

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
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May 11, 2012

W W DesChamps, Jr
William Wayne DesChamps, III
1357 21st Ave North, Ste 102
Myrtle Beach SC 29577

Robert T Lyles, Jr
PO Box 773
Charleston SC 29402

Re Bradley, Fred v Brentwood Homes
Appellate Case No 2010-163350

Dear Counsel

This case is scheduled for oral argument at 9:30 a.m. on Tuesday, May 22, 2012.
The following oral argument times have been allocated:

Appellants 15 minutes

Respondent 15 minutes

Appellants in Reply 5 minutes

Very truly yours,

Debbie M Hopkins

ADMINISTRATIVE ASSISTANT

LYLES & LYLES, LLC
 ATTORNEYS AT LAW
 342 East Bay Street
 P O Box 773 (29402)
 Charleston, South Carolina 29401
 Telephone (843) 577 7730
 Facsimile (843) 577 7172

Robert T Lyles Jr
 Member

Direct (843) 735 5560
 E-mail rtl@lylesfirm.com

March 27, 2012
VIA FAX ONLY (803-734-1499)

The Honorable Daniel E Shearouse
 Clerk, The South Carolina Supreme Court
 Post Office Box 11330
 Columbia, S C 29211

Re *Fred Bradley v Brentwood Homes Inc et al*
 Horry County Case Number 2009-CP-26-7477
 S C Court of Appeals Case Tracking Number 2010163350

RECEIVED

MAR 27 2012

S.C. SUPREME COURT

Dear Mr Shearouse

This letter is in response to the notice regarding the Preliminary List dated March 21, 2012 regarding the May 2012 Preliminary List of Cases

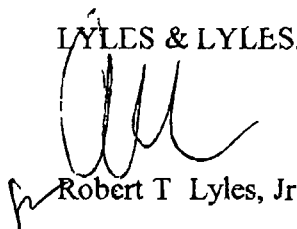
As I had previously indicated in my correspondence dated March 12, 2012, I am unavailable on May 1, 2, and 3, 2012 due to a mediation which is currently scheduled for all three days I represent the Plaintiff in this matter which is large case including approximately 50 attorneys This mediation is required by court order and has literally taken months to arrange

I will also be on my honeymoon the week of May 7th I would appreciate the above-referenced case being carried over until May 22 or 23, 2012

If you have any questions, please do not hesitate to contact me Thank you for your consideration, and with kind regards, I remain

Very truly yours,

LYLES & LYLES, LLC



Robert T Lyles, Jr

cc William W DesChamps, III, Esquire
 Mr Edward M Terry



The South Carolina Supreme Court

DANIEL E SHEAROUSE
CLERK OF COURT
BRENDA F SHEALY
DEPUTY CLERK

P O BOX 11330
COLUMBIA S C 29211
PHONE NO 734 1080

To William W DesChamps Jr Esquire
William W DesChamps III Esquire
From Daniel E Shearouse
Date March 21 2012
RE May Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules this is to advise that the following case(s) will probably be reached for hearing at the May 2012 term of the South Carolina Supreme Court Our records indicate that you are counsel of record in one or more of these case(s)

Court will meet the days of May 1 2 3 22 and 23 Please notify this office in writing prior to March 28 2012 as to any scheduling conflicts for the May term and any changes or additions of counsel that should be made to the record for the purpose of argument If you do have a scheduling conflict please advise as to the specific nature of the conflict

Bradley, Fred v Brentwood Homes



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734-1080

To Robert T. Lyles, Jr., Esquire
From Daniel E. Shearouse
Date March 21, 2012
RE May Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the May 2012 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of May 1, 2, 3, 22, and 23. Please notify this office in writing prior to March 28, 2012, as to any scheduling conflicts for the May term and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

Bradley, Fred v. Brentwood Homes

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F-mail rtl@lylesfirm.com

March 12, 2012

VIA FAX ONLY (803-734-1499)

RECEIVED

MAR 12 2012

The Honorable Daniel E Shearouse
Clerk, The South Carolina Supreme Court
Post Office Box 11330
Columbia, S C 29211

S C Supreme Court

Re *Fred Bradley v Brentwood Homes Inc et al*
Horry County Case Number 2009-CP-26-7477
S C Court of Appeals Case Tracking Number 2010163350

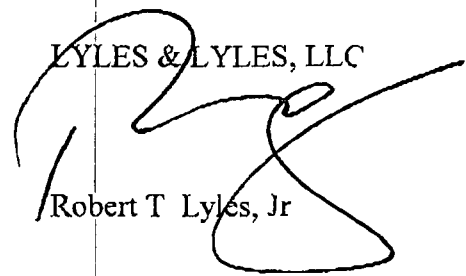
Dear Mr Shearouse

This letter is in response to your letter dated March 7, 2012 regarding the May 2012 Preliminary List of Cases Please be advised that I am unavailable on May 1, 2, and 3, 2012 due to a mediation which is currently scheduled for all three days in a large case including approximately 50 attorneys I will also be on my honeymoon the week of May 7th I would appreciate the above-referenced case being carried over until May 22 or 23, 2012

Thank you for your consideration, and with kind regards, I remain

Very truly yours,

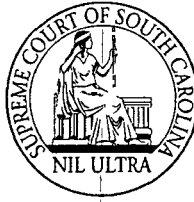
LYLES & LYLES, LLC



/Robert T Lyles, Jr

RTL/crw

cc William W DesChamps, III, Esquire
Mr Edward M Terry



The Supreme Court of South Carolina

DANIEL E SHEAROUSE
CLERK OF COURT

BRENDA F SHEALY
CHIEF DEPUTY CLERK

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March 7, 2012

Robert T Lyles, Jr, Esquire
Lyles & Lyles, LLC
P O Box 773
Charleston, SC 29402

William W DesChamps, Jr , Esquire
William W DesChamps, III, Esquire
DesChamps Law Firm
1551 21st Avenue North
Myrtle Beach, SC 29577

Re Bradley, Fred v Brentwood Homes

Dear Counsel

When the roster for the April 2012 term of Court was prepared, the above referenced case was not scheduled. Our records indicate that you are counsel of record in this case.

This case will be placed on the May 2012 Preliminary List of Cases. Court will meet the days of May 1, 2, 3, 22 and 23.

Very truly yours,

Daniel E Shearouse
55

CLERK

DES/dmh

DESCHAMPS LAW FIRM
ATTORNEYS-AT-LAW

www.deschampslaw.com

WILLIAM W DESCAMPS JR ESQ *
WILLIAM W DESCAMPS III ESQ
BHUMI A PATEL ESQ
PEGGY G DESCAMPS OFFICE ADMINISTRATOR
Certified Court Mediator and Arbitrator

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February 21, 2012

Via US Mail

The Honorable Daniel E Shearouse
Clerk of Court, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re **Bradley, Fred v Brentwood Homes**

Dear Mr Shearouse

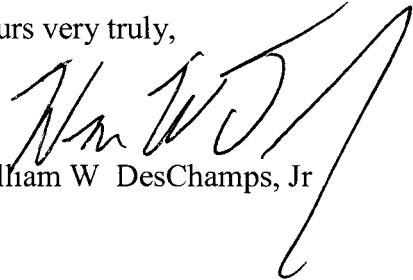
I am in receipt of the April Preliminary List of cases that will probably be reached during the April 2012 term

Pursuant to the Court's instructions as to scheduling conflicts, this is to advise the Court that my son, William W DesChamps, III (who had planned on making the oral argument in this matter), and his wife are expecting their first child (my first grandchild) to be born during the first week of April Therefore, I respectfully request that the Court schedule the hearing in this matter on April 18, 2012, or, in the alternative, that the hearing be continued until the next term of Court

Thank you for the Court's consideration in this matter Please feel free to contact me if you have any questions

With kindest personal regards, I remain

Yours very truly,


William W DesChamps, Jr

WWDJr/tm

cc Robert T Lyles, Esquire

RECEIVED
FEB 27 2012
S C SUPREME COURT

RECEIVED
FEB 24 2012
S C SUPREME COURT

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February 23, 2012
VIA FAX ONLY (803-734-1499)

The Honorable Daniel E Shearouse
Clerk, The South Carolina Supreme Court
Post Office Box 11330
Columbia, S C 29211

Re *Fred Bradley v Brentwood Homes, Inc et al*
Horry County Case Number 2009-CP-26-7477
S C Court of Appeals Case Tracking Number 2010163350

Dear Mr Shearouse

This letter is in response to the South Carolina Supreme Court's April Preliminary List, which you recently forwarded to me. Please be advised that I am available on the dates listed (April 3, 4, 5, 17 and 18). Please be advised, however, that I am unavailable during the week of April 9 through 13.

With kind regards I remain

Very truly yours,

LYLES & LYLES, LLC

Robert Lyles/crw
Robert T Lyles, Jr

RTL/crw

Enclosures

cc William W DesChamps, III Esquire
Mr Edward M Terry



The South Carolina Supreme Court

DANIEL E SHEAROUSE
CLERK OF COURT
BRENDA F SHEALY
DEPUTY CLERK

P O BOX 11330
COLUMBIA S C 29211
PHONE NO 734 1080

To William W DesChamps Jr Esquire
William W DesChamps III Esquire
From Daniel E Shearouse
Date February 17 2012
RE April Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules this is to advise that the following case(s) will probably be reached for hearing at the April 2012 term of the South Carolina Supreme Court Our records indicate that you are counsel of record in one or more of these case(s)

Court will meet the days of April 3 4 5 17 and 18 Please notify this office in writing prior to February 24 2012 as to any scheduling conflicts for the April term and any changes or additions of counsel that should be made to the record for the purpose of argument If you do have a scheduling conflict please advise as to the specific nature of the conflict

Bradley, Fred v Brentwood Homes



The South Carolina Supreme Court

DANIEL E SHEAROUSE
CLERK OF COURT
BRENDA F SHEALY
DEPUTY CLERK

PO BOX 11330
COLUMBIA S C 29211
PHONE NO 734 1080

To Robert T Lyles Jr Esquire
From Daniel E Shearouse
Date February 17 2012
RE April Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules this is to advise that the following case(s) will probably be reached for hearing at the April 2012 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of April 3 4 5 17 and 18. Please notify this office in writing prior to February 24 2012 as to any scheduling conflicts for the April term and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict please advise as to the specific nature of the conflict.

Bradley, Fred v Brentwood Homes

The Supreme Court of South Carolina

Fred Bradley,

Respondent,

v

Brentwood Homes, Inc ,
Brentwood Homes-Limehouse,
LLC, Brentwood Homes-The
Retreat at Johns Island, LLC,
Brentwood Homes of South
Carolina, Inc , Brentwood
Homes of North Carolina, Inc ,
Brentwood Homes of Myrtle
Beach, Inc , Brentwood Homes
of Low Country, Inc ,
Brentwood Homes of Fort Mill,
Inc , Brentwood Homes of
Beaufort-Bluffton, Inc , Harris
Street, LLC, Crescent Homes
of SC, Inc , Brentwood Homes
Incorporated, a Georgia
Corporation,

Appellants

The Honorable Larry B Hyman, Jr
Horry County
Trial Court Case No 2009-CP-26-07477

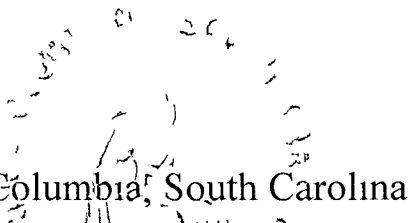
ORDER

Pursuant to Rule 204(b) of the South Carolina Appellate Court Rules,
this appeal is hereby certified for review by the South Carolina Supreme
Court

Upon receipt of this order, the Court of Appeals is hereby directed to forward the case file, all records and briefs and any exhibits on file to this Court

IT IS SO ORDERED


C J
FOR THE COURT


Columbia, South Carolina
January 26, 2012
w. CJ

cc Robert T Lyles, Jr, Esquire
William Wayne DesChamps, III, Esquire
The Honorable Tanya Gee

The Supreme Court of South Carolina

Fred Bradley,

Respondent,

v

Brentwood Homes, Inc ,
Brentwood Homes-Limehouse,
LLC, Brentwood Homes-The
Retreat at Johns Island, LLC,
Brentwood Homes of South
Carolina, Inc , Brentwood
Homes of North Carolina, Inc ,
Brentwood Homes of Myrtle
Beach, Inc , Brentwood Homes
of Low Country, Inc ,
Brentwood Homes of Fort Mill,
Inc , Brentwood Homes of
Beaufort-Bluffton, Inc , Harris
Street, LLC, Crescent Homes
of SC, Inc , Brentwood Homes
Incorporated, a Georgia
Corporation,

Appellants

The Honorable Larry B Hyman, Jr
Horry County
Trial Court Case No 2009-CP-26-07477

ORDER

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this appeal is hereby certified for review by the South Carolina Supreme
Court

Upon receipt of this order, the Court of Appeals is hereby directed to forward the case file, all records and briefs and any exhibits on file to this Court

IT IS SO ORDERED


FOR THE COURT CJ

Columbia, South Carolina

January 26, 2012

cc Robert T Lyles, Jr, Esquire
William Wayne DesChamps, III, Esquire
The Honorable Tanya Gee



The South Carolina Court of Appeals

TANYA A GFF
CLERK

V CLAIRF ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
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1015 SUMTER STREET
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January 3, 2012

Robert T Lyles, Jr, Esquire
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P O Box 773
Charleston, SC 29402

William Wayne DesChamps, III, Esquire
DesChamps Law Firm
1551 21st Ave N
Ste 14
Myrtle Beach, SC 29577-7495

Re Bradley, Fred v Brentwood Homes

Dear Counsel

The Court of Appeals has decided to seek certification from the Supreme Court in this case. The case will be removed from the January 2012 roster and placed in held in abeyance status until the Supreme Court makes a decision. You will be notified of the decision.

Very truly yours,

V. Clairf Allen
DEPUTY CLERK

Addressee	Start Time	Time	Prints	Result	Note
918434483308	01-20 17 51	00 00 18	001/001	OK	

Note TMR Timer TX POL Polling ORG Original Size Setting FME Frame Erase TX
 MIX Mixed Original TX CALL Manual TX CSRC CSRC FWD Forward PC PC-Fax
 BND Double-Sided Binding Direction SP Special original FCODE F-Code RTX Re-TX
 RLY Relay MBX Confidential BUL bulletin SIP SIP Fax IPADR IP Address Fax
 I-FAX Internet Fax

Result OK Communication OK S-OK Stop Communication PW-OFF Power Switch OFF
 TEL RX from TEL NG Other Error Cont Continue No Ans No Answer
 Refuse Receipt Refused Busy Busy M-Full Memory Full
 LOVR Receiving length Over POVR Receiving page Over FIL File Error
 DC Decode Error MDN MDN Response Error DSN DSN Response Error



The South Carolina Court of Appeals

TANYA A OBB
 CLERK
 V CLAIRE ALLEN
 DEPUTY CLERK

POST OFFICE BOX 609
 COLUMBIA, SOUTH CAROLINA 29202
 9 BUNTING STREET
 COLUMBIA A, SOUTH CAROLINA 29201
 TELEPHONE: (803) 734- 890
 FAX: (803) 734- 879
 WWW.SCCOURTS.ORG

January 3 2012

Robert T Lyles Jr Esquire
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William Wayne DesChamps III Esquire
 DesChamps Law Firm
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 Ste 14
 Myrtle Beach SC 29577-7495

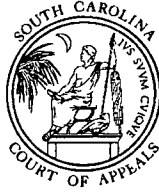
Re Bradley Fred v Brentwood Homes

Dear Counsel

The Court of Appeals has decided to seek certification from the Supreme Court in this case. The case will be removed from the January 2012 roster and placed in held in abeyance status until the Supreme Court makes a decision. You will be not tied of the decision.

