STATE OF SOUTH CAROLINA **COUNTY OF CHARLESTON** **MANSFIELD AT PARK WEST, INC.,** **Plaintiff,** **vs.** **D.R. HORTON, INC.,** **Defendant.**	**2021-CP-10–01215** **ORDER DENYING DEFENDANT'S MOTION TO VACATE AND CONFIRMING THE ARBITRATION AWARD**

This matter came before me for a hearing on July 12, 2024, upon a Motion to Vacate the Arbitration Award entered by Thomas J. Wills, IV, in this matter. After hearing arguments of counsel from both sides and reviewing the Motion, memoranda, exhibits, and all other evidence properly before the Court, for the foregoing reasons, Defendant, D.R. Horton, Inc.'s Motion to Vacate is hereby **DENIED** and the Award of the arbitrator is hereby **CONFIRMED**.

STANDARD OF REVIEW

"Arbitration is a favored method of settling disputes in South Carolina." *Pittman Mortg. Co. v. Edwards*, 327 S.C. 72, 75, 488 S.E.2d 335, 337 (1997) (citing *Batten v. Howell*, 300 S.C. 545, 389 S.E.2d 170 (Ct. App. 1990); *Trident Technical College v. Lucas & Stubbs, Ltd.*, 286 S.C. 98, 333 S.E.2d 781 (1985)). "When a dispute is submitted to arbitration, the arbitrators determine questions of both law and fact." *Id.* at 76, 488 S.E.2d at 337 (citing S.C. Code Ann. § 15-48-180). "Generally, an arbitration award is conclusive and courts will refuse to review the merits of an award." *Id.* "Arbitration is not litigation carried on by other means." *Lauro v. Visnapuu*, 351 S.C. 507, 516, 570 S.E.2d 551, 555 (Ct. App. 2002) (citing *White v. Preferred Research, Inc.*, 315 S.C. 209, 212, 432 S.E.2d 506, 508 (Ct. App. 1993)). "Judicial review of an arbitration award is

[therefore] limited in scope, and any attempt to convert arbitration into a trial-like judicial proceeding is looked upon with disfavor." *Id*. "'The judiciary should minimize its role in arbitration as judge of the arbitrator's impartiality.'" *Crouch Constr. Co. v. Causey*, 405 S.C. 155, 163, 747 S.E.2d 482, 486 (2013) (quoting *Commonwealth Coatings Corp. v. Cont'l Cas. Co.,* 393 U.S. 145, 151 (1968)).

"In reviewing arbitration awards, 'the standards for judicial intervention are . . . narrowly drawn to assure the basic integrity of the arbitration process without meddling in it.'" *Id.* (quoting *Merit Ins. Co. v. Leatherby Ins. Co.*, 714 F.2d 673, 681 (7th Cir. 1983)). "An award will be vacated only under narrow, limited circumstances, *inter alia*, 'when the arbitrator exceeds his or her powers and/or manifestly disregards or perversely misconstrues the law.'" *C-Sculptures, LLC v. Brown*, 403 S.C. 53, 56, 742 S.E.2d 359, 360 (2013) (quoting *Gissel v. Hart*, 382 S.C. 235, 240, 676 S.E.2d 320, 323 (2009)). "However, for a court to vacate an arbitration award based upon an arbitrator's manifest disregard of the law, the governing law ignored by the arbitrator must be well defined, explicit, and clearly applicable." *Gissel v. Hart*, 382 S.C. 235, 241, 676 S.E.2d 320, 323 (2009) (citations omitted). "Case law presupposes something beyond a mere error in construing or applying the law. Even a 'clearly erroneous interpretation of the contract' cannot be disturbed." *Id.* (quoting *Trident Tech. College v. Lucas & Stubbs*, 286 S.C. 98, 108, 333 S.E.2d 781, 787 (1985)). "An arbitrator's 'manifest disregard of the law,' as a basis for vacating an arbitration award occurs when the arbitrator knew of a governing legal principle yet refused to apply it." *Id.* (citing *Weimer v. Jones,* 364 S.C. 78, 610 S.E.2d 850 (Ct. App. 2005)). "Factual and legal errors by arbitrators do not constitute an abuse of powers, and a court is not required to review the merits of a decision so long as the arbitrators do not exceed their powers." *Id.* at 242, 676 S.E.2d at 324.

"Arbitrators need not specify their reasoning or the basis of the award so long as the factual inferences and legal conclusions supporting the award are 'barely colorable.' If the grounds for the award can be inferred from the facts, the award should be confirmed." *Pittman Mortg. Co. v. Edwards*, 327 S.C. 72, 77, 488 S.E.2d 335, 338 (1997) (citing *Batten v. Howell*, 300 S.C. 545, 389 S.E.2d 170 (Ct. App. 1990)). To vacate the arbitration award, DRH must show "'something beyond and different from a mere error of law or failure on the part of arbitrator[] to understand or apply the law.'" *Batten v. Howell*, 300 S.C. 545, 549, 389 S.E.2d 170, 172 (Ct. App. 1990) (quoting *Trident Tech. College v. Lucas & Stubbs, Ltd.*, 286 S.C. 98, 108-109, 333 S.E.2d 781, 787 (1985)).

