley Services, LLC and Sunrise Windows and Doors, LLC and Sunrise Windows and Doors LLC, Third-Party Defendants

And

Sagehorn and Company, Inc., Third Party Plaintiff

v.

Henry's Construction Trucking, Inc., Charlotte Mechanical, LLC, Ethridge Electric Co., LLC, Builders Insulation of North Carolina, LLC, Tradition Builders, Inc., Heaven Woodworks, Inc., Bishop & Sons Plumbing & Piping, Inc., and John Doe 1-10, Third Party Defendants

And

Alpha Omega Construction Group, LLC, Third Party Plaintiff

v.

Arteaga Roofing, LLC, Melinda Amador, James Bayles, Blanca Christina Lopez, Flavio Morales, Daniel Leon Ramos, Juan Garza Ramos an Fidel Morales, Third Party Defendants.

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The undersigned hereby certifies that on April 3, 2023, copies of **NOTICE OF APPEAL** were served on all counsel of record via email to counsels' individual AIS email addresses:

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April 3, 2023

Via E-Mail [ctappfilings@sccourts.org] and U.S. Mail

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201


Re: ***Royal Palms Property Owner Association, on behalf of themselves and similarly situated, v. Lennar Carolinas, LLC, et al.***
Case No. 2020-CP-10-03931

Dear Mrs. Kitchings:

Enclosed for filing please find Appellant Lennar Carolinas, LLC's Notice of Appeal in the above referenced matter. Also enclosed please find copies of the orders to be challenged on appeal, the Proof of Service, and this Firm's check in the amount of \$250.00 in satisfaction of the Court of Appeal's filing fee.

By copy of this correspondence, we are serving all counsel of record with a copy of the Notice of Appeal. A copy of this Notice of Appeal will also be filed electronically with the Charleston County Clerk of Court. Should you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,



Katon E. Dawson, Jr.

KED
Enclosures

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The Honorable Jenny Abbott Kitchings
April 3, 2023
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The Honorable Jenny Abbott Kitchings
April 3, 2023
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***** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

-

A filing has been submitted to the court RE: 2020CP1003931

Official File Stamp: 04-17-2023 03:29:00 PM

Court: CIRCUIT COURT

Common Pleas

Charleston

Case Caption: Royal Palms Property Owners Association Inc ,
plaintiff, et al VS Alpha Prime Llc , defendant, et
al

Document(s) Submitted: Appeal/Notice of Appeal to Court of Appeals

Filed by or on behalf of: Katon Edwards Dawson, Jr.

This notice was automatically generated by the Court's auto-notification system.

-

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Sonaly Kirkley Hendricks for Royal Palms Holding Llc

Claude Townsend Prevost, III for Sunrise Siding Llc

Stephen P. Hughes for Builders Firstsource Southeast Group Llc

Erin DuBose Dean for Raul Martinez Masonry Llc, Sagehorn And Company Inc

Roman Vincent Hammes for Cesar Desouza, Cesar E De Souza

Taylor Harrison Stair for Lennar Carolinas Llc

William Green DesChamps, IV for Lennar Carolinas Llc

Michael Lawrence Leech for Dvs Inc

Tyler Ethan Cloud for Dvs Inc

Christopher Clay Olson for Bruza Construction Llc

Jeffrey A Ross for Cohens Drywall Company Inc

PHILIP Paul CRISTALDI, III for Cohens Drywall Company Inc

Alan Ross Belcher, Jr. for Cebes Construction Llc

Caroline Kathryn Hicks for Melinda Amador

Jason Alan Daigle for Arteaga Roofing Llc, Arteaga Roofing LLC

Julia A. Bradshaw for Henry Palmer, Palmers Construction Services Llc

Sarah E. Butler for Henry Palmer, Palmers Construction Services Llc

Francis E. Grimball for Royal Palms Property Owners Association Inc

Madison Brooke Alger for Associated Materials Incorporated

John Patrick Turner Norris for Associated Materials Incorporated

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Scott William Giblin for Bishop & Sons Plumbing & Piping Inc

Kirkley Gibson White for Flavio Morales

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Mark Shanter Chaparro for Alpha Omega Construction Group Inc