Very truly yours

V. Claire Allen
 DEPUTY CLERK



The South Carolina Court of Appeals

TANYA A GEE
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

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COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
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December 30, 2011

Robert T Lyles, Jr, Esquire
Lyles & Lyles, LLC
P O Box 773
Charleston, SC 29402

William Wayne DesChamps, III, Esquire
DesChamps Law Firm
1551 21st Ave N
Ste 14
Myrtle Beach, SC 29577-7495

Re Bradley, Fred v Brentwood Homes

Dear Counsel

Please be advised that the time of this oral argument has been changed to 10 40 am on Wednesday, January 11, 2012 The date is the same This change is due to a conflict with another argument

Very truly yours,

V. Claire Allen

DEPUTY CLERK

DESCHAMPS LAW FIRM
ATTORNEYS-AT-LAW

WILLIAM W DESCHAMPS JR ESQ *
WLLIAM W DESCHAMPS III ESQ
BHUMI A PATEL ESQ
PEGGY G DESCHAMPS OFFICE ADMINISTRATOR
Certified Court Mediator and Arbitrator

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MYRTLE BEACH SC 29577
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FACSIMILE (843) 448 3308

September 23 2011

Via U S Mail

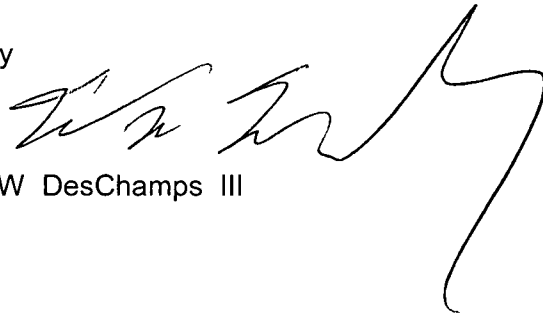
The SC Court of Appeals
V Claire Allen Deputy Clerk
1015 Sumter St
Columbia SC 29201

**Re Bradley, Fred v Brentwood Homes
Case No 2009-CP-26-07477**

Dear Ms Allen

In response to your letter dated September 9 2011 in reference to the above case I have no conflicts that take precedence over argument at the Court on December 5-8

Sincerely



William W DesChamps III

RECEIVED

SEP 26 2011

SC Court of Appeals

DESCHAMPS LAW FIRM
ATTORNEYS-AT-LAW

WILLIAM W DESCHAMPS JR ESQ
WILLIAM W DESCHAMPS III ESQ
BHUMI A PATEL ESQ
PEGGY G DESCHAMPS OFFICE ADMINISTRATOR
Certified Court Mediator and Arbitrator

1357 21ST AVENUE NORTH STE 102
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MYRTLE BEACH SC 29577
TELEPHONE (843) 448 2391
FACSIMILE (843) 448 3308

October 18, 2011

Via US Mail

The Honorable V Claire Allen
Deputy Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE Fred Bradley v Brentwood Homes, Inc , et al
Case No 2009-CP-26-7477

Dear Ms Allen

I am in receipt of your letter dated October 13, 2011 regarding the above captioned case
This is to advise the Court that we do not foresee any conflicts that would take precedence over oral
arguments during the January 2012 term of Court

With kindest personal regards, I remain

Sincerely yours,



William W DesChamps, III

WWDIII/tm
cc Robert T Lyles, Esquire

RECEIVED
OCT 20 2011
SC Court of Appeals

LYLES & LYLES, LLC
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Member

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E mail rtl@lylesfirm.com

December 10, 2010

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, S C 29211

RECEIVED

DEC 14 2010

SC Court of Appeals

Re *Fred Bradley v Brentwood Homes Inc et al*
Horry County Case Number 2009-CP-26-7477
Case Tracking Number 2010163350

Dear Ms Gee

Regarding the above-referenced matter, enclosed please find the original and one (1) copy each of the following

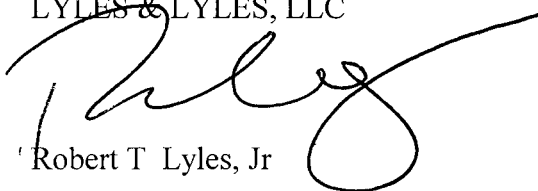
- 1) Proof of Service of the Record on Appeal

Please file the original and return a clocked-in copy to me in the envelope provided for your convenience. Should you have any questions concerning the enclosed, please feel free to give me a call.

With kind regards, I remain

Very truly yours,

LYLES & LYLES, LLC



Robert T Lyles, Jr

RTL/daw

Enclosures

cc William W DesChamps, III Esquire
Mr Edward M Terry

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B Hyman, Jr , Circuit Court Judge

Case No 2009-CP-26-7477

RECEIVED

NOV 15 2010

SC Court of Appeals

Fred Bradley,

Respondent,

v

Brentwood Homes, Inc , Brentwood Homes – Limehouse, LLC,
Brentwood Homes – The Retreat at Johns Island, LLC, Brentwood
Homes of South Carolina, Inc , Brentwood Homes of North Carolina,
Inc , Brentwood Homes of Myrtle Beach, Inc , Brentwood Homes of
Low Country, Inc , Brentwood Homes of Fort Mill, Inc , Brentwood
Homes of Beaufort-Bluffton, Inc , Harris Street, LLC, Crescent Homes
of SC, Inc , Brentwood Homes Incorporated, a Georgia Corporation,

Appellants

INITIAL REPLY BRIEF OF APPELLANTS

Robert T Lyles
Lyles & Lyles, LLC
342 East Bay Street
Charleston, South Carolina 29401
(843) 577-7730
Attorneys for Appellants

TABLE OF CONTENTS

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Argument 1

I THE ISSUE OF THE SUFFICIENCY OF THE AFFIDAVIT OF EDWARD M TERRY (“TERRY AFFIDAVIT”) WAS PROPERLY PRESERVED AND THE TRIAL COURT’S FINDING THAT EVIDENCE PRESENTED BY WAY OF THAT AFFIDAVIT DID NOT ESTABLISH INTERSTATE COMMERCE MUST BE REVERSED 1

A Because the issue of the sufficiency of the Terry Affidavit to establish interstate commerce was specifically ruled on by Trial Court, this issue is proper for review 1

B The Trial Court’s finding that transaction between Plaintiff and Defendants did not involve interstate commerce is not supported by the evidence including the Terry Affidavit 2

II APPELLANT HAS NOT WAIVED ITS RIGHT TO COMPEL ARBITRATION 4

A Respondent may not argue that Appellants have waived their right to arbitrate as this issue was not ruled on by the lower court 4

B Respondent cannot establish that Appellants waived their right to arbitrate as it cannot establish that any delay or conduct by the Appellants prejudiced the Respondent 5

Conclusion 6

TABLE OF AUTHORITIES

CASES

Elam v South Carolina Dept Of Transp.,
361 S C 9, 602 S E 2d 772 (2004)

Evans v Manufactured Homes, Inc ,
352 S C 544, 575 S E 2d 74 (Ct App 2003)

Microstrategy v Lauricia,
268 F 3d 244, 249 (4th Cir 2001)

Rich v Walsh,
357 S C 64, 590 S E 2d 506 (Ct App 2003)

Sentry Eng'g & Constr , Inc v Mariner's Cay Dev Corp.,
287 S C 346, 338 S E 2d 631 (S Ct 1985)

STATUTES

9 U S C § 2

RULES

S C R A P 201(a)

S C R C P 59(e)

ARGUMENT

I THE ISSUE OF THE SUFFICIENCY OF THE AFFIDAVIT OF EDWARD M TERRY (“TERRY AFFIDAVIT”) WAS PROPERLY PRESERVED AND THE TRIAL COURT’S FINDING THAT EVIDENCE PRESENTED BY WAY OF THAT AFFIDAVIT DID NOT ESTABLISH INTERSTATE COMMERCE MUST BE REVERSED

A Because the issue of the sufficiency of the Terry Affidavit to establish interstate commerce was specifically ruled on by Trial Court, this issue is proper for review

Appellants presented the Terry Affidavit to support their contention that the arbitration provision between the parties was enforceable pursuant to the Federal Arbitration Act found at 9 U S C § 2 (“FAA”) Respondent claims that the issue of the sufficiency of the Terry Affidavit to establish evidence of interstate commerce was not preserved for review because no motion was filed pursuant to South Carolina Rule of Civil Procedure 59(e) An appeal may be taken, as provided by law, from any final judgment, appealable order, or decision SCRAP 201(a) Appellants presented the Terry Affidavit in support of their motion to compel arbitration which established the involvement of interstate commerce in the transaction between Brentwood Homes, Inc and Respondent In its Order Granting Plaintiff’s Motion to Alter/Amend and Denying Defendants’ Motion to Compel Arbitration dated June 16, 2010 (hereinafter “Order”) the Court ruled that the “Defendants have not submitted sufficient evidence to demonstrate that the transaction between Plaintiff and Defendants involved interstate commerce ” (Order, P 6) As the Court’s ruling on this issue is clearly set forth in the Order no motion pursuant to SCRCF 59 was required The issue of whether the evidence of interstate commerce presented by the Defendants specifically in the form of the Terry Affidavit is sufficient is clearly preserved for review

B The Trial Court's finding that transaction between Plaintiff and Defendants did not involve interstate commerce is not supported by the evidence including the Terry Affidavit

The arguments of the Respondent simply do not refute the existence of a binding arbitration clause contained in the agreement between the Appellants and Respondent (hereinafter "Agreement") that on its face and through information in Mr Terry's affidavit clearly contemplates interstate commerce Under *de novo* review the appellate court is to grant deference to the trial court's factual findings underlying its conclusion **if there is any evidence reasonably supporting them** Rich v Walsh, 357 S C 64, 68, 590 S E 2d 506, 508 (Ct App 2003)(emphasis added) The facts simply do not support the Court's finding that there was not sufficient evidence to demonstrate that the transaction between Appellants and Respondent involved interstate commerce

The Court found that there was no evidence of interstate commerce based on the following

- The Home Purchase Agreement did not refer to equipment and materials to be furnished from outside the State of South Carolina, nor does it list subcontractors which were from outside the confines of this state,
- Defendants did not list Edward M Terry as an officer for Brentwood Homes of SC, Inc , which was listed as the contractor on the Building Permit filed with the City of North Myrtle Beach,
- Defendants' discovery responses to Plaintiff's initial Set of Interrogatories Numbers 1(a) and 1(b) state that Edward M Terry did not deal directly with the customer and that Donald Garratt was the builder who built Plaintiff's home and dealt with all warranty calls (Order, P 5-6)

However, none of these points dispute that Exhibit A to the Terry Affidavit is a true and accurate copy of the Home Purchase Agreement entered into between Brentwood Homes, Inc and John L and Carole G Bradley (Terry Affidavit) None of the facts relied on by the court or argued by the Respondent refute the fact that throughout the warranty section of the Agreement the use of

a national warranty program is contemplated throughout the document to address structural issues with the home (Agreement) None refute the fact that the home that was the subject of the Home Purchase Agreement was constructed with subcontractors and suppliers from outside of the state of South Carolina Respondent argues that issues exist with respect to the enrollment of this home in the national warranty program (Affidavit of John F Bradley (“Fred Bradley”) In Opposition to Defendants’ Motion to Compel Arbitration) However, this does not dispute that the national warranty program is clearly contemplated within the four corners of the Agreement between the parties (Agreement) Whether the home was properly enrolled in the program is an issue to be addressed in arbitration, not an issue to be used to avoid arbitration¹ Therefore, there is simply no dispute that the Agreement between the parties involved interstate commerce

Mr Terry sets forth that the affidavit is made of his own knowledge (Terry Affidavit) He states that he served as president of Brentwood Homes, Inc , who is the party to the Home Purchase Agreement attached as an exhibit thereto Id He verifies that the exhibit to his Affidavit is a true and accurate copy of the Home Purchase Agreement between the Respondent and Carole G Bradley (who is not a party to this action) Id Respondent contends that because answers to interrogatories indicate that Donald Garratt was the representative who dealt with the customer and Donald Garratt was listed as the builder on documentation, that Mr Terry may not offer evidence of the company’s contracts, the details of the warranty program referenced in that contract, or information regarding the homes that it sold including who and what was used to construct them An officer of the company that is a party to the agreement would clearly have knowledge of these details As set forth

¹ Appellants contend that the home was properly enrolled, but that Respondent has breached the terms of the Agreement in refusing to utilize that program to address the issues complained of in this suit (Amended Answer and Counterclaim dated February 11, 2010)

in Appellants' Initial Brief, all of these factors clearly involve interstate commerce. The trial court's finding that sufficient evidence of interstate commerce did not exist is without foundation.

II APPELLANT HAS NOT WAIVED ITS RIGHT TO COMPEL ARBITRATION

A Respondent may not argue that Appellants have waived their right to arbitrate as this issue was not ruled on by the lower court.

Respondent argues that Appellants have failed to preserve issues for review by this Court, but also asks this Court to refuse to uphold the arbitration agreement on grounds not ruled upon by the Trial Court. No ruling was made on the issue of waiver by the Court, but Respondent argues that the Appellants have waived their right to arbitrate this matter. Generally, an issue must be raised and ruled upon by the circuit court to be preserved for appellate review. Elam v. South Carolina Dept. Of Transp., 361 S.C. 9, 23, 602 S.E.2d 772, 779-80 (2004). As stated herein, under *de novo* review the appellate court is to grant deference to the trial court's factual findings. Rich at 68. The "Findings of Fact" contained in the trial court's order states:

Plaintiff further asserted that Defendants were not entitled to arbitrate the above-captioned matter as they delayed the discovery process by not completely and accurately answering Plaintiff's discovery requests despite this Court's previous Order granting Plaintiff's Motion to Compel Discovery, did not raise the issue of arbitration in their initial answer and two prior Rule 12 Motion, and served discovery requests on Plaintiff prior to filing a Motion. (Order, P. 3-4)

However, the Order issued by the Court made no finding that the Appellants had waived their right to arbitrate². Contentions pertaining to delay were made by the Respondent and examined by the Court, but no finding of prejudice to the Respondent due to this delay or waiver of the arbitration clause was made by the Court.

²The Order was drafted by the Respondent. (*See Transcript, generally*)

B Respondent cannot establish that Appellants waived their right to arbitrate as it cannot establish that any delay or conduct by the Appellants prejudiced the Respondent

In order to establish waiver, a party must show prejudice through an undue burden caused by delay in demanding arbitration Sentry Eng'g & Constr , Inc v Mariner's Cay Dev Corp, 287 S C 346, 351, 338 S E 2d 631, 634 (S Ct 1985) South Carolina has generally adopted the approach utilized by the Fourth Circuit and other jurisdiction which require that a party show actual prejudice before finding a waiver Rich v Walsh, 357 S C 64, 590 S E 2d 506 (Ct App 2003)(Court did not find that Bank had waived right to compel arbitration even after discovery including the exchange of written discovery and a limited deposition) “Mere inconvenience to an opposing party is not sufficient to establish prejudice, and thus invoke the waiver of right to arbitrate ” Id At 71, citing Evans v Manufactured Homes, Inc , 352 S C 544, 575 S E 2d 74 (Ct App 2003) “Neither delay nor the filing of pleadings by the party seeking a stay will suffice ” Id Quoting Microstrategy v Lauricia, 268 F 3d 244, 249 (4th Cir 2001)

There was no prejudicial delay in asserting the right to arbitrate The right to arbitrate was raised in the Amended Answer filed with leave of the court and the motion to compel arbitration was filed simultaneously therewith (Amended Answer and Counterclaim dated February 11, 2010, Notice of Motion and Motion to Stay and Compel Arbitration) Said answer raising arbitration was filed pursuant to leave of court (Order Denying Plaintiff’s Motion for Summary Judgment filed February 11, 2010)

Respondent contends that Appellants are not entitled to their right to arbitrate because it served discovery requests prior to filing its motion to compel arbitration As reflected in the Order,

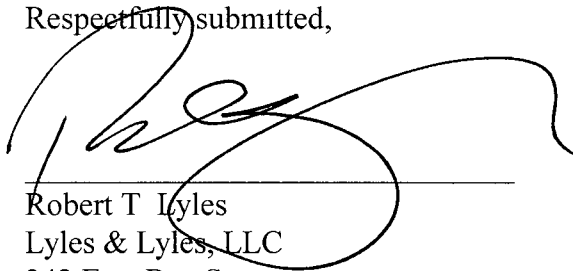
Respondent has issued multiple written discovery requests in the form of interrogatories, requests for production, and requests for admission. No depositions were taken. There was no discovery tool availed by the Appellants that was not utilized to further extent by the Respondent. In fact, Respondent heavily relies on the discovery responses issued by the Appellants to oppose Appellants' motion to compel arbitration. (Order, P. 4) There has been no demonstration of prejudice to the Respondent and therefore, Appellant's right to arbitrate has not been waived.

CONCLUSION

Because the Appellants have presented sufficient evidence of the involvement of interstate commerce in the transaction between the Appellants and Respondent, the arbitration agreement between the parties must be enforced pursuant to the Federal Arbitration Act. Furthermore, because the Respondent cannot establish any prejudice due to any delay in Appellants seeking to enforce the arbitration agreement, Appellants' right to arbitrate have not been waived.

