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**May 24 2023**

**SC Court of Appeals**

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May 24, 2023

**VIA EMAIL AND FIRST CLASS MAIL:**

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201  
ctappfilings@sccourts.org

Re: Melissa Dixon v. Weekley Homes, LLC  
Appellate Case No.: 2020-000384  
SC File No.: 17-202

Dear Ms. Kitchings:

In response to your request, Respondent Lansing Pattee and Stephanie Pattee (hereinafter collectively referred to as the “Pattees”) hereby submit this memorandum addressing the impact of *Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 879 S.E.2d 746 (2022) (“*Damico*”) on this appeal. As an initial matter, the Pattees would point out that they have not taken an active role in this appeal and did not file any brief. Therefore, they are adopting the arguments of Respondents Melissa Dixon and Willard Dixon (hereinafter collectively referred to as the “Dixons”), as laid out in the Final Brief of Respondents. Because the Pattees did not file a brief and did not present any argument, they also do not intend to attend the oral argument currently scheduled for June 6, 2023 at 10:00 AM in Courtroom I.

As to *Damico*, the Pattees believe it impacts this appeal by reinforcing that our Supreme Court adheres to the view that real estate purchase contracts, like the contract at issue in this appeal, only implicate intrastate commerce. *Damico* also reinforces that real estate purchase contracts are adhesion contracts and, while not per se unconscionable, should be viewed “with ‘considerable skepticism,’ as it remains doubtful ‘any true agreement ever existed to submit disputes to arbitration’.” 437 S.C. at 613, 879 S.E.2d at 756 (quoting *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 26, 644 S.E.2d 663, 669 (2007)).

In *Damico*, the purchase agreement stated that the parties “specifically agree that this transaction involves interstate commerce.” There is no specific agreement or similar provision in the purchase agreement at issue in this appeal wherein the parties expressly or specifically agreed

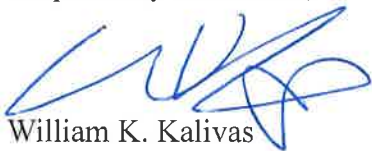
that the transaction involves interstate commerce. Unlike the contract in *Damico*, the one at issue here involved the purchase of a completed home and not the construction of a home. Therefore, absent a specific agreement like that at issue in *Damico*, the Appellant has failed to establish that the transaction at issue in this case involves interstate commerce and therefore the Federal Arbitration Act (“FAA”) does not apply.

As argued in the Final Brief of Respondents, if the FAA does not apply, then the arbitration provision at issue fails to comply with the express terms of the South Carolina Uniform Arbitration Act, S.C. Code Ann. § 15-48-10, et seq. Therefore, the arbitration provision should be unenforceable regardless of whether any of the express terms are unconscionable. As noted above and in Respondents’ Brief, the contract at issue in this appeal is an adhesion contract, where the seller and drafter held a position of superior bargaining power and sophistication. While Respondents’ Brief does not identify a particular clause or term that is unconscionable, the Pattees would note that it does contain a “**Limitations**” clause that specifically limits the ability to bring an action to two (2) years after the cause of action accrues, and further states that “unless proven otherwise, it shall be resumed [sic] that any such cause of action accrued on the Closing Date...” Moreover, that same clause purports to waive any longer period of limitations that may otherwise apply regardless of the nature of the cause of action.

The arbitration provision in this case is distinguishable from *Damico* insofar as whether the FAA should apply, but should follow the *Damico* court’s rationale as to the unconscionability of the provision. That the Respondents are required to waive certain rights that would otherwise be afforded to them under state and/or federal law should make the entire arbitration provision unenforceable.

Additionally, and by way of clarification, the Dixons were not a party to the contract at issue in this appeal, which further distinguishes this case from *Damico*. The only cause of action brought by a party to the contract, the Pattees, is for equitable indemnification. Therefore, even if the arbitration provision is found to be enforceable, it should only apply to that cause of action, which inherently must be decided after the Dixons’ claims have been adjudicated.

Respectfully Submitted,



William K. Kalivas  
*Attorney for Respondent Lansing and Stephanie Patee*

cc: John P. Linton, Jr., Esquire  
Jennifer S. Ivey, Esquire  
Hon. Gregory L. Hyland