A. REASONED AWARD

D.R. Horton contends that the parties had an agreement for a reasoned award and that the reasoning in the award was insufficient. The Plaintiff contends that the award was reasoned, but that there was no requirement for a reasoned award because the arbitrator had the sole discretion as to the format of the award. The Consent Order for Arbitration gives the arbitrator sole discretion over all scheduling and procedural issues of the arbitration. This includes the format of the Award.

At the conclusion of the arbitration, the arbitrator asked the parties to submit proposed Awards. The Plaintiff submitted a proposed Award and DRH submitted three different alternative proposed Awards, with only one captioned DRH PROPOSED #2 with the Plaintiff prevailing. The arbitrator didn't choose the proposed awards submitted by either of the parties, but rather drafted his own Award. The arbitrator's Award format is substantially similar to the proposed awards submitted by both the Plaintiff and DRH's PROPOSED #2, with the main difference being the inclusion by the arbitrator of a lengthy discussion of significant factual findings in determining DRH was grossly negligent.

DRH argues that the Standing Section of the arbitrator's award lacks sufficient reasoning, yet the language of the Standing Section of the Award is essentially identical to DRH's own language in its DRH PROPOSED #2. The reasoning and findings contained in the Statute of Repose/Gross Negligence Section of the Award determining DRH's gross negligence and support the damage award is far more extensive than the four sentences DRH submitted in its Statue of Repose/Gross Negligence section of its DRH PROPOSED #2. Further, DRH's PROPOSED #2 contains no reasoning to support any awarded damages for which it now complains. "Arbitrators need not specify their reasoning or the basis of the award so long as the factual inferences and legal conclusions supporting the award are 'barely colorable.'" *Pittman Mortg. Co. v. Edwards,* 327 S.C. 72, 77, 488 S.E.2d 335, 338 (1997) (quoting *Batten v. Howell*, 300 S.C. 545, 549, 389 S.E.2d 170, 172 (Ct. App. 1990)).

The Consent Order for Arbitration also states that the laws of the State of South Carolina shall apply to the proceeding. The South Carolina Arbitration Act provides that the final award be in writing and signed by the arbitrator per Section 15-48-90, with which the arbitrator's Award complies. "Arbitrators need not specify their reasoning or the basis of the award so long as the factual inferences and legal conclusions supporting the award are 'barely colorable.'" *Pittman Mortg. Co. v. Edwards,* 327 S.C. 72, 77, 488 S.E.2d 335, 338 (1997) (quoting *Batten v. Howell*, 300 S.C. 545, 549, 389 S.E.2d 170, 172 (Ct. App. 1990)). DRH has failed to show that Mr. Wills manifestly disregarded the law, exceeded his authority, or violated the South Carolina Supreme Court's Code of Ethics for Arbitrators as it contends.

B. STANDING AND REAL PARTY IN INTEREST

The issue of Standing and Real Party in Interest is a matter of contract interpretation of the Declarations of Covenants, Conditions, and Restrictions and Second Amendment filed by the

Association. The Second Amendment was filed after obtaining seventy-five (75%) of the vote of the ownership with no objection from any owner. DRH had no ownership interest in the Mansfield community since 2011. To show that Arbitrator Wills manifestly disregarded the law, DRH has the burden of showing that Mr. Wills knew the law and intentionally refused to apply it – a standard that DRH has not met. "An arbitrator's 'manifest disregard of the law' as a basis for vacating an arbitration award occurs when the arbitrator knew of a governing legal principle yet refused to apply it." *Gissel v. Hart,* 382 S.C. 235, 241, 676 S.E.2d 320, 323-324 (2009) (citing *Weimer v. Jones*, 364 S.C. 78, 610 S.E.2d 850 (Ct. App. 2005)).

DRH asserts that no amendment to the Covenants is allowed for a period of twenty years after initial filing of the Covenants. The Plaintiff contends this relates to the duration of the governing documents and the manner in which the effective duration can be extended. The arbitrator found no prohibition against amending the content of the Covenants prior to the expiration of the effective twenty-year duration of the Covenants. Article I of the covenants provides the following:

> No Person shall record additional covenants, conditions, or restrictions affecting any portion of Mansfield at Park West without declarant's written consent, so long as Declarant owns any portion of the real property described in Exhibit "A" or "B". *Thereafter, Owners representing at least Seventy-Five (75%) percent of the Townhome Association's total votes must consent to such additions.* Any instrument Recorded without the required consent is void and of no force and effect.

Article I, § 1.3 (emphasis added).

It is undisputed that DRH has not been an owner or a member of the homeowners' association since 2011 and has not had voting rights or a relationship with the Association since approximately 2011. Therefore, it was not a manifest disregard of the law by the arbitrator to find that the Second Amendment, which was recorded with consent of at least 75% of the owners,

followed the rules outlined within the Covenants.

Given the content of the Award, the arbitrator