Respectfully submitted,

November 11, 2010



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B Hyman, Jr , Circuit Court Judge

Case No 2009-CP-26-7477

Fred Bradley,

Respondent,

v

Brentwood Homes, Inc , Brentwood Homes – Limehouse, LLC,
Brentwood Homes – The Retreat at Johns Island, LLC, Brentwood
Homes of South Carolina, Inc , Brentwood Homes of North Carolina,
Inc Brentwood Homes of Myrtle Beach, Inc , Brentwood Homes of
Low Country, Inc , Brentwood Homes of Fort Mill, Inc , Brentwood
Homes of Beaufort-Bluffton, Inc , Harris Street, LLC, Crescent Homes
of SC, Inc , Brentwood Homes Incorporated, a Georgia Corporation,

Appellants

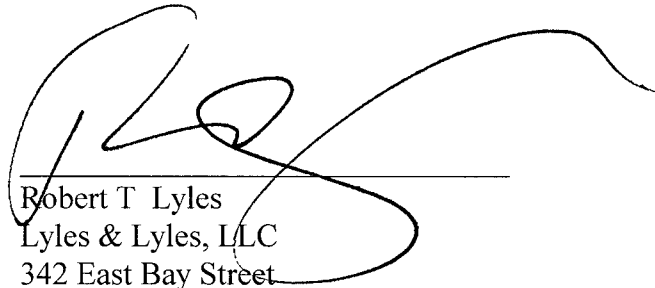
DESIGNATION OF ADDITIONAL MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following to be included in the Record on Appeal

- 1 Transcript of Record dated June 1, 2010

I certify that this designation contains no matter which is irrelevant to this appeal

November 11, 2010



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THE STATE OF SOUTH CAROLINA
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APPEAL FROM HORRY COUNTY
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Larry B Hyman, Jr , Circuit Court Judge

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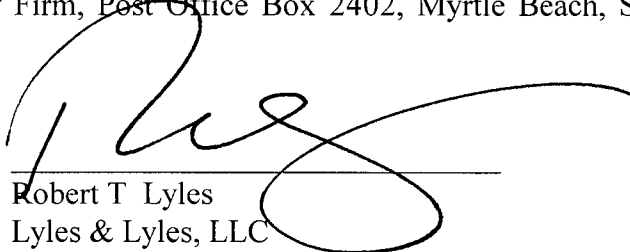
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Inc , Brentwood Homes of Myrtle Beach, Inc , Brentwood Homes of
Low Country, Inc , Brentwood Homes of Fort Mill, Inc , Brentwood
Homes of Beaufort-Bluffton, Inc , Harris Street, LLC, Crescent Homes
of SC, Inc , Brentwood Homes Incorporated, a Georgia Corporation,

Appellants

PROOF OF SERVICE

I certify that I have served the Appellants' Designation of Additional Matter to be included in the Record on Appeal on Fred Bradley by depositing a copy of it in the United States Mail, First Class postage prepaid, on November 12, 2010, addressed to his attorney of record, William W DesChamps, III, Esquire, DesChamps Law Firm, Post Office Box 2402, Myrtle Beach, South Carolina 29577

November 12, 2010



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B Hyman, Jr , Circuit Court Judge

Case No 2009-CP-26-7477

Fred Bradley,

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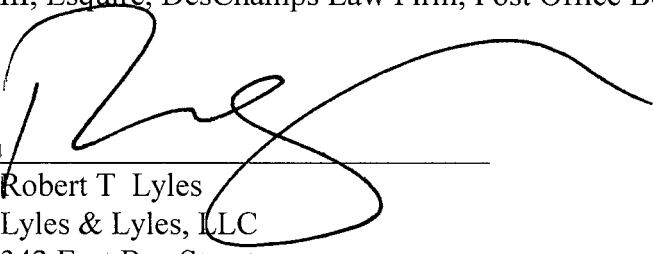
Brentwood Homes, Inc , Brentwood Homes – Limehouse, LLC,
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Homes of Beaufort-Bluffton, Inc , Harris Street, LLC, Crescent Homes
of SC, Inc , Brentwood Homes Incorporated, a Georgia Corporation,

Appellants

PROOF OF SERVICE

I certify that I have served the Appellants' Initial Reply on Fred Bradley by depositing a copy of it in the United States Mail, First Class postage prepaid, on November 12, 2010, addressed to his attorney of record, William W DesChamps, III, Esquire, DesChamps Law Firm, Post Office Box 2402, Myrtle Beach, South Carolina 29577

November 12, 2010



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November 12, 2010

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, S C 29211

RECEIVED
NOV 15 2010
SC Court of Appeals

Re *Fred Bradley v Brentwood Homes Inc et al*
Horry County Case Number 2009-CP-26-7477
Case Tracking Number 2010163350

Dear Ms Gee

Regarding the above-referenced matter, enclosed please find the original and one (1) copy each of the following

- 1) Initial Reply Brief of Appellants with Proof of Service, and,
- 2) Designation of Additional Matter to Be Included in the Record on Appeal with Proof of Service

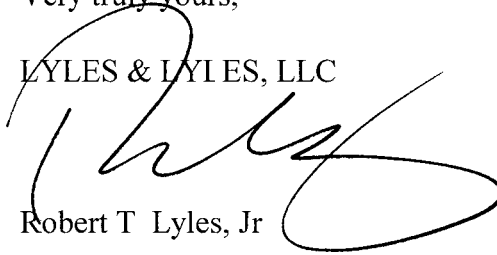
Please file the originals and return a clocked-in copy of each to me in the envelope provided for your convenience. Should you have any questions concerning the enclosed, please feel free to give me a call.

With kind regards, I remain

Very truly yours,

LYLES & LYLES, LLC

Robert T Lyles, Jr



RTL/crw
Enclosures

cc William W DesChamps, III, Esquire
Mr Edward M Terry

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B Hyman, Jr , Resident Judge, Fifteenth Judicial Circuit

Civil Action No 2009-CP-26-7477

RECEIVED

NOV 02 2010

SC Court of Appeals

Fred Bradley,

Respondent,

vs

Brentwood Homes, Inc , Brentwood Homes-Limehouse, LLC,
Brentwood Homes – The Retreat at Johns Island, LLC, Brentwood
Homes of South Carolina, Inc , Brentwood Homes of North Carolina,
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Low Country, Inc , Brentwood Homes of Fort Mill, Inc , Brentwood
Homes of Beaufort-Bluffton, Inc , Harris Street, LLC, Crescent Homes
of SC, Inc Brentwood Homes Incorporated, a Georgia Corporation,

Appellants

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

- I DID THE TRIAL COURT ERR IN DENYING APPELLANTS' MOTION TO STAY AND COMPEL ARBITRATION WHEN THE ESSENTIAL CHARACTER OF THE CONTRACT AT ISSUE WAS FOR THE PURCHASE AND SALE OF REAL ESTATE LOCATED IN SOUTH CAROLINA, THE TERRY AFFIDAVIT WAS NOT SUFFICIENT TO ESTABLISH INTERSTATE COMMERCE, AND THE APPELLANTS WAIVED ANY RIGHT TO SEEK ARBITRATION?

STATEMENT OF THE CASE

On July 31, 2009, Respondent Fred Bradley (hereinafter sometimes referred to as “Bradley”) filed a Complaint against Appellants Brentwood Homes, Inc , Brentwood Homes – Limehouse, LLC, Brentwood Homes – The Retreat at Johns Island, LLC, Brentwood Homes of South Carolina, Inc , Brentwood Homes of North Carolina, Inc , Brentwood Homes of Low Country, Inc , Brentwood Homes of Fort Mill, Inc , Brentwood Homes of Beaufort-Bluffton, Inc , Harris Street, LLC, Crescent Homes SC, Inc , and Brentwood Homes Incorporated, a Georgia Corporation, alleging causes of action under an alter ego theory of liability for fraud, negligence, and breach of implied warranty (Complaint, pp 1-8) Caroline Bernard, Esq , filed an initial Answer on behalf of Appellants in the form of a general denial (Initial Answer) Thereafter, Bradley served his initial discovery requests on Appellants on September 9, 2009 (Exhibit A to Motion to Compel) Caroline Bernard, Esq , filed a Motion to Amend Appellants’ Answer to include a counterclaim for frivolous proceedings on September 30, 2009 (2/1/10 Transcript, p 17, lines 8-11) Bradley served Appellants’ counsel with his Second Request for Admissions, Second Set of Interrogatories, and Second Request for Production of Documents on October 27, 2009 (Exhibit K to Motion to Compel) Bradley filed a Notice of Motion and Motion to Compel Discovery on December 22, 2009 to request the Trial Court to grant him an order compelling Appellants to produce their responses to Respondent s Second Request for Production of Documents and responses to Respondent’s Second Set of Interrogatories and/or an Order entering a Default Judgment against Appellants for their willful failure to respond to said discovery requests pursuant to Rule 37(d), *South Carolina Rules of Civil Procedure* (Motion to Compel, p 1) In his Motion to Compel Discovery, Bradley also moved for the Trial Court to determine the sufficiency of Appellants’ responses to Respondent’s Second Request for



Admissions as well as the Appellants' responses to Respondent's initial requests for admission numbers 1 and 2, initial request for production of documents, and for an Order compelling Appellants to completely answer Respondent's first set of interrogatories numbers 1, 2, 3, 4, 10, and 11 (Motion to Compel, p 2)

Appellants retained new counsel, Allen DuPre, Esq , of Lyles & Lyles, LLC on January 11, 2010 (1/11/10 Order Substituting Counsel) Mrs DuPre filed and served an Amended Notice of Motion and Motion to Dismiss on behalf of Appellants on January 5, 2010 (Amended Motion to Dismiss) The grounds for Appellants' Amended Motion to Dismiss were that Bradley's allegation that the Appellants were alter egos constituted a legal conclusion and was not proper pursuant to Rule 12(b)(6), South Carolina Rules of Civil Procedure (Amended Motion to Dismiss, p 1) Thereafter, Appellants' counsel served Bradley with Appellant Brentwood Homes, Inc s First Set of Interrogatories and Requests for Production, as well as Defendant Brentwood Homes – Limehouse, LLC's First Set of Interrogatories on January 19, 2010 (Appellants' Counsel's Letter)

On February 1 2010 the Honorable Larry B Hyman Jr , heard Bradley s Motion to Compel Discovery and Appellants' Motion to Dismiss wherein the Trial Court ordered Appellants to respond to Respondent's discovery requests within 45 days (2/11/10 Order) The Honorable Larry B Hyman, Jr , also heard Bradley's Motion for Summary Judgment on February 1, 2010 (Order Denying Summary Judgment) At the hearing on February 1, 2010, Appellants' counsel asserted that summary judgment would punish the client for the prior acts of their prior attorney, and that summary judgment would not promote an adjudication on the merits (2/1/10 Transcript, p 23, lines 9 – 12) Thereafter, the Honorable Larry B Hyman, Jr ,



permitted Appellants to amend their answer to promote an adjudication on the merits (2/1/10 Transcript, p 23, lines 9-17)

Subsequent to the February 1, 2010 hearing, Appellants served Bradley with their Amended Answer and Counterclaim on February 5, 2010 (Amended Answer and Counterclaim) Appellants also filed and served a Motion to Compel Arbitration along with the Home Purchase Agreement at issue attached thereto on February 5, 2010 (Motion to Compel Arbitration) Thereafter, Bradley filed and served a Motion to Reconsider to request the Honorable Larry B Hyman, Jr , to amend his prior Order (Motion to Reconsider, p 1) Bradley alleged that the Trial Court should strike the affirmative defenses asserted in Appellants' Amended Answer and Counterclaim because the Appellants were reluctant to respond to his discovery requests and were attempting to use affirmative defenses to avoid complying with the Trial Court's prior Order granting Bradley's Motion to Compel and Denying Appellants' Motion to Dismiss (Motion to Reconsider, p 2)

Appellants agree that the Home Purchase Agreement is not subject to arbitration pursuant to S C Code Ann 15-48-10(A) and, therefore, the only issue before this Court is whether the Home Purchase Agreement involves interstate commerce within the scope of the FAA At the hearing before the Trial Court on June 1, 2010, Appellants asserted that the Home Purchase Agreement involved interstate commerce because the agreement included a provision wherein the seller shall deliver a warranty from a national warranty provider as seller may reasonably elect Appellants further asserted that the Home Purchase Agreement involved interstate commerce because South Carolina has basically found that construction contracts involving materials and contractors from out-of-state involve interstate commerce (6/1/10 Transcript, p 12, lines 1-8) Bradley asserted at the hearing that the Home Purchase Agreement does not



evidence interstate commerce as it is a general contract to purchase and sell the subject home (6/1/10 Transcript, p 11, lines 11-15) The Trial Court denied Appellants' Motion to Compel Arbitration and granted Appellants 40 days to respond to Bradley's discovery requests pursuant to the terms of the Trial Court's order (6/16/10 Order, pp 6-7) The Trial Court examined the Home Purchase Agreement, the Complaint, and the surrounding facts when it determined that the transaction involving the purchase of Bradley's home did not involve interstate commerce (6/16/10 Order, pp 5-6) Further, the Trial Court found that the Home Purchase Agreement clearly states that the South Carolina Arbitration Act is Applicable (6/1/10 Transcript, p 13, lines 7-10)

STATEMENT OF FACTS

This action arises out of Appellants' material misrepresentations regarding the marketing and selling the subject home to Bradley, as well as Bradley's discovery of construction defects and deficiencies (Complaint, ¶ 15, 19) It is unclear at this stage in the litigation whether Brentwood Homes, Inc , or Brentwood Homes of South Carolina, Inc , was the contractor with respect to constructing the subject home as Brentwood Homes of South Carolina, Inc is listed as the contractor on the building permit (Exhibit H to Motion to Compel, p 6) On or about January 31, 2007, Bradley executed a Home Purchase Agreement in order to purchase the subject home (Home Purchase Agreement, p 1) The Home Purchase Agreement was executed by Bradley, as purchaser, and Donald Gerratt, as agent for seller, Brentwood Homes, Inc (Home Purchase Agreement, p 10) Pursuant to the Home Purchase Agreement, Bradley agreed to purchase a completed dwelling wherein Brentwood Homes, Inc , was not acting as a contractor for purchaser in the construction of the dwelling, but rather as a seller of a completed dwelling (Home Purchase Agreement, ¶ 22(H)) The closing of Bradley's home took place on



March 2, 2007 and was conducted by the Brush Law Firm (Bradley Affidavit, ¶ 3) Thomas H Brush, Esq , of the Brush Law Firm was the assistant vice president of Brentwood Homes, Inc , at the time of closing (Exhibit C to Bradley Affidavit) However, Bradley was never informed that the closing attorney was an officer of Brentwood Homes, Inc , prior to or at the time of closing (Bradley Affidavit, ¶ 10)

The Home Purchase Agreement provides that “validation of the 2-10 HBW warranty is conditioned upon seller’s compliance with all 2-10 HBW’s enrollment procedures and upon seller remaining in good standing in the 2-10 HBW Program ” (Home Purchase Agreement, ¶ 14(B)) The document entitled ‘ Builder Application for Home Enrollment ’ states to the buyer that “By signing below, you acknowledge that you have read a sample copy of the Warranty Booklet, and consent to the terms of these documents including the binding arbitration provision contained therein ” (Exhibit B to Bradley Affidavit) The Builder Application for Home Enrollment also provides that there is no coverage by the builder’s warranty insurer if the buyer has not received a certificate of warranty coverage and a warranty booklet from 2-10 HBW within thirty days after closing (Exhibit B to Bradley Affidavit) The Builder Application for Home Enrollment was never presented to Bradley before the commencement of this litigation, nor did he ever execute any document relating to the 2-10 Home Buyers Warranty associated with the home he purchased from Appellants (Bradley Affidavit, ¶ 4) Bradley did not receive the Home Buyers Warranty Limited Warranty Booklet until after April 11, 2007 (Bradley Affidavit, ¶ 7, Exhibit E to Bradley Affidavit)

Edward M Terry, past president of Brentwood Homes, Inc , ran the operations of the company but did not deal directly with Bradley (Exhibit G to Motion to Compel, ¶ 1(b)) Donald Gerratt, former vice president of construction for Brentwood Homes, Inc , was alleged

A handwritten signature in black ink, appearing to be 'M. J.', is located at the bottom right of the page.

by Appellants to be the builder who built the subject home (Exhibit G to Motion to Compel, ¶ 1(a))

STANDARD OF REVIEW

“Determinations of arbitrability are subject to de novo review” Thorton v Trident Med Ctr, L L C, 357 S C 91, 94, 592 S E 2d 50, 51 (Ct App 2003) “Nevertheless, a circuit court’s factual findings will not be reversed on appeal if there is any evidence reasonably supporting the findings” Id

ARGUMENT

Bradley respectfully requests that this Court affirm the Order denying Appellants’ Motion to Compel Arbitration as there exists substantial evidence to support the Trial Court’s finding that the Home Purchase Agreement is not subject to the Federal Arbitration Act

I THE HOME PURCHASE AGREEMENT ON ITS FACE DOES NOT INVOLVE INTERSTATE COMMERCE AS THE ESSENTIAL CHARACTER OF THE CONTRACT INVOLVES THE PURCHASE OF REAL PROPERTY IN SOUTH CAROLINA

In order for the Federal Arbitration Act “to apply, the commerce involved in the contract must be interstate or foreign” Soil Remediation Co v Nu-Way Envntl Inc., 323 S C 454, 460, 476 S E 2d 149, 152 (1996) “To ascertain whether a transaction involves commerce within the meaning of the FAA, the court must examine the agreement, the complaint, and the surrounding facts” Zabinski v Bright Acres Assocs., 346 S C 580, 594, 553 S E 2d 110, 117 (2001) The court is required to review the entire contract “in determining whether the contract on its face evidences commerce” Timms v Greene, 310 S C 469, 472, 427 S E 2d 642, 644 (1993) South Carolina courts “consistently look to the essential character of the contract when applying the FAA” Thorton, at 96, 592 S E 2d at 52 The South Carolina Supreme Court has found that a contract for the sale of land in this state to out-of-state parties did not involve interstate

commerce even though the parties obtained engineering services and procured financing from other states See, Mathews v Fluor Corp., 312 S C 404, 440 S E 2d 880 (1994), overruled by Munoz v Green Tree Fin Corp., 343 S C 531, 542 S E 2d 360 (2001) (overruling Mathews to the extent it considered whether the parties contemplated interstate commerce as a factor in determining whether the FAA applied) In Mathews, the South Carolina Supreme Court found that the transaction did not involve interstate commerce and was not within the scope of the Federal Arbitration Act even though the contracting parties were domiciled outside the confines of South Carolina, and the “transactions incident to the sale, [including the financing of the purchase by foreign lending institutions], were conducted in foreign jurisdictions ” Mathews, at 407, 440 S E 2d at 881-82

Subparagraph H in paragraph 22 on Page 8 of the Home Purchase Agreement executed by Bradley and Donald Gerratt, as agent for Appellant Brentwood Homes, Inc , specifically states that “Purchaser is buying a completed dwelling and that Seller is not acting as a contractor for Purchaser in the construction of a dwelling ” (Home Purchase Agreement, ¶ 22) The Home Purchase Agreement contains a merger clause which provides that the contract contains the sole and entire agreement between the parties hereto and no modification of this Agreement shall be binding unless attached hereto and signed by all parties to this Agreement ” (Home Purchase Agreement, ¶ 32) The merger clause in the Home Purchase Agreement also provides that “no representations, promise, or inducement not included in this Agreement shall be binding upon any party hereto ” (Home Purchase Agreement, ¶ 32) Further, the terms of the Home Purchase Agreement do not refer to equipment and materials to be furnished from outside the state of South Carolina, nor does it list any subcontractors which were outside the confines of this state Therefore, the terms of the Home Purchase Agreement unambiguously indicate that the essential



character of the agreement involves the purchase of real property with improvements thereon rather than a contract for warranty coverage, financing, or construction of a dwelling