Steven T. Moon for Jas Construction Services Llc

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Melinda Amador

Flavio Morales

Henrys Construction & Trucking Inc

Ethridge Electric Co Llc

Builders Insulation Of North Carolina Llc

Tradition Builders Inc

Heavin Woodworks Inc
Bishop & Sons Plumbing & Piping Inc
Henrys Construction Trucking
Charlotte Mechanical
Ethridge Electric
Builders Insulation
Tradition Builders
Heavin Woodworks
Bishop & Sons
John Doe 1 10
Heaven Woodworks Inc
Ethridge Electric Co Llc
Charlotte Mechanical Llc
Henrys Construction & Trucking Inc
Sagehorn and Company Inc
Sunrise Windows And Doors Llc
Pereira Construction Llc
Della Putti Construction
Robert McNair Peele, III for Sunrise Siding Llc, J
Plitz Construction Llc
Sunrise Windows And Doors Llc
Alside
Cebes Custom Homes Llc
Siding Construction Llc
John Does 1 10
Angelo De Souza
Gc General Construction Llc
Alpha Prime Construction Llc
Valmar Nunes

Builders Insulation

Alpha Prime Llc

Fidel Morales

Blanca Christina Chavez

James Bayles

Blanca Christina Lopez

James Bayles

Alpha Omega Construction Group Inc

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

Apr 26 2023

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Keith Kelly, Circuit Court Judge

Appellate Case No. 2023-000542

Case No. 2020-CP-10-03931

Royal Palms Property Owners Association, Inc.

Respondent,

v.

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. Desouza 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 Insulation of North Carolina, LLC a/k/a City Wide Insulation of Madison, Inc. a/b/a Builders Insulation; Tradition Builders, Inc.; Heaven Woodworks, Inc.; Bishop & Sons Plumbing & Piping, Inc.; Arteaga Roofing, LLC; Melinda Amador; James Bayles; Blanca Christina Lopez a/k/a Blanca Christina Chaves; Flavio Morales; Daniel Leon Ramos; Juan Garza Ramos; Fidel Morales; and City Wide Insulation of Madison, Inc. d/b/a Builders Insulation, Defendants,

Of Which Lennar Carolinas, LLC is the Appellant.

And

Builders Firstsource-Southeast Group, LLC, Third Party Plaintiff

v.

Hurley Services, LLC and Sunrise Windows and Doors, LLC and Sunrise Windows and Doors LLC, Third-Party Defendants

And

Sagehorn and Company, Inc. Third Party Plaintiff

v.

Henry's Construction Trucking, Inc., Charlotte Mechanical, LLC, Ethridge Electric Co., LLC, Builders Insulation of North Carolina, LLC, Tradition Builders, Inc., Heaven Woodworks, Inc., Bishop & Sons Plumbing & Piping, Inc. and John Doe 1-10, Third Party Defendants

And

Alpha Omega Construction Group, LLC, Third Party Plaintiff

v.

Arteaga Roofing, LLC, Melinda Amador, James Bayles, Blanca Christina Lopez, Flavio Morales, Daniel Leon Ramos, Juan Garza Ramos and Fidel Morales, Third Party Defendants

PROOF OF SERVICE

The undersigned hereby certifies that on April 26, 2023 copies of Respondent Royal Palms Property Owners Association, Inc. **Letter to Clerk of Court, South Carolina Court of Appeals dated April 26, 2023 and Motion to Dismiss** were served on all counsel of record in the underlying matter via email containing the above-referenced documents to counsels' individual AIS email addresses as follows:

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April 26, 2023

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April 26, 2023

VIA EMAIL [ctappfilings@sccourts.org]

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

**RE: Royal Palms Property Owners Association, Inc., Respondent vs.
Lennar Carolinas, LLC, Appellant
Appellate Case No. 2023-000542**

Dear Ms. Kitchings:

Pursuant to Rule 260(a), SCACR, Respondent is advising the Court of Appeals that the Notice of Appeal was not timely filed with the lower court pursuant to Rule 203(d)(1). The Notice of Appeal was served on Respondents on April 3, 2023 and filed with the Court of Appeals on April 3, 2023. Appellant filed the Notice of Appeal with the lower court on April 17, 2023 more than 10 days after service of the Notice of Appeal.

“If the notice of appeal is not timely filed or the filing fee is not paid in full, the appeal shall be dismissed, and shall not be reinstated except as provided by Rule 260.” Rule 203(d)(3), SCACR. Rule 260(a), SCACR states: “Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court. A case shall not be reinstated except by leave of the court, upon good cause shown, after notice to all parties.” Rule 260(a), SCACR.

In the event a formal motion is required by the Court, Respondent is attaching a Motion to Dismiss detailing the service and filing history. If the Motion is needed, please advise so that Respondent can send any required filing fees to the

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Lauren M. Thomas

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J. Anthony Penry
Of Counsel

*Letter to S.C. Court of Appeals /Appellate Case No. 2023-000542
April 26, 2023*

Court. A Proof of Service in connection with the above-referenced matter is also attached.

Sincerely,



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-and-

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