The contract and transaction at issue in Mathews mirrors the Home Purchase Agreement and transaction between the parties in the present case as both cases involve a transaction in which the essential character of the contract is the purchase and sale of real estate located in South Carolina. Appellants rely on Zabinski, 346 S C at 595, 553 S E 2d at 117, to assert that out-of-state financing establishes interstate commerce with respect to the subject transaction involving the purchase and sale of real property in South Carolina. However, Zabinski involved an action whereby Appellants sought arbitration of the distribution of partnership assets and other partnership disputes wherein the partnership agreement expressly provided that all controversies or claims arising out of the agreement shall be subject to arbitration. Id at 586, 553 S E 2d at 112-113. The partnership in Zabinski was formed “in order to buy, renovate, and sell thirty apartments and approximately twenty-six acres of land on Hilton Head Island.” Id 553 S E 2d at 112. The South Carolina Supreme Court found that “the development of land within South Carolina’s borders is the quintessential example of a purely intrastate activity. However, the transaction [at issue] involved interstate commerce as contemplated by the FAA because the partnership utilized out-of-state materials, contractors, and investors.” Id at 595, 553 S E 2d at 118. The essential character of the Home Purchase Agreement and the transaction at issue in the present action involved the purchase and sale of real property with a previously constructed dwelling thereon rather than a dispute amongst partners belonging to a partnership which utilized out-of-state materials, contractors, and investors to buy, renovate, and sell apartments located within the confines of South Carolina. Therefore, Zabinski is not analogous

or applicable to the present action as the set of facts and causes of action therein substantially differ from the present action

Appellants contend that the financing of the purchase, the provision within the Home Purchase Agreement giving the seller the discretion to purchase a warranty from any warranty company of its choosing, and the construction materials and subcontractors used to construct the subject dwelling cause the Home Purchase Agreement to involve Interstate Commerce. However, these transactions, like the incidental transactions in Mathews, are incident to the sale of the subject property and, therefore, do not cause the Home Purchase Agreement to involve interstate commerce within the scope of the Federal Arbitration Act. Further, the warranty referenced by Appellants was not validated because Appellants did not offer any evidence or present any arguments to oppose the allegations in the Bradley Affidavit which alleged that Bradley never read a sample copy of the warranty booklet, consented to any terms with respect to the warranty, or received a certificate of warranty coverage along with a warranty booklet within 30 days after closing. Therefore, the warranty issue raised by Appellants is not relevant to the present action as they did not validate the warranty, Bradley never agreed to any terms with respect to the warranty, the terms of HBW 2-10 Warranty were never presented to the Trial Court or offered into evidence, and this action does not arise from the 2-10 HBW warranty referenced in the Home Purchase Agreement.

II THE TRIAL COURT'S FACTUAL FINDINGS WITH RESPECT TO THE TERRY AFFIDAVIT MUST NOT BE REVERSED AS APPELLANTS DID NOT PROPERLY PRESERVE THE ISSUE OF THE SUFFICIENCY OF THE TERRY AFFIDAVIT, AND THERE EXISTS AMPLE EVIDENCE THAT REASONABLY SUPPORTS THE TRIAL COURT'S FINDINGS

1 Appellants Did Not Preserve the Issue of the Sufficiency of the Terry Affidavit for Review

“It is an axiomatic rule of law that issues may not be raised for the first time on appeal.”

Talley v South Carolina Higher Educ Tuition Grants Comm'n, 289 S C 483, 487, 347 S E 2d 99, 101 (1986) Further, an issue is not preserved for appeal even if it was raised below, but not ruled upon by the trial judge Id A specific issue or allegation is not properly preserved for review when the trial judge considers it, but fails to specifically rule on it, and the Appellant makes no mention under Rule 59(e), SCRPC for the trial judge to alter or amend his order to consider that specific issue or allegation See, e.g., Skinner v Elrod, 308 S C 239, 417 S E 2d 599 (Ct App 1992) "The appellate courts have ruled consistently that an issue presented to the trial judge but not decided, may not be heard on appeal" James F Flanagan, South Carolina Rules of Civil Procedure 475 (2d ed 1996)

Appellants assert that the Trial Court made no specific finding that the information set forth in the Terry Affidavit was untrue or inaccurate, or that the affidavit was proper for consideration to establish the involvement of interstate commerce in the transaction between Appellants and Bradley Bradley objected to the submission of the Terry Affidavit due to its factual inaccuracies in comparison to Appellants' initial responses to Bradley's interrogatories, and Donald Gerratt being the signatory of the Home Purchase Agreement on behalf of Appellants (6/1/10 Transcript, p 12, lines 18-24) At the hearing, Bradley alleged that Edward Terry was not competent to give testimony because the Appellants alleged that they were not alter egos and did not list Mr Terry as an officer of Brentwood Homes of South Carolina, Inc , which was the entity listed in the building permit as the contractor (6/1/10 Transcript, p 13, lines 1-6) Appellants did not respond to Bradley's objection to the submission of the Terry Affidavit, nor did they mention, by filing a Motion to Alter or Amend pursuant to Rule 59(e), SCRPC the issue that the Trial Court made no specific finding that the Terry Affidavit was untrue or inaccurate, or that the affidavit should have been considered to establish the



involvement of interstate commerce in the subject transaction. Therefore, Appellants must be precluded from asserting for the first time on appeal any alleged error resulting from the Trial Court's alleged failure to consider the Terry Affidavit to establish the involvement of interstate commerce in the subject transaction, as well as the Trial Court's omission of a specific finding that the information set forth in the affidavit was untrue and inaccurate.

2. The Terry Affidavit Fails to Establish Interstate Commerce

The South Carolina Supreme Court has found that a contract for the sale of land in this state to out-of-state parties did not involve interstate commerce even though the parties obtained engineering services and procured financing from other states. See, Mathews, 312 S.C. 404, 440 S.E.2d 880 (1994), overruled by Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 542 S.E.2d 360 (2001) (overruling Mathews to the extent it considered whether the parties contemplated interstate commerce as a factor in determining whether the FAA applied). In Mathews, the South Carolina Supreme Court found that the transaction did not involve interstate commerce and was not within the scope of the Federal Arbitration Act even though the contracting parties were domiciled outside the confines of South Carolina and the "transactions incident to the sale, [including the financing of the purchase by foreign lending institutions], were conducted in foreign jurisdictions." Mathews, at 407, 440 S.E.2d at 881-82. Pursuant to Rule 401 of the South Carolina Rules of Evidence, "relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." A party's response to an interrogatory constitutes an admission of the responding party and may be used as substantive evidence. Camlin v. Bi-Lo, Inc. 311 S.C. 197, 428 S.E.2d 6 (Ct. App. 1993).



The Home Purchase Agreement was executed by Bradley and Donald Gerratt on behalf of Appellant Brentwood Homes, Inc. Subparagraph H in paragraph 22 on Page 8 of the Home Purchase Agreement specifically states that “Purchaser is buying a completed dwelling and that Seller is not acting as a contractor for Purchaser in the construction of a dwelling” Further, the Home Purchase Agreement contains a merger clause which provides that the contract “contains the sole and entire agreement between the parties hereto and no modification of this Agreement shall be binding unless attached hereto and signed by all parties to this Agreement” The terms of the Home Purchase Agreement unambiguously indicate that it is an agreement for the purchase and sale of real estate and, therefore, cannot be construed as a construction contract Paragraph 12 of the Terry Affidavit solely relates to the construction, materials, and suppliers associated with the construction of Bradley’s home and, therefore, paragraph 12 of the affidavit is not relevant to establish any fact arising from the purchase and sale of the home to establish interstate commerce

The Trial Court specifically restated Appellants’ discovery responses to Bradley’s initial Set of Interrogatories Numbers 1(a) and 1(b) which stated that Edward M Terry did not deal directly with the customer and that Donald Gerratt was the builder who built Plaintiff’s home and dealt with all warranty calls (6/16/10 Order) Appellants submitted no evidence to establish that Edward M Terry ever read the Home Purchase Agreement, met or communicated with Bradley, or ever visited or witnessed any transaction involving the sale or construction of Bradley’s Home Therefore, Bradley was not required to offer evidence to refute the specific information contained in the Terry Affidavit as the Trial Court properly relied on the Appellants’ responses to Bradley’s initial Set of Interrogatories, Bradley’s objections to the admission of the

A handwritten signature in black ink, appearing to be 'WJ', is located at the bottom right of the page.

Terry Affidavit, as well as the fact that the transaction involved the purchase and sale of Bradley's Home, not the construction thereof, while rendering its decision

3 The Terry Affidavit is Not Based Upon Personal Knowledge

Rule 602, South Carolina Rules of Evidence, provides that "a witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter"

At the June 1, 2010 hearing, Appellants submitted no evidence to support the allegations in the Terry Affidavit with respect to Edward Terry's personal knowledge thereof. The only evidence the Trial Court had to consider when reviewing the Terry Affidavit were Appellants' responses to Bradley's initial set of interrogatories attached to his Motion to Reconsider wherein Appellants responded that Edward Terry did not deal directly with the customer and Donald Gerratt built the subject home. Further, Appellants did not oppose Bradley's contention that Edward Terry was not listed as an officer of Brentwood Homes of South Carolina, Inc., which was listed on the building permit as the contractor. Therefore, Appellants did not introduce evidence sufficient to support a finding that Edward Terry had personal knowledge regarding the construction of Bradley's home.

Appellants did not preserve the issue of the sufficiency of the Terry Affidavit for Appeal. The Terry Affidavit is irrelevant to establish interstate commerce with respect to Home Purchase Agreement as the agreement constitutes a contract to purchase and sale real estate located in South Carolina rather than a construction contract. Further, the Trial Court was limited to Appellants' discovery responses, the arguments of counsel, and the terms of the Home Purchase Agreement when reviewing the Terry Affidavit after Appellants submitted it to the Trial Court. Therefore, reasonable evidence exists in the record to support the Trial Court's finding that the



Appellants failed to submit sufficient evidence to demonstrate that the subject transaction involved interstate commerce in the event this Court finds that Appellants preserved this issue for appeal

III EVEN IF THIS COURT WERE TO FIND THAT THE HOME PURCHASE AGREEMENT WAS SUBJECT TO THE FEDERAL ARBITRATION ACT, THE APPELLANTS WAIVED ANY RIGHT TO ARBITRATION

“Arbitration laws are passed in order to expedite the settlement of disputes and should not be used as a means of furthering and extending delays” Evans v Accent Manufactured Homes, Inc., 352 S C 544, 550, 575 S E 2d 74, 76 (Ct App 2003) (citing 4 Am Jur 2d Alternative Dispute Resolution § 131 (1995)) “A party may waive the right to arbitration by being unjustifiably slow in seeking arbitration” Id “A party seeking to establish waiver must show prejudice through an undue burden caused by delay in demanding arbitration” Id “There is no set rule as to what constitutes a waiver of the right to arbitrate, the question depends on the facts of each case” Evans, 352 S C at 544, 575, S E 2d at 77

Appellants have filed a Motion to Dismiss, two Answers in conjunction with two counterclaims, and served discovery requests on Bradley prior to raising the issue of arbitration on February 5, 2010 Prior to Appellants filing their Motion to Compel Arbitration, the Trial Court, on February 1, 2010, granted Bradley’s Motion to Compel which required Appellants to respond to Bradley’s discovery requests within 45 days At the February 1, 2010 hearing, the Trial Court also heard Bradley’s Motion for Summary Judgment Appellants’ counsel asserted that the Trial Court should not grant Bradley’s Motion for Summary Judgment because it would essentially punish the Appellants for the actions of their prior attorney, and not promote an adjudication on the merits Thereafter, Appellants were permitted to amend their original Answer, which was in the form of a single paragraph general denial, to avoid default, however,

Appellants subsequently raised the arbitration issue in their Amended Answer and filed a Motion to Compel Arbitration. Bradley was forced to file Motion to Reconsider the Trial Court's Order arising from the hearing on February 1, 2010 as the Appellants raised various defenses, including the arbitration issue, and failed to comply with the terms of the Order which granted Bradley's Motion to Compel. Further, Appellants have not supplemented the initial discovery responses of their prior counsel, nor have they complied with the terms of the Trial Court's Order, dated June 16, 2010.

The record clearly reflects that Appellants availed themselves with discovery tools not available in arbitration. There is also ample evidence in the record which shows that the Appellants used the judicial process to substitute counsel, amend their Answer to avoid default and assert a counterclaim against Bradley and to avoid cooperating with the discovery process. As a result of Appellants' use of the judicial process and discovery tools available therein, Bradley has been forced to incur much prejudice as he has incurred substantial attorney's fees resulting from his counsel having to appear before the Trial Court on two separate occasions regarding Appellants' reluctance to respond to his discovery requests. Appellants also used the judicial system to avoid default prior to raising the arbitration issue, and now seek to compel arbitration even though they previously requested the Trial Court for an adjudication on the merits in opposition to Bradley's Motion for Summary Judgment. Although Appellants were entitled to appeal the Trial Court's Order denying their Motion to Compel Arbitration, the facts and circumstances of this proceeding indicate that this action was taken to delay the proceeding in an attempt to avoid compliance with the terms of the Order in which Appellants have appealed. Therefore, the record contains ample evidence which indicates that Appellants were unjustifiably slow in seeking arbitration, engaged in discovery to their benefit, participated in the

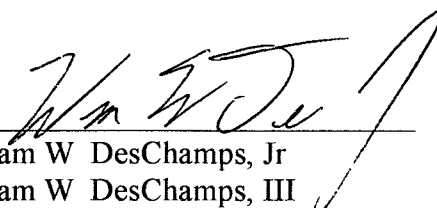
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judicial process for their benefit, and forced Bradley to incur costs he would not have incurred in arbitration even though Appellants have yet to provide complete and accurate discovery responses to Bradley's initial discovery requests

CONCLUSION

The decision of the Trial Court must be affirmed because there exists ample evidence which reasonably supports the Trial Court's findings of fact. The Trial Court reviewed the Home Purchase Agreement, the Complaint, and considered the surrounding facts when it found that the Home Purchase Agreement did not involve interstate commerce.

Respectfully submitted,



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Attorney for Respondent

November 1, 2010

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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B Hyman, Jr , Resident Judge, Fifteenth Judicial Circuit

Civil Action No 2009-CP-26-7477

Fred Bradley,

Respondent,

vs

Brentwood Homes, Inc , Brentwood Homes-Limehouse, LLC,
Brentwood Homes – The Retreat at Johns Island, LLC Brentwood
Homes of South Carolina, Inc , Brentwood Homes of North Carolina,
Inc , Brentwood Homes of Myrtle Beach, Inc Brentwood Homes of
Low Country, Inc , Brentwood Homes of Fort Mill, Inc , Brentwood
Homes of Beaufort-Bluffton, Inc , Harris Street, LLC, Crescent Homes
of SC, Inc , Brentwood Homes Incorporated, a Georgia Corporation,

Appellants

**DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

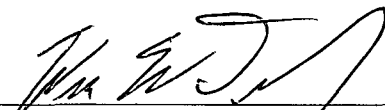
Respondent proposes the following to be included in the Record on Appeal

- 1 Order Denying Defendants' Motion to Dismiss and granting Plaintiff's Motion to Compel dated February 8, 2010,
- 2 Order Denying Plaintiff's Motion for Summary Judgment dated February 8, 2010,
- 3 Consent Order for Substitution of Counsel,
- 4 Complaint,
- 5 Answer,
- 6 Defendants' Amended Answer and Counterclaim,



7 Plaintiff's Notice of Motion and Motion to Reconsider and/or Alter or Amend the
Court's prior Order Denying Defendants' Motion to Dismiss and granting
Plaintiff's Motion to Compel Discovery,
8 Defendants' Notice of Motion and Motion to Stay Arbitration
9 Memorandum in Support of Defendants' Motion to Stay and Compel Arbitration,
10 Defendants' Amended Notice of Motion and Motion to Dismiss,
11 Plaintiff's Notice of Motion and Motion to Compel Discovery and for Attorney's
Fees and Costs (with attached Exhibits A through N),
12 Judicial (Non-Jury) Proceedings February 1, 2010, p 17, p 23,
13 Transcript of Record June 1, 2010, pp 11-13,
14 Affidavit John F Bradley ("Fred Bradley") in Opposition to Defendants' Motion
to Compel Arbitration (with attached Exhibits A through G),
15 Affidavit of Edward M Terry (with attached Exhibits), and
16 Letter dated January 19, 2010 from Allen Leland Dupre to William W
DesChamps, Jr

I certify that this designation contains no matter which is irrelevant to this appeal



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Attorneys for Respondent

November 1, 2010

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B Hyman, Jr , Resident Judge, Fifteenth Judicial Circuit

Civil Action No 2009-CP-26-7477

Fred Bradley,

Respondent,

vs

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Brentwood Homes – The Retreat at Johns Island, LLC, Brentwood
Homes of South Carolina, Inc , Brentwood Homes of North Carolina,
Inc , Brentwood Homes of Myrtle Beach, Inc , Brentwood Homes of
Low Country, Inc , Brentwood Homes of Fort Mill, Inc , Brentwood
Homes of Beaufort-Bluffton, Inc , Harris Street, LLC, Crescent Homes
of SC, Inc , Brentwood Homes Incorporated, a Georgia Corporation,

Appellants

PROOF OF SERVICE

I certify that I have served one (1) copy of the Initial Brief of Respondent and Designation of Matter to be included in the Record on Appeal on counsel for Appellants by depositing copies of same in the United States Mail, postage prepaid, on November 1, 2010, to the following addressee

Robert T Lyles, Esquire
Lyles & Lyles
342 East Bay Street
Charleston SC 29401

[SIGNATURE APPEAR ON NEXT PAGE]

Dated November 1, 2010



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WILLIAM W DESCHAMPS III ESQ
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TELEPHONE (843) 448 2391

Certified Court Mediator and Arbitrator

FACSIMILE (843) 448-3308

November 1, 2010

The Honorable Tanya A Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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SC Court of Appeals

RE Fred Bradley v Brentwood Homes, Inc , et al
Case No 2009-CP-26-7477

Dear Ms Gee

Enclosed for filing is the original of the Initial Brief of Respondent regarding the above-referenced case

By copy of this letter, I am herewith serving one (1) copy of the Initial Brief of Respondent on counsel for the Appellants as evidenced by the enclosed Proof of Service

If you have any questions, please do not hesitate to contact my office and speak with either Trey DesChamps or Trina McManus, Litigation Paralegal

Thank you for your assistance in this matter With kindest personal regards, I remain

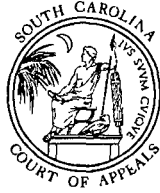
Sincerely yours,


William W DesChamps, Jr

WWD, Jr /tdm

Enclosures

cc Robert T Lyles, Esquire



The South Carolina Court of Appeals

TANYA A GEE
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
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September 29, 2010

William Wayne DesChamps, III, Esquire
DesChamps Law Firm
1551 21st Ave N
Ste 14
Myrtle Beach, SC 29577-7495

Re Bradley, Fred v Brentwood Homes
Case Tracking # 2010163350

Dear Mr DesChamps

The following Order has been endorsed on your "Motion for Extension of Time to File Initial Brief of Respondent and Designation of Matter to be Included in the Record on Appeal" in the above entitled case on appeal

"Granted

John Cannon Few C J
For the Court

By s/ V. Claire Allen
Deputy Clerk

September 29, 2010 "

Please be advised the Respondent's Initial Brief and Designation of Matter must be served and filed on or before November 3, 2010

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/ec

cc Robert T Lyles, Jr, Esquire

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B Hyman, Jr , Circuit Court Judge

Civil Action No 2009-CP-26-7477

Fred Bradley,

Respondent,

vs

Brentwood Homes, Inc , Brentwood Homes – Limehouse, LLC,
Brentwood Homes – The Retreat at Johns Island, LLC, Brentwood
Homes of South Carolina, Inc , Brentwood Homes of North
Carolina, Inc , Brentwood Homes of Myrtle Beach, Inc , Brentwood
Homes of Low Country, Inc , Brentwood Homes of Fort Mill, Inc ,
Brentwood Homes of Beaufort-Bluffton, Inc , Harris Street, LLC,
Crescent Homes of SC, Inc , Brentwood Homes, Incorporated,
A Georgia Corporation,

Appellants

**MOTION FOR EXTENSION OF TIME
TO FILE INITIAL BRIEF OF RESPONDENT AND
DESIGNATION OF MATTER TO BE INCLUDED IN THE
RECORD ON APPEAL**

Counsel for Respondent, Fred Bradley, hereby respectfully requests the Court, pursuant to Rule 224, SCACR, for an extension of time to file Respondent’s Initial Brief and Designation of Matter to be included in the Record on Appeal

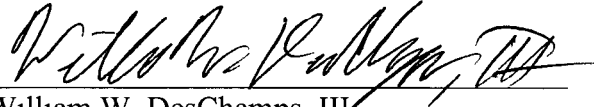
As a result of Respondent’s counsel’s schedule, Respondent respectfully contends that good cause exists for an extension of time to file his Initial Brief and Designation of Matter Wherefore, Respondent contends that this appeal and the interest of justice will be served by granting Respondent an extension of time to file his Initial Brief and Designation of Matter

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Respondent, therefore, respectfully prays upon this Court for an order granting Respondent an extension of thirty (30) days to file his Initial Brief and Designation of Matter to be included in the Record on Appeal

DESCHAMPS LAW FIRM



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William W DesChamps, Jr
Attorneys for Respondent, Fred Bradley
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SC Bar #01658 and 77150
E-mail trey@deschampsllaw.com

Dated September 9, 2010

Other Counsel of Record

Robert T Lyles, Esquire
Lyles & Lyles, LLC
Post Office Box 773
Charleston, SC 29402
Attorney for Appellants

GRANTED
JOHN CANNON FEW, C J
FOR THE COURT

By V. Claire Allen
(Clerk) (Deputy Clerk)

FILED
9/29/10

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM Horry COUNTY
Court of Common Pleas

Larry B Hyman, Jr , Circuit Court Judge

Civil Action No 2009-CP-26-7477

Fred Bradley,

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Brentwood Homes – The Retreat at Johns Island, LLC, Brentwood
Homes of South Carolina, Inc , Brentwood Homes of North
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Homes of Low Country, Inc , Brentwood Homes of Fort Mill, Inc ,
Brentwood Homes of Beaufort-Bluffton, Inc , Harris Street, LLC,
Crescent Homes of SC, Inc , Brentwood Homes, Incorporated,
A Georgia Corporation,

Appellants

PROOF OF SERVICE

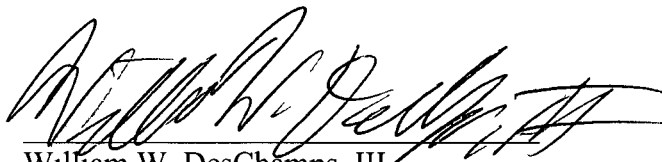
I certify that I have served one (1) copy of the Motion for Extension of Time to File Initial Brief of Respondent and Designation of Matter to be Included in the Record on Appeal upon counsel for Appellants depositing a copy of the same in the United States Mail, postage prepaid, on September 10, 2010, to the following address

Robert T Lyles, Esquire
Lyles & Lyles, LLC
Post Office Box 773
Charleston, SC 29402

[SIGNATURES APPEAR ON NEXT PAGE]

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SC Court of Appeals

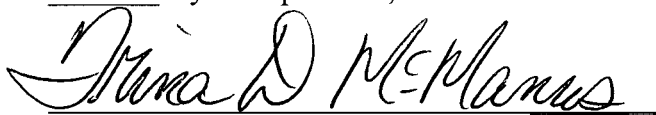
DESCHAMPS LAW FIRM



William W DesChamps, III
William W DesChamps, Jr
Attorneys for Respondent
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SC Bar # 77447 and 01658
E-mail trey@deschampsllaw.com

SWORN to before me this

10th day of September, 2010



Notary Public for South Carolina
My Commission Expires 12/6/15

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B Hyman, Jr , Circuit Court Judge

Case No 2009-CP-26-7477

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SC Court of Appeals

Fred Bradley,

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v

Brentwood Homes, Inc , Brentwood Homes – Limehouse, LLC,
Brentwood Homes – The Retreat at Johns Island, LLC, Brentwood
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Low Country, Inc Brentwood Homes of Fort Mill, Inc , Brentwood
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of SC, Inc , Brentwood Homes Incorporated, a Georgia Corporation,

Appellants

DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following to be included in the Record on Appeal

- 1 Order Granting Plaintiff's Motion to Alter/Amend and Denying Defendants' Motion to Compel Arbitration dated June 16, 2010
- 2 Order Denying Defendants' Motion to Dismiss and Granting Plaintiff's Motion to Compel dated February 11, 2010
- 3 Order Denying Plaintiff's Motion for Summary Judgment filed February 11, 2010
- 4 Consent Order Substituting Counsel dated January 11, 2010
- 5 Complaint dated July 31, 2009
- 6 Answer dated August 19, 2009
- 7 Amended Answer and Counterclaim dated February 11, 2010 (with exhibits)
- 8 Defendants' Motion to Dismiss dated October 5, 2009
- 9 Plaintiff's Motion for Summary Judgment dated December 22, 2009

- 10 Notice of Motion and Motion to Stay and Compel Arbitration (with exhibits)
- 11 Affidavit of Edward M Terry (with exhibits)
- 12 Affidavit of Affidavit of John F Bradley ("Fred Bradley") In Opposition to Defendants' Motion to Compel Arbitration (with exhibits)

I certify that this designation contains no matter which is irrelevant to this appeal

September 2, 2010



for Robert T Lyles
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Charleston, South Carolina 29401
(843) 577-7730
Attorneys for Appellants

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SEP 03 2010
SC Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B Hyman, Jr , Circuit Court Judge

Case No 2009-CP-26-7477

Fred Bradley,

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v

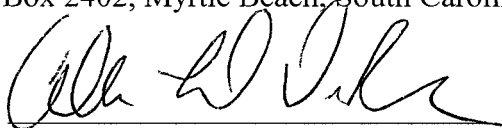
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Brentwood Homes – The Retreat at Johns Island, LLC, Brentwood
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Homes of Beaufort-Bluffton, Inc , Harris Street, LLC, Crescent Homes
of SC, Inc , Brentwood Homes Incorporated, a Georgia Corporation,

Appellants

PROOF OF SERVICE

I certify that I have served the Appellants' Designation of Matter to be included in the Record on Appeal on Fred Bradley by Depositing a copy of it in the United States Mail, First Class postage prepaid, on September 1, 2010, addressed to his attorney of record, William W DesChamps, III, Esquire, DesChamps Law Firm, Post Office Box 2402, Myrtle Beach, South Carolina 29577

September 2, 2010



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Member

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September 2, 2010

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, S C 29211

RECEIVED
SEP 03 2010
SC Court of Appeals

Re *Fred Bradley v Brentwood Homes Inc et al*
Horry County Case Number 2009-Cp-26-7477
Case Tracking Number 2010163350

Dear Ms Gee

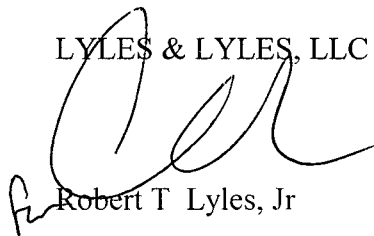
Enclosed for filing with regard to the above referenced matter, please find the following

- 1) Initial Brief of Appellant with Proof of Service, and,
- 2) Designation of Matter to Be Included in the Record on Appeal with Proof of Service

If you have any questions, please feel free to give me a call With kind regards, I remain

Very truly yours,

LYLES & LYLES, LLC



Robert T Lyles, Jr

RTL/daw

Enclosures

cc William W DesChamps, III, Esquire
Edward M Terry

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM Horry COUNTY
Court of Common Pleas

Larry B Hyman, Jr , Circuit Court Judge

Case No 2009-CP-26-7477

Fred Bradley,

Respondent,

v

Brentwood Homes, Inc , Brentwood Homes – Limehouse, LLC,
Brentwood Homes – The Retreat at Johns Island, LLC, Brentwood
Homes of South Carolina, Inc , Brentwood Homes of North Carolina,
Inc , Brentwood Homes of Myrtle Beach Inc , Brentwood Homes of
Low Country, Inc Brentwood Homes of Fort Mill, Inc , Brentwood
Homes of Beaufort-Bluffton, Inc , Harris Street LLC, Crescent Homes
of SC, Inc Brentwood Homes Incorporated, a Georgia Corporation,

Appellants

INITIAL BRIEF OF APPELLANT

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(843) 577-7730
Attorneys for Appellants

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SC Court of Appeals

ORIGINAL

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STATEMENT OF ISSUE ON APPEAL

I DID THE TRIAL COURT ERR IN DENYING APPELLANTS' MOTION TO STAY AND COMPEL ARBITRATION?

STATEMENT OF THE CASE

This is an appeal from the circuit court's denial of the Appellants' motion to stay this case and to compel arbitration. Appellants submit that binding and valid agreements to arbitrate exist between Fred Bradley, Plaintiff/Respondent, ("Bradley") and Appellant, Brentwood Homes, Inc ("BHI"). Bradley filed this action on or about July 31, 2009, in which he alleges multiple causes of action, all of which relate to the construction of a home he purchased. (Complaint) Bradley actually purchased the residence from BHI pursuant to an agreement dated January 31, 2007 ("Agreement") (Exhibit A to Notice of Motion and Motion to Stay and Compel Arbitration). Bradley also alleges these causes of action against all Appellants as "alter egos" of one another ("Alter Ego Entities"). The causes of action alleged are fraud, negligence, and breach of implied warranty. (Complaint) Appellants filed an Answer on August 19, 2009. (Answer) Appellants also filed a Notice of Motion and Motion to Dismiss Pursuant to Rule 12(b)(6), or in the Alternative to Amend Answer to Include Counterclaim for Frivolous Proceedings on October 5, 2009. (Defendants' Motion to Dismiss) Bradley moved for Summary Judgment on December 22, 2009, alleging that the Answer was insufficient. (Plaintiffs Motion for Summary Judgment) A substitution of counsel was made by Order on or about January 11, 2010. (Consent Order Substituting Counsel)

The Court denied the Motion to Dismiss (which was later amended), but granted ten (10) days to Appellants to 'amend their Answer to the Plaintiff's Complaint.' (Order Denying Defendants' Motion to Dismiss and Granting Plaintiff's Motion to Compel) Bradley's Motion for

Summary Judgment was denied (Order Denying Plaintiff's Motion for Summary Judgment filed February 11, 2010)

On February 5, 2010, Appellants served an Amended Answer and Counterclaim which raised Arbitration as an affirmative defense (Amended Answer and Counterclaim) On the same date Appellants served a Notice of Motion and Motion to Stay and Compel Arbitration (Notice of Motion and Motion to Stay and Compel Arbitration)

On June 1, 2010, the Honorable Larry H Hyman, Jr , heard oral arguments on Appellants' Motion to Stay and Compel Arbitration and orally issued and denied said motion from the bench Defendants served a notice of appeal on June 3, 2010 On June 11, 2010, Judge Hyman signed a written order denying the motion to compel arbitration ("Order") (Order Granting Plaintiff's Motion to Alter/Amend and Denying Defendants' Motion to Compel Arbitration) Said Order was filed on June 16 2010 Defendants served an amended notice of appeal on June 29, 2010

FACTS

The lawsuit arises out of alleged deficiencies in the construction of a home located at 2304 Tortuga Drive, North Myrtle Beach, South Carolina ("Residence") (Complaint) Bradley entered into a Home Purchase Agreement for the Residence with BHI, the builder and seller of the home, dated January 31, 2007 ("Agreement") (Exhibit A to Notice of Motion and Motion to Stay and Compel Arbitration, hereinafter cited as "Agreement") Pursuant to Section 14 of the Agreement a 2-10 Homebuyers Warranty was to be provided to the purchasers (Agreement P 5) This "Warranties and Dispute Resolution" provision of the Agreement contains a Mandatory Binding Arbitration Clause (Subsection G) which was initialed by Bradley (Agreement P 6) It provides

“Purchaser and Seller each agree that, to the maximum extent allowed by law, they desire to arbitrate all disputes between themselves. The list of disputes which shall be arbitrated in accordance with this paragraph include, but are not limited to (1) any claim arising out of Seller’s construction of the home, (2) Seller’s performance under any Punch List or Inspection Agreement, (3) Seller’s performance under any warranty contained in this Agreement or otherwise, and (4) any matters as to which Purchaser and Seller agree to arbitrate.”

The Respondent alleges that an inspection of this residence has resulted in the discovery of construction defects and deficiencies in the building. (Complaint P. 3) Respondent further claims that the Appellants failed to construct the residence in accordance with applicable building codes. (Complaint P. 4) Appellants have denied Respondent’s Allegations and maintain that such issue should be addressed by and through the 2-10 Home Buyers Warranty as provided in the Agreement. (Amended Answer and Counterclaim)

STANDARD OF REVIEW

Determinations of arbitrability are subject to de novo review. MBNA Am. Bank v. Christianson, 377 S. Ct. 210, 213, 659 S. E. 2d 209, 211 (Ct. App. 2008). Unless the parties provide otherwise, the question of the arbitrability of a claim is an issue for judicial determination. Zabinski v. Bright Acres Assocs., 346 S. Ct. 580, 596-97, 553 S. E. 2d 110, 118-19 (S. Ct. 2001). “There is a strong presumption in favor of the validity of arbitration agreements because of the strong policy favoring arbitration.” Towles v. United Healthcare Corp., 338 S. Ct. 29, 37, 524 S. E. 2d 839, 843-844 (Ct. App. 1999).

ARGUMENT

I. THE CIRCUIT COURT ERRED IN DENYING APPELLANT’S MOTION TO STAY AND COMPEL ARBITRATION BECAUSE A BINDING AND VALID AGREEMENT TO ARBITRATE EXISTS BETWEEN RESPONDENT BRADLEY AND APPELLANT BRENTWOOD HOMES, INC.

The Agreement purports to be subject to the South Carolina or North Carolina Uniform Arbitration Act (Agreement) The Court found that the Agreement did not strictly comply with S C Code Ann § 15-48-10(a), in that the notice of the arbitration provision was not typed in underlined capital letters on the first page Appellants acknowledge that strict compliance with this provision is required but not met by the agreement at issue

The circuit court erred in failing to enforce the arbitration pursuant to the Federal Arbitration Act When an arbitration provision of an agreement does not meet the technical requirements of S C Code Ann § 15-48-10(a) the Court must inquire whether the Federal Arbitration Act applies Zabinski 346 S C at 590 See also Soil Remediation Co v Nu-Way Envtl Inc, 323 S C 454, 460, 476 S E 2d 149, 152 (S Ct 1996) Like the contract at issue in Soil Remediation the arbitration provision purported to comply with the South Carolina Arbitration Act, but failed to comply with the technical requirements However, because the contract involved interstate commerce, the court found that the Federal Arbitration Act (“FAA”) preempted the South Carolina Act and enforced the provision

Because the Agreement involves interstate commerce, the arbitration provision in the instant case should also be enforced under the FAA The FAA provides that

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy therefore arising out of such contract or transaction or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract shall be valid irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract 9 U S C § 2

Within the FAA, courts have interpreted “involving commerce” “signals an intent to exercise Congress' commerce power to the full ’ Allied Bruce Terminix Co., v. Dobson, 513 U S 265, 277, 115 S Ct 834, 130 L Ed 2d 753 (1995) See also Towles v. United Healthcare Corp., 338 S C at 36

The terms of the contract at issue reveal that the transaction between the parties involves interstate commerce. The FAA preempts state law when the transaction in fact involves interstate commerce, regardless of whether or not the parties contemplated an interstate transaction. Munoz v. Green Tree Fin. Corp., 343 S C 531, 538, 542 S E 2d 360, 363 (S Ct 2001). The Agreement between the parties specifies that a **national** warranty company will be used to provide a structural warranty on the Residence (Agreement)(emphasis added). Specifically, the Agreement provides that the Seller (BHI) will purchase a warranty from 2-10 HBW Warranty (“2-10 Warranty”) or such other national warranty provider as Seller may reasonably elect (§ 14A) (Agreement). Therefore the Agreement shows evidence of the involvement of interstate commerce on its face.

The trial court further erred in finding that the *Affidavit of Edward M. Terry* (*Terry Affidavit*”) did not provide additional evidence of interstate commerce. “To ascertain whether a transaction involved commerce within the meaning of the FAA, the court must examine the agreement, the complaint, and the surrounding facts.” Zabinski 346 S C at 594, citing Towles, supra. Courts have relied on the use of affidavits to determine whether a transaction involves interstate commerce. Id. In the *Terry Affidavit*, Mr. Terry sets forth that in the construction of the Residence materials, subcontractors and suppliers from outside of South Carolina were used (Terry Affidavit, ¶ 12). Such evidence has been accepted to establish interstate commerce by courts in South Carolina who have all but found that contracts involving construction inherently involve

interstate commerce See Episcopal Housing Corp v Federal Ins Co, 269 S C 631, 239 S E 2d 647 (S Ct 1977) (Construction contract involved interstate commerce where materials, equipment and supplies were produced and manufactured out-of-state), Circle S Enterprises, Inc v Stanley Smith & Sons, 288 S C 428, 343 S E 2d 4 (Ct App 1998) (Though contract did not refer to out-of-state materials or subcontractors, an affidavit made part of record stated that numerous items specified in contract were purchased and shipped from outside state, and the nature of project was sufficient to give notice that materials, equipment and supplies from outside state would be required, thus evidencing transaction involving interstate commerce) Additionally, the *Terry Affidavit* provides that Claims under the 2-10 Warranty specified in the Agreement are to be submitted to HBW's location in Georgia (Terry Affidavit)

The Trial Court made no specific finding that the information set forth in the *Terry Affidavit* was untrue or inaccurate, but apparently found that because Mr Terry (1) did not “deal directly with the customer ” was not the “builder”, and did not deal with warranty calls that his affidavit did not establish the involvement of interstate commerce (Order Granting Plaintiff's Motion to Alter/Amend and Denying Defendants' Motion to Compel Arbitration) Under South Carolina Rule of Evidence 602 evidence to prove personal knowledge may consist of the witness' own testimony Mr Terry set forth that he was the Vice President and later President of Brentwood Homes, Inc (Terry Affidavit ¶ 7-8) The Seller listed in the Agreement is Brentwood Homes, Inc Mr Terry states that he made the affidavit of his personal knowledge (Terry Affidavit ¶ 6) The Respondent offered no affidavit or other evidence to refute the specific information contained in the *Terry Affidavit* The affidavit was therefore proper for consideration and established the involvement of interstate commerce in the transaction between BHI and the Respondent

Finally, the Respondent himself provides evidence of interstate commerce in the transaction with BHI. In the *Affidavit of John F. Bradley (Fred Bradley) In Opposition to Defendants Motion to Compel Arbitration* (“Bradley Affidavit”), the Respondent attached a copy of the settlement statement from the sale of the Residence (Bradley Affidavit, Exhibit C). South Carolina Courts have considered evidence of out-of-state financing in determining if a transaction evidences interstate commerce. See Zabinsky, 346 S.C. at 595 (Partner offered affidavit evidencing the use of out of state financing to establish interstate commerce and the Court found that the transaction involved interstate commerce because the partnership utilized out-of-state materials, contractors, and investors). This settlement statement indicates that the Respondent’s lender in the transaction is a North Carolina lender. The Respondent’s own affidavit therefore establishes the involvement of interstate commerce in the transaction.

Because evidence of interstate commerce is established by the face of the Agreement between Respondent and BHI, the *Terry Affidavit*, and the Respondent’s own affidavit, the arbitration provision in the Agreement is therefore enforceable under the FAA and the entire proceeding against all Appellants should be stayed pending the arbitration.

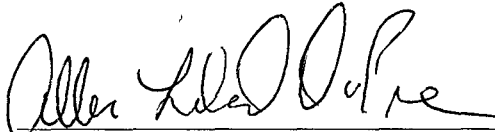
CONCLUSION

Because a valid and enforceable arbitration provision exists between Brentwood Homes, Inc., and the Respondent, this action must be stayed until arbitration is complete.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

September 2, 2010


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~

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM Horry COUNTY
Court of Common Pleas

Larry B Hyman, Jr , Circuit Court Judge

Case No 2009-CP-26-7477

Fred Bradley,

Respondent,

v

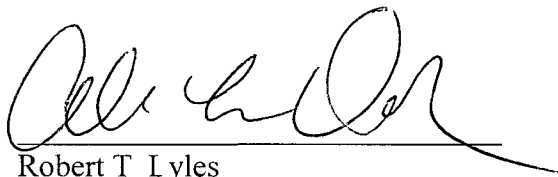
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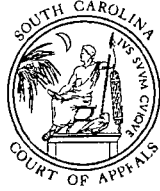
PROOF OF SERVICE

I certify that I have served the Appellants' Initial Brief on Fred Bradley by Depositing a copy of it in the United States Mail, First Class postage prepaid, on September 1, 2010, addressed to his attorney of record, William W DesChamps, III, Esquire, DesChamps Law Firm, Post Office Box 2402, Myrtle Beach, South Carolina 29577

September 2, 2010



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The South Carolina Court of Appeals

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August 13, 2010

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P O Box 773
Charleston, SC 29402

Re Bradley, Fred v Brentwood Homes
Case Tracking # 2010163350

Dear Mr Lyles

The following Order has been endorsed on your "Motion for Extension of time in Which to File and serve Appellant's Initial Brief" in the above entitled case on appeal

"Granted

John Cannon Few C J
For the Court

By s/ Tanya A Gee
Clerk

August 12, 2010 "

Please be advised the Appellants' Initial Brief and Designation of Matter must be served and filed on or before September 6, 2010

Very truly yours,

V Claire Allen, Deputy
CLERK

TAG/ec

cc William Wayne DesChamps, III, Esquire

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August 10, 2010

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, S C 29211

Re *Fred Bradley v Brentwood Homes Inc et al*
Horry County Case Number 2009-CP-26-7477
Court of Appeals Case Number 2010163350

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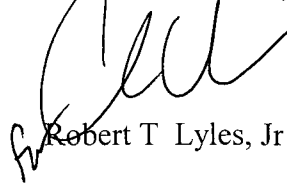
Dear Ms Gee

With regard to your request of the status of the transcript, please be advised that the transcript relative to the above-referenced matter was received from the court reporter on July 15, 2010

With kindest regards, I remain

Very truly yours,

LYLES & LYLES, LLC



Robert T Lyles, Jr

RTL/daw
cc (Via Facsimile and U S Mail)
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August 10, 2010

The Honorable Tanya Cree
Clerk South Carolina Court of Appeals
Post Office Box 11629
Columbia, S C 29211

Re *Fred Bradley v Brentwood Homes Inc , et al*
Horry County Case Number 2009-CP-26-7477
Court of Appeals Case Number 2010163350

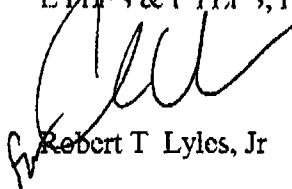
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With kindest regards, I remain

Very truly yours,

LYLES & LYLES, LLC



Robert T Lyles, Jr

RTL/daw
cc (Via Facsimile and U S Mail)
William W DesChamps, III, Esquire

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AUG 10 2010

SC Court of Appeals

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NUMBER OF PAGES (INCLUDING COVER SHEET) 2

IF PROBLEMS ARISE WITH RECEIPT OF THIS TRANSMISSION, PLEASE CONTACT DANELLE AT 843 577 7730

TO The Honorable Tanya Gee
William W DesChamps, III, Esquire

FROM Allen L DuPre, Esquire

FACSIMILE # 803-734-1839 **CLIENT/MAILER #** Bradley v Brentwood
843-448-3308 **Homes, et al**

DATE August 10, 2010 **TIME** _____

MESSAGE

Re *Fred Bradley v Brentwood Homes Inc et al*
Horry County Case Number 2009-CP-26-7477
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SC Court of Appeals

The information contained in this facsimile is attorney-privileged, may be confidential and is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient please be advised that any dissemination, distribution or copy of this communication is strictly prohibited. If this communication has been received in error please notify us by telephone and return the facsimile to us at the above address via the U.S. Postal Service.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM Horry COUNTY
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of SC, Inc , Brentwood Homes Incorporated, a Georgia Corporation,

Appellants

MOTION FOR EXTENSION OF TIME IN WHICH TO FILE AND
SERVE APPELLANT'S INITIAL BRIEF

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rtl@lylesfirm.com
Attorney for Appellants

8-16-10
9-6-10

TO THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS

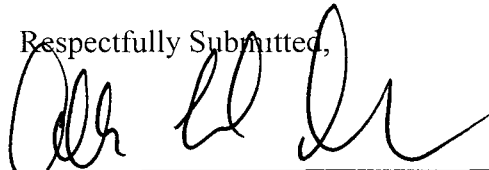
Pursuant to Rule 224, SCACR, Appellants respectfully moves this Court for an Order granting it an extension of time in which to file and serve its Initial Brief Appellants seek this motion due to scheduling obligations of Appellants' counsel

The current deadline for filing and service of Appellants' Initial Brief is August 13, 2010 Appellants hereby request a (20) twenty day extension, which would place the new deadline at September 2, 2010


Appellants have consulted with Respondent regarding this request and Respondent has consented to this extension

Appellants greatly appreciate the Court's attention to this request

Respectfully Submitted,



August 2, 2010

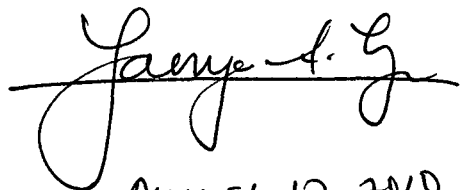
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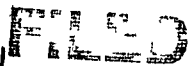
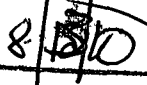

Charleston, South Carolina

GRANTED.

John Cannon, CJ

FOR THE COURT

By 
August 12, 2010

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B Hyman, Jr , Circuit Court Judge

Case No 2009-CP-26-7477

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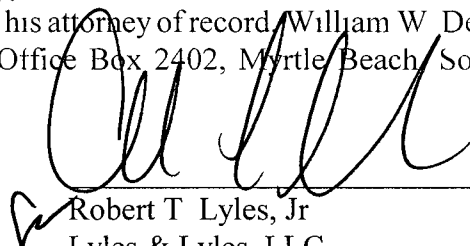
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Homes of Beaufort-Bluffton, Inc , Harris Street LLC, Ciescent Homes
of SC, Inc , Brentwood Homes Incorporated, a Georgia Corporation,

Appellants

PROOF OF SERVICE

I certify that I have served the Motion for Extension for Filing of Appellants' Initial Brief on Fred Bradley by depositing a copy of it in the United States Mail, First Class postage prepaid, on August 2, 2010, addressed to his attorney of record, William W DesChamps, III, Esquire, DesChamps Law Firm, Post Office Box 2402, Myrtle Beach, South Carolina 29577

August 2, 2010



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August 2, 2010

The Honorable Tanya Gee
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Re *Fred Bradley v Brentwood Homes Inc et al*
Horry County Case Number 2009-CP-26-7477
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Dear Ms Gee

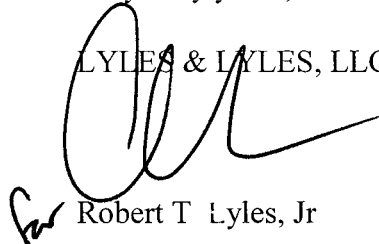
Enclosed for filing, please find the Original and seven (7) copies of Appellant's *Motion for Extension of Time in which to File and Serve Appellants Initial Brief*, as well as the Proof of Service for same, in the above-referenced matter I have also enclosing herewith a check in the amount of \$25 00 for the required filing fee Please return a clocked copy of the motion to me in the envelope provided for you

Due to the time sensitive nature of this Motion, I have also faxed a copy of this Motion to ensure that it is received by the Court Please note that the deadline for Appellants' brief is currently August 13, 2010

By copy of this letter, a copy of same is being served upon all counsel of record If you have any questions, please feel free to give me a call Thank you, and with kindest regards, I remain

Very truly yours,

LYLES & LYLES, LLC



for Robert T Lyles, Jr

RTL/daw
Enclosures

cc (Via Facsimile and U S Mail)
William W DesChamps, III, Esquire

DESCHAMPS LAW FIRM
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Certified Court Mediator and Arbitrator

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July 26, 2010

Honorable Tanya Gee
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Post Office Box 11629
Columbia, South Carolina 29211

RE **Bradley, Fred v Brentwood Homes**
Case Tracking # 2010163350

RECEIVED
JUL 27 2010
SC Court of Appeals

Dear Ms Gee

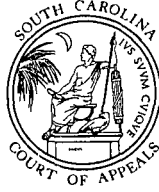
I am in receipt of your letter dated July 16, 2010 Appellants' counsel has served me with a proper Notice of Appeal subsequent to the parties receiving notice of entry of the Order Denying Defendants' Motion to Compel Arbitration Therefore, I believe the issue is now moot and Respondent will not be filing a Motion in response to Appellants' initial Notice of Appeal filed with the Court Should you have any questions or concerns please do not hesitate to contact me Thank you for your assistance with this matter

With kindest regards, I remain

Very truly yours,


William W DesChamps, Jr
Attorney for Respondent, Fred Bradley

cc Robert T Lyles, Jr , Esquire



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
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www.sccourts.org

July 16, 2010

William Wayne DesChamps, III, Esquire
DesChamps Law Firm
1551 21st Ave N
Ste 14
Myrtle Beach, SC 29577-7495

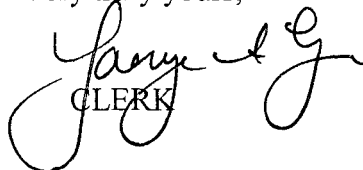
Re Bradley, Fred v Brentwood Homes
Case Tracking # 2010163350

Dear Mr DesChamps

We have received your correspondence of June 25, 2010 in regards to the above appeal

Please be advised that any request directed to this Court must be in the form of a motion and must be in compliance with Rule 240 of the South Carolina Appellate Court Rules in order for the request to be considered

Very truly yours,


CLERK

TAG/ec

cc Robert T Lyles, Jr, Esquire

DESCHAMPS LAW FIRM
ATTORNEYS-AT-LAW

WILLIAM W DESCHAMPS JR ESQ
WILLIAM W DESCHAMPS III ESQ
BHUMI A PATEL ESQ
PEGGY G DESCHAMPS OFFICE ADMINISTRATOR
Certified Court Mediator and Arbitrator

1551 21ST AVENUE NORTH STE 14
P O BOX 2402 (29578)
MYRTLE BEACH SC 29577
TELEPHONE (843) 448 2391
FACSIMILE (843) 448 3308

June 25, 2010

RECEIVED

JUN 29 2010

SC Court of Appeals

Honorable Tanya Gee
Clerk, South Carolina court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE Bradley, Fred v Brentwood Homes
Case Tracking # 2010163350

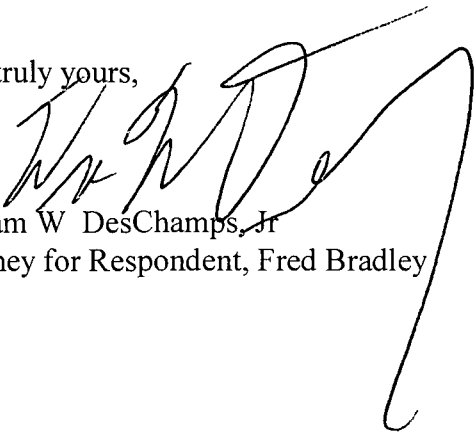
Dear Ms Gee

I am in receipt of Appellants' Notice of Appeal and Proof of Service of said Notice of Appeal. On behalf of Respondent, I must object to Mr Lyles' Notice of Appeal as it was filed and served prior to the execution and entry of the Order denying Appellants' Motion to Compel Arbitration. Further, the transcript from the hearing held on June 1, 2010 was ordered by Appellants on June 16, 2010 and the Proof of Service of Appellants' Notice of Appeal is dated June 3, 2010. Therefore, the Respondent respectfully requests this Honorable Court to Dismiss Appellants' Notice of Appeal as it is premature, and shall not be deemed to stay the proceedings which are currently pending before the Circuit Court.

Should you have any questions or concerns please do not hesitate to contact me

With kindest regards, I remain

Very truly yours,


William W DesChamps, Jr
Attorney for Respondent, Fred Bradley

cc Robert T Lyles, Jr , Esquire

COPY

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO 2009-CP-26-07477

FRED BRADLEY,)
)
Plaintiff,)
)
v)
)

Brentwood Homes, Inc , Brentwood)
Homes – Limehouse, LLC, Brentwood)
Homes – The Retreat at Johns Island,)
LLC, Brentwood Homes of South)
Carolina, Inc , Brentwood Homes of)
North Carolina, Inc , Brentwood Homes)
of Myrtle Beach, Inc , Brentwood Homes)
of Low Country, Inc , Brentwood Homes)
of Fort Mill, Inc , Brentwood Homes of)
Beaufort-Bluffton, Inc , Harris Street,)
LLC, Crescent Homes SC, Inc ,)
Brentwood Homes Incorporated, a)
Georgia Corporation,)
)
Defendants)
)

**ORDER GRANTING PLAINTIFF'S
MOTION TO ALTER/AMEND
AND DENYING DEFENDANTS'
MOTION TO COMPEL ARBITRATION**

17 JUN 15 PM 1 42
117-130

This Matter was before this Court on June 1 2010 by way of Plaintiff's Motion to Reconsider and/or Alter or Amend as well as Defendants Motion to Stay and Compel Arbitration and Motion to Alter or Amend Appearing at the hearing on behalf of Plaintiff were William W DesChamps, Jr , Esquire, and William W DesChamps, III, Esquire Appearing at the hearing on behalf of Defendants was Allen DuPre, Esquire

Defendants moved pursuant to Rule 12(b)(2), *South Carolina Rules of Civil Procedure*, for an Order seeking to stay the above captioned action and compel the Plaintiff to participate in arbitration pursuant to the Home Purchase Agreement that was attached to said Defendants Notice of Motion and Motion to Stay and Compel Arbitration Defendants grounds for their Motion to Stay and Compel Arbitration were that a valid and binding agreement to arbitrate existed between Defendant Brentwood Homes, Inc , and the Plaintiff, and that said agreement was applicable to the allegations contained within the pleadings relevant to the above-captioned action Defendants also moved pursuant to Rule 59(c), *South Carolina Rules of Civil Procedure*,

for an Order altering or amending this Court's prior Order, dated February 8, 2010, which granted Plaintiff's Motion to Compel Discovery. Defendants' asserted that the Order should be modified, withdrawn or extended since Defendants moved to enforce an arbitration provision which they alleged existed in the Home Purchase Agreement between Defendant Brentwood Homes, Inc., and the Plaintiff.

Plaintiff moved pursuant to Rule 59(e), *South Carolina Rules of Civil Procedure*, for this Court to clarify its prior Order, dated February 8, 2010, granting Plaintiff's Motion to Compel Discovery and Denying Defendants' Rule 12(b)(6) Motion to Dismiss. Plaintiff requested this Court to clarify its Order, dated February 8, 2010, by amending it to permit Defendants to amend their Answer to avoid default, and not to amend their Answer by asserting various affirmative defenses, a counterclaim, and an arbitration provision.

A hearing was held before this Court, on February 1, 2010, on Plaintiff's Motion for Summary Judgment, Plaintiff's Motion to Compel Discovery, and Defendants' Motion to Dismiss pursuant to Rule 12(b)(6), *South Carolina Rules of Civil Procedure*. Plaintiff asserted that he was entitled to Summary Judgment on the grounds that the Answer filed by the Defendants on or about August 18, 2009, did not meet the requirements enumerated in Rule 8(b), *South Carolina Rules of Civil Procedure*, as it was in the form of a general denial drafted in a single provision which denied all allegations in Plaintiff's Complaint, including the jurisdiction of the Court and the residency of the parties. Plaintiff, in his Complaint, alleged causes of action for fraud, negligence, and breach of implied warranty against all of the above-captioned Defendants through an alter ego theory of liability. Plaintiff asserted that the Defendants' Answer constituted an admission to the allegations in Plaintiff's Complaint because it failed to specifically deny each of those allegations. After filing their initial Answer, Defendants filed a Motion to Dismiss pursuant to Rule 12(b)(6), *South Carolina Rules of Civil Procedure*, and/or a Motion to Amend their Answer on or about October 5, 2009, to add a counterclaim for frivolous proceedings by alleging that Plaintiff filed causes of action against parties in which he had no connection. These pleadings were filed by Defendants' prior counsel, Ms. Caroline Bernard, Esq. Defendants substituted counsel in December of 2009 after Plaintiff served his Second Request for Production of Documents, Second Set of Interrogatories, and Second Request for Admission on Defendants' prior counsel on October 26, 2009. Defendants substituted counsel, Allen DuPre, Esq., filed an Amended Motion to Dismiss pursuant to Rule 12(b)(6), *South*

Carolina Rules of Civil Procedure, on January 25, 2010 to dismiss Plaintiff's Complaint because said Complaint alleged that Defendants were the alter egos of one another, and Defendants asserted that such allegation constitutes a legal conclusion. This Court denied Defendants' Motion to Dismiss and denied Plaintiff's Motion for Summary Judgment by finding that said motion constituted a responsive pleading sufficient to defeat a Motion for Summary Judgment, and that granting Plaintiff's Motion for Summary Judgment at this juncture would not promote an adjudication on the merits. At the hearing on February 1, 2010, this Court also granted Plaintiff's Motion to Compel Discovery. More specifically, this Court gave Defendants 45 days from February 1, 2010 to respond to Plaintiff's Discovery Requests. Plaintiff asserted in his Motion to Compel Discovery that Defendants' responses to Plaintiff's Initial Request for Admission Numbers 1 and 2, and that Defendants' responses to Plaintiff's Initial Request for Production of Documents were insufficient. Plaintiff also sought an Order compelling Defendants to completely answer Plaintiff's Initial Set of Interrogatories Numbers 1, 2, 3, 4, 10, and 11. Plaintiff, in his Motion to Compel Discovery, further requested this Court to grant him an Order compelling Defendants to produce their responses to Plaintiff's Second Request for Production of Documents and Second Set of Interrogatories as said responses were in default.



FINDINGS OF FACT

This Court commenced the hearing on June 1, 2010 by first hearing from counsel regarding Plaintiff's Motion to Alter or Amend the Court's prior Order denying Defendants' Motion to Dismiss and Granting Plaintiff's Motion to Compel. Plaintiff asserted that this Court should clarify its prior Order to permit Defendants to only amend their Answer to avoid default and not add various affirmative defenses, a counterclaim, and raise an arbitration issue. Defendants alleged that there was a binding agreement to arbitrate between Brentwood Homes, Inc., and Plaintiff. Plaintiff asserted that he was not obligated to arbitrate the above-captioned matter as the arbitration provision on pages 2 and 6 of the Home Purchase Agreement attached to the affidavit of Edward M. Terry submitted to the Court by Defendants' counsel was not enforceable, and that he never executed any agreement which contemplated the Federal Arbitration Act. Plaintiff further asserted that Defendants were not entitled to arbitrate the above-captioned matter as they delayed the discovery process by not completely and accurately answering Plaintiff's discovery requests despite this Court's previous Order granting Plaintiff's

Motion to Compel Discovery, did not raise the issue of arbitration in their initial Answer and two prior Rule 12 Motions, and served discovery requests on Plaintiff prior to filing a Motion to Compel Arbitration. Plaintiff also filed his affidavit in opposition to Defendants' Motion to Compel Arbitration as well as an Affidavit of Attorney's Fees with the Horry County Clerk of Court to evidence prejudice. Defendants submitted an Affidavit of Edward M. Terry to support their contention that the Home Purchase Agreement attached to said affidavit contemplated a transaction which involved interstate commerce. Plaintiff's counsel objected to the submission of the Affidavit of Edward M. Terry on the following grounds: that Defendants' responses to Plaintiff's Initial Request for Interrogatories Numbers 1(a) and 1(b) stated that Donald Gerratt, the former Vice President of Construction for Brentwood Homes, Inc., Myrtle Beach, was the builder who built Plaintiff's home and dealt with the homeowner on all warranty calls, and that Edward M. Terry ran the operations of Brentwood Homes, Inc., but did not deal directly with the customer, that Donald Gerratt executed the "Property Owner – General Contractor Certification and Sub-Contractors List" filed with the City of North Myrtle Beach, and composed the attached list of sub-contractors which did not list the foundation sub-contractor, Soto Concrete, as indicated on said affidavit, that there is no evidence that Edward M. Terry ever visited the site of the home or saw the Home Purchase Agreement, that Defendants failed to provide Plaintiff with any documentation of materials, equipment, or invoices through discovery, that Defendants did not list Edward M. Terry as an officer of Brentwood Homes of SC, Inc., in their response to Plaintiff's Second Set of Interrogatories Number 4, despite said entity being listed as the contractor of Plaintiff's home on the Building Permit filed with the City of North Myrtle Beach, and that the Home Purchase Agreement was executed by Plaintiff and Donald Gerratt, not Edward M. Terry.

CONCLUSIONS OF LAW

1 South Carolina Arbitration Act

The Court must consider the issues presented by counsel, the pleadings, and the Home Purchase Agreement in conjunction with the South Carolina Arbitration Act and the Federal Arbitration Act to determine whether the alleged arbitration provision is enforceable. S.C. Code Ann. § 15-48-10(a) provides:

A written agreement to submit any existing controversy to arbitration or

provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract Notice that a contract is subject to arbitration pursuant to this chapter shall be typed in underlined capital letters, or rubber-stamped prominently, on the first page of the contract and unless such notice is displayed thereon the contract shall not be the subject to arbitration

The terms of Section 15-48-10(a) "are clear, therefore, the court must apply those terms according to their literal meaning"¹ The elements enumerated in the statute "are to be strictly adhered to in order to satisfy the notice requirements"²

The disputed arbitration provision is not typed in underlined capital letters on the first page of the Home Purchase Agreement executed by Plaintiff and Donald Gerratt Further, the Home Purchase Agreement is a preprinted contract which states on page 2 that the agreement will be subject to mandatory binding arbitration pursuant to the South Carolina or North Carolina Uniform Arbitration Act, whichever is applicable Therefore, the Home Purchase Agreement does not comply with the South Carolina Arbitration Act

2 Federal Arbitration Act

A contract may be subject to the Federal Arbitration Act despite its noncompliance with the South Carolina Arbitration Act "Interstate Commerce is a necessary basis for application of the Federal Act, and a contract or agreement not so predicated must be governed by State Law"³

To ascertain whether a transaction involves commerce within the meaning of the FAA the court must examine the agreement, the complaint, and the surrounding facts"⁴

The Home Purchase Agreement attached to the Affidavit of Edward M Terry submitted by Defendants counsel at hearing does not refer to equipment and materials to be furnished from outside the state of South Carolina, nor does it list any subcontractors which were outside the confines of this state Defendants did not list Edward M Terry as an officer for Brentwood Homes SC Inc , which was listed as the contractor on the Building Permit filed with the City of North Myrtle Beach Further, Defendants' discovery responses to Plaintiff's initial Set of Interrogatories Numbers 1(a) and 1(b) state that Edward M Terry did not deal directly with the

¹ *Soil Remediation Co v Nu Way Emtl Inc* 323 S C 454 457 476 S E 2d 149 151 (1996)

² *Blanton v Stathos* 351 S C 534 539 570 S E 2d 565 567 (Ct App 2002)

³ *Timms v Greene* 310 S C 469 427 S E 2d 642 (1993)

⁴ *Blanton* 351 S C at 539 570 S E 2d at 567

customer and that Donald Gerratt was the builder who built Plaintiff's home and dealt with all warranty calls. Defendants did not submit any evidence in addition to the Affidavit of Edward M. Terry to allege or support their contention that the transaction involving the purchase of Plaintiff's home along with the Home Purchase Agreement involved interstate commerce. Therefore, the Home Purchase Agreement is not subject to the Federal Arbitration Act as Defendants have not submitted sufficient evidence to demonstrate that the transaction between Plaintiff and Defendants involved interstate commerce.

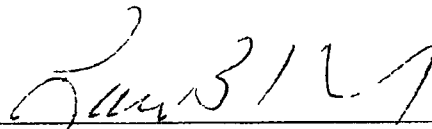
After reviewing the pleadings, memorandum of law submitted to the Court by Defendants, the affidavits submitted at hearing and attachments thereto, the arguments of counsel, as well as the attachments to Plaintiff's Motion to Compel, the Court denies Defendants' Motion to Stay and Compel Arbitration, Defendants' Motion to Alter or Amend. The Court grants Plaintiff's Motion to Reconsider in part as to Plaintiff's allegations referring to the Arbitration Provision. Therefore, it is

ORDERED that Plaintiff is not compelled to arbitrate the above-captioned matter and that paragraphs 62 and 63 are stricken from Defendants' Amended Answer. It is further

ORDERED that this Court's prior ruling as to Plaintiff's Motion to Compel Discovery is affirmed as to compelling Defendants to properly respond to Plaintiff's discovery requests enumerated in Plaintiff's Motion to Compel previously filed with the Court. Defendants have 40 days from June 1, 2010 to respond to Plaintiff's discovery requests and comply with the following terms and conditions:

- 1 That Defendants shall have 40 days from June 1, 2010 to provide Plaintiff with all copies of tax returns prepared for all of the above-captioned entities for the years 2004 to 2008,
- 2 That Defendants shall provide to Plaintiff any annual reports from 2004 to 2009 prepared for Brentwood Homes, Inc., Brentwood Homes of South Carolina, Inc., Brentwood Homes of North Carolina, Inc., Brentwood Homes of Myrtle Beach, Inc., Brentwood Homes of Low Country, Inc., Brentwood Homes of Fort Mill, Inc., Brentwood Homes of Beaufort-Bluffton, Inc., Crescent Homes SC, Inc., and Brentwood Homes Incorporated, a Georgia Corporation,

- 3 That as to the production of any documents in the possession of Stephen Kidd
or Post & Associates, located in Marietta, Georgia, the burden of production of
such documents does not shift to the Defendants until Plaintiff's counsel
forwards a written request of such documents to the above-referenced
individual or entity Defendants shall supply Plaintiff with the tax returns
and/or other corporate records of the Defendants in the possession of Stephen
Kidd or Post & Associates within 40 days of June 1, 2010 upon Plaintiff's
counsel forwarding the written request to Stephen Kidd and/or Post &
Associates in Marietta, Georgia,
- 4 That Defendants shall completely and accurately respond to Plaintiff's Initial
Request for Production of Documents Numbers 2, 7, and 8,
- 5 That Defendants shall completely and accurately respond to Plaintiff's First
Set of Interrogatories Numbers 1, 3, 4, 6, and 11,
- 6 That Defendants shall completely and accurately respond to Plaintiff's Second
Set of Interrogatories Numbers 1, 4, 5, and 8,
- 7 That Defendants shall completely and accurately respond to Plaintiff's Second
Request for Production of Documents Numbers 1, 2 4 5, 6, 7 and 8,
- 8 If Defendants respond to any of the above-referenced discovery requests by
stating that a file pertaining to the referenced matter is available for inspection
they must specifically identify each document in their file, possession, or
attorney s possession which relates to that specific discovery request
- 9 That the Defendants must specifically identify each document to which they
claim is privileged,
- 10 The Court will award Plaintiff attorney's fees upon Defendants' failure to
comply with the discovery terms enumerated in this Order


Larry B Hyman Jr
Resident Judge
Fifteenth Judicial Circuit

June 11 2010
Conway South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO 2009-CP-26-07477

FRED BRADLEY,)
)
Plaintiff,)

v)

CERTIFICATE OF SERVICE BY MAIL

Brentwood Homes, Inc , Brentwood)
Homes – Limehouse, LLC, Brentwood)
Homes – The Retreat at Johns Island,)
LLC, Brentwood Homes of South)
Carolina, Inc , Brentwood Homes of)
North Carolina, Inc , Brentwood Homes)
of Myrtle Beach, Inc , Brentwood Homes)
of Low Country, Inc , Brentwood Homes)
of Fort Mill, Inc., Brentwood Homes of)
Beaufort-Bluffton, Inc , Harris Street,)
LLC, Crescent Homes SC, Inc ,)
Brentwood Homes Incorporated, a)
Georgia Corporation,)
)
Defendants)

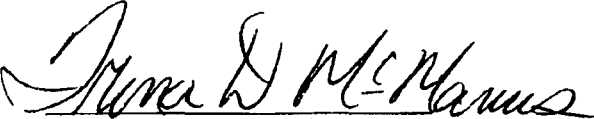
The undersigned hereby certifies that a true and exact copy (or copies) of the within named document(s) have been served upon the following counsel of record by delivering a copy of same to counsel via First Class US Mail postage prepaid addressed as shown below this 18th day of June 2010

DOCUMENT(S)

Order Granting Plaintiff's Motion to Alter/Amend and Denying Defendants Motion to Compel Arbitration

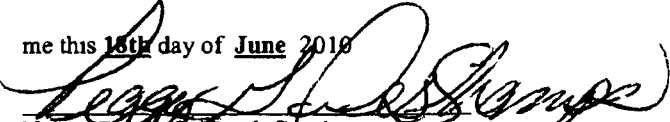
ADDRESSEE

Ms Allen L DuPre Esquire
Lyles & Lyles LLC
Attorney for Defendants
Post Office Box 773
Charleston SC 29402


Trina D McManus, Legal Assistant

SUBSCRIBED and sworn to before

me this 18th day of June 2010


Notary Public for South Carolina
My Commission Expires 4/28/2018

DESCHAMPS LAW FIRM
ATTORNEYS-AT-LAW

www.descampslaw.com

WILLIAM W DESCAMPS, JR. ESQ *
WILLIAM W DESCAMPS, III, ESQ
BHUMI A. PATEL, ESQ
PEGGY G DESCAMPS, OFFICE ADMINISTRATOR
*Certified Court Mediator and Arbitrator

1551 21ST AVENUE NORTH STE. 14
P O BOX 2402 (29578)
MYRTLE BEACH, SC 29577
TELEPHONE (843) 448-2391
FACSIMILE (843) 448-3308

June 18, 2010

6/21

Allen Leland DuPre, Esquire
Lyles & Lyles, LLC
342 East Bay Street
Charleston, South Carolina 29401

RE Fred Bradley vs Brentwood Homes, Inc , et al
Civil Action No 2009-CP-26-7477

Dear Ms DuPre

Enclosed is a copy of the Order Granting Plaintiff's Motion to Alter/Amend and Denying Defendants' Motion to Compel Arbitration which is being served upon you by a Certificate of Service by Mail

With kind regards, I remain

Sincerely yours,


William W DesChamps, III

WWD, III/tdm
Enclosures

RECEIVED

NOTICE OF APPEAL IN A CIVIL CASE

JUN 30 2010

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

SC Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B Hyman, Jr , Circuit Court Judge

Case No 2009-CP-26-7477

Fred Bradley,

Respondent,

v

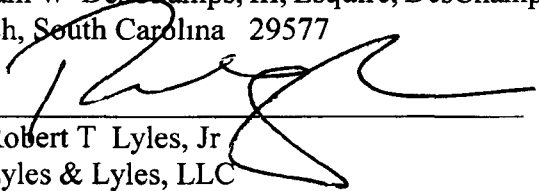
Brentwood Homes, Inc , Brentwood Homes – Limehouse, LLC,
Brentwood Homes – The Retreat at Johns Island, LLC, Brentwood
Homes of South Carolina, Inc , Brentwood Homes of North Carolina,
Inc , Brentwood Homes of Myrtle Beach, Inc , Brentwood Homes of
Low Country, Inc , Brentwood Homes of Fort Mill, Inc , Brentwood
Homes of Beaufort-Bluffton, Inc , Harris Street, LLC, Crescent Homes
of SC, Inc , Brentwood Homes Incorporated, a Georgia Corporation,

Appellants

PROOF OF SERVICE

I certify that I have served the Amended Notice of Appeal on Fred Bradley by depositing a copy of it in the United States Mail, First Class postage prepaid, on June 29, 2010, addressed to his attorney of record, William W DesChamps, III, Esquire, DesChamps Law Firm, Post Office Box 2402, Myrtle Beach, South Carolina 29577

June 29, 2010


Robert T Lyles, Jr
Lyles & Lyles, LLC
342 East Bay Street (29401)
Post Office Box 773
Charleston, South Carolina 29402
Attorney for Appellants

RECEIVED

JUN 30 2010

SC Court of Appeals

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B Hyman, Jr , Circuit Court Judge

Case No 2009-CP-26-7477

Fred Bradley,

Respondent,

v

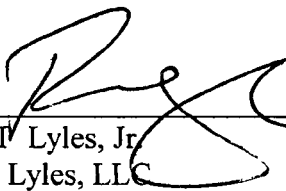
Brentwood Homes, Inc , Brentwood Homes – Limehouse, LLC
Brentwood Homes – The Retreat at Johns Island, LLC, Brentwood
Homes of South Carolina, Inc , Brentwood Homes of North Carolina,
Inc , Brentwood Homes of Myrtle Beach, Inc , Brentwood Homes of
Low Country, Inc , Brentwood Homes of Fort Mill, Inc , Brentwood
Homes of Beaufort-Bluffton, Inc , Harris Street, LLC, Crescent Homes
of SC, Inc , Brentwood Homes Incorporated, a Georgia Corporation,

Appellants

AMENDED NOTICE OF APPEAL

Brentwood Homes, Inc , Brentwood Homes – Limehouse, LLC, Brentwood Homes – The Retreat at Johns Island, LLC, Brentwood Homes of South Carolina, Inc , Brentwood Homes of North Carolina, Inc , Brentwood Homes of Myrtle Beach, Inc , Brentwood Homes of Low Country, Inc , Brentwood Homes of Fort Mill, Inc , Brentwood Homes of Beaufort-Bluffton, Inc , Harris Street, LLC, Crescent Homes of SC, Inc , Brentwood Homes Incorporated, a Georgia Corporation (“Appellants”), appeals the Order of the Honorable Larry B Hyman, Jr , dated June 11, 2010 and filed June 16, 2010, denying Appellants’ Motion to Stay and Compel Arbitration Appellants received Judge Hyman’s written Order on June 21, 2010, attached as Exhibit “A ”

June 29, 2010



Robert T. Lyles, Jr.
Lyles & Lyles, LLC
342 East Bay Street (29401)
Post Office Box 773
Charleston, South Carolina 29402
(843) 577-7730
Attorney for Appellants

Other Counsel of Record
William W. DesChamps, III, Esquire
DesChamps Law Firm
Post Office Box 2402
Myrtle Beach, South Carolina 29577

Exhibit “A”

RECEIVED

JUN 30 2010

SC Court of Appeals

LYLES & LYLES, LLC
ATTORNEYS AT LAW
342 East Bay Street
P O Box 773 (29402)
Charleston South Carolina 29401
Telephone (843) 577 7730
Facsimile (843) 577 7172

Robert T Lyles, Jr
Member

Direct (843) 735 5560
E mail rtl@lylesfirm.com

June 29, 2010

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, S C 29211

Re *Fred Bradley v Brentwood Homes Inc et al*
Horry County Case Number 2009-CP-26-7477

Dear Ms Gee

Enclosed for filing with regard to the above-referenced matter, please find the following

- 1) Amended Notice of Appeal,
- 2) Exhibit "A" - Judge Hyman's Order filed June 16, 2010, and,
- 3) Proof of Service of the Amended Notice of Appeal on the Respondent

Thank you, and with kindest regards, I remain

Very truly yours,

LYLES & LYLES, LLC



Robert T Lyles, Jr

RTL/crw

Enclosures

cc Clerk, Horry County Court of Common Pleas
William W DesChamps, III, Esquire
Mr Edward M Terry

LYLES & LYLES, LLC
ATTORNEYS AT LAW
342 East Bay Street
P O Box 773 (29402)
Charleston South Carolina 29401
Telephone (843) 577 7730
Facsimile (843) 577-7172

RECEIVED
JUN 17 2010
SC Court of Appeals

Robert T Lyles Jr
Member

Direct (843) 735-5560
E-mail rtl@lylesfirm.com

June 16, 2010

Ms Kay Richardson
P O Box 1147
Conway, S C 29528

Re *Fred Bradley v Brentwood Homes Inc , et al*
Horry County Case Number 2009-CP-26-7477

Dear Ms Richardson

A hearing was held on June 1, 2010 before the Honorable Larry B Hyman, Jr regarding Defendants Motion to Stay and Compel Arbitration in the above-referenced matter My records indicate that you were the court reporter for this hearing

I hereby request that you provide me with a transcript of the hearing Please transcribe the entire record I agree to pay the per page charge for this transcript as provided by Rule 607, SCACR

Should you have any questions concerning this request, please do not hesitate to contact me Thank you, and with kindest regards, I remain

Very truly yours,

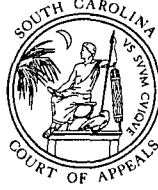
LYLES & LYLES, LLC

Robert Lyles (h)

Robert T Lyles, Jr

RTL/crw
Enclosures

cc Clerk, South Carolina Court of Appeals
Clerk, Horry County Court of Common Pleas
William W DesChamps, III, Esquire
Mr Edward M Terry



The South Carolina Court of Appeals

TANYA A GEE
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

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1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734 1890
FAX (803) 734 1839
www.sccourts.org

June 21, 2010

Robert T Lyles, Jr, Esquire
Lyles & Lyles, LLC
P O Box 773
Charleston, SC 29402

Re Bradley, Fred v Brentwood Homes
Case Tracking # 2010163350

Dear Mr Lyles

We have received your Notice of Appeal in the case noted above. This case will be docketed in the Court of Appeals and all communications concerning this case, including motions and petitions, initial and final briefs, and the Record on Appeal, should be directed to and filed in this Court. For all filings, please note the requirements of Rule 267(a) of the South Carolina Appellate Court Rules, and be further advised that Court of Appeals policy requires the firm name of any counsel shown must be included in his or her address.

Within ten days of the date of this letter, you are requested to provide a copy of the order you are appealing, pursuant to Rule 203 of the South Carolina Appellate Court Rules. Failure to provide a copy of the order will result in the dismissal of the appeal.

We suggest that large parcels such as copies of final briefs and the Record On Appeal be sent directly to the Court via the street address 1015 Sumter Street, Columbia, S C 29201. Thank you for your attention to this. Failure to file in the proper court may result in the dismissal of your appeal.

PLEASE BE ADVISED that, pursuant to Rule 207 of the South Carolina Appellate Court Rules, the transcript must be ordered within ten (10) days of the proof of service of the Notice of Appeal and you must provide this Court, opposing counsel, and the Office of Court

Administration with all correspondence regarding the transcript. It is the Appellant's responsibility to make satisfactory arrangements (including agreement regarding payment for the transcript) with the Court Reporter for furnishing the transcript. You are reminded of the notification requirements of Rule 207(a)(5), SCACR, also, please advise the Court in writing upon receipt of the transcript.

NOTE If you believe this case has been improperly filed in the Court of Appeals, by reason of the limitations set forth in S C Code Ann Section 14-8-200(b)(1998), as amended June 1, 1999, notify the Clerk's office of the Court of Appeals immediately. The cited Code Section prohibits the Court of Appeals from hearing appeals in seven classes of cases

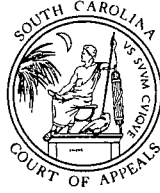
- 1) any final judgment from the circuit court which includes a sentence of death,
- 2) any final judgment from the circuit court setting public utility rates pursuant to Title 58,
- 3) any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is the constitutionality of the law or ordinance,
- 4) any final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the state, its agencies, political subdivisions, public service districts, counties, and municipalities or any other indebtedness now or hereafter authorized by Article X of the Constitution of this state,
- 5) any final judgment from the circuit court pertaining to elections and election procedure,
- 6) any order limiting an investigation by a State Grand Jury under S C Code Ann Section 14-7-1630,
- 7) any order of the family court relating to an abortion by a minor under S C Code Ann Section 44-41-33

Very truly yours,

Tanya A. Gee
Tanya A. Gee
CLERK

TAG/ec

cc William Wayne DesChamps, III, Esquire



The South Carolina Court of Appeals

TANYA A GEE
CLERK
V CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734 1890
FAX (803) 734 1839
www.sccourts.org

June 21, 2010

Robert T Lyles, Jr, Esquire
Lyles & Lyles, LLC
P O Box 773
Charleston, SC 29402

Re Bradley, Fred v Brentwood Homes
Case Tracking # 2010163350

Dear Mr Lyles

This office has received your Notice of Appeal in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,

V Claire Allen, Deputy
CLERK

TAG/ec

cc William Wayne DesChamps, III, Esquire

RECEIVED

JUN 04 2010

SC Court of Appeals

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B Hyman, Jr , Circuit Court Judge

Case No 2009-CP-26-7477

Fred Bradley,

Respondent,

v

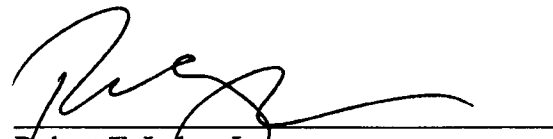
Brentwood Homes, Inc , Brentwood Homes – Limehouse, LLC,
Brentwood Homes – The Retreat at Johns Island, LLC, Brentwood
Homes of South Carolina, Inc , Brentwood Homes of North Carolina,
Inc , Brentwood Homes of Myrtle Beach, Inc , Brentwood Homes of
Low Country, Inc , Brentwood Homes of Fort Mill, Inc , Brentwood
Homes of Beaufort-Bluffton, Inc , Harris Street, LLC, Crescent Homes
of SC, Inc , Brentwood Homes Incorporated, a Georgia Corporation,

Appellants

NOTICE OF APPEAL

Brentwood Homes, Inc , Brentwood Homes – Limehouse, LLC, Brentwood Homes
– The Retreat at Johns Island, LLC, Brentwood Homes of South Carolina, Inc , Brentwood
Homes of North Carolina, Inc , Brentwood Homes of Myrtle Beach, Inc , Brentwood Homes
of Low Country, Inc , Brentwood Homes of Fort Mill, Inc , Brentwood Homes of Beaufort-
Bluffton, Inc , Harris Street, LLC, Crescent Homes of SC, Inc , Brentwood Homes
Incorporated, a Georgia Corporation (“Appellants”), appeals the ruling of the Honorable
Larry B Hyman, Jr on June 1, 2010, issued from the bench, denying Appellants’ Motion to
Stay and Compel Arbitration

June 2, 2010



Robert T Lyles, Jr
Lyles & Lyles, LLC
342 East Bay Street (29401)
Post Office Box 773
Charleston, South Carolina 29402
(843) 577-7730
Attorney for Appellants

Other Counsel of Record
William W DesChamps, III, Esquire
DesChamps Law Firm
Post Office Box 2402
Myrtle Beach, South Carolina 29577

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JUN 04 2010

SC Court of Appeals

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B Hyman, Jr , Circuit Court Judge

Case No 2009-CP-26-7477

Fred Bradley,

Respondent,

v

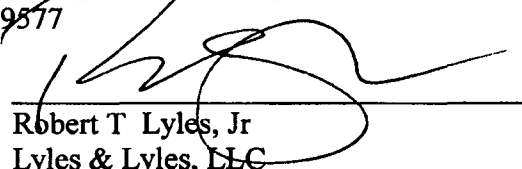
Brentwood Homes, Inc , Brentwood Homes – Limehouse, LLC,
Brentwood Homes – The Retreat at Johns Island, LLC, Brentwood
Homes of South Carolina, Inc , Brentwood Homes of North Carolina,
Inc , Brentwood Homes of Myrtle Beach, Inc , Brentwood Homes of
Low Country, Inc , Brentwood Homes of Fort Mill, Inc , Brentwood
Homes of Beaufort-Bluffton, Inc , Harris Street, LLC, Crescent Homes
of SC, Inc , Brentwood Homes Incorporated, a Georgia Corporation,

Appellants

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Fred Bradley by depositing a copy of it in the United States Mail, First Class postage prepaid, on June 3, 2010, addressed to his attorney of record, William W DesChamps, III, Esquire, DesChamps Law Firm, Post Office Box 2402, Myrtle Beach, South Carolina 29577

June 3, 2010


Robert T Lyles, Jr
Lyles & Lyles, LLC
342 East Bay Street (29401)
Post Office Box 773
Charleston, South Carolina 29402
Attorney for Appellants

LYLES & LYLES, LLC
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Facsimile (843) 577 7172

RECEIVED
JUN 04 2010
SC Court of Appeals

Robert T Lyles Jr
Member

Direct (843) 735 5560
E mail rtl@lylesfirm.com

June 2, 2010

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, S C 29211

Re *Fred Bradley v Brentwood Homes, Inc et al*
Horry County Case Number 2009-CP-26-7477

Dear Ms Gee

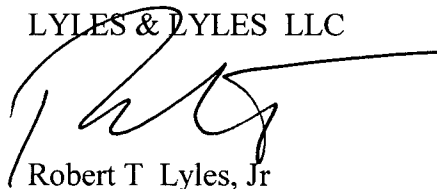
Enclosed for filing with regard to the above-referenced matter, please find the following

- 1) Notice of Appeal
- 2) Proof of Service of the Notice of Appeal on the Respondent
- 3) This firm's check in the amount of \$100 00 for the filing fee

Thank you, and with kindest regards, I remain

Very truly yours,

LYLES & LYLES LLC



Robert T Lyles, Jr

RTL/crw

Enclosures

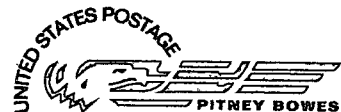
cc Clerk, Horry County Court of Common Pleas
William W DesChamps, III, Esquire
Mr Edward M Terry

LYLES & LYLES, LLC

ATTORNEYS AT LAW

P O Box 773

Charleston South Carolina 29402



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\$ 000 61⁰

0004454758 JUN 03 2010

MAILED FROM ZIP CODE 29401

The Honorable Fanya Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia S C 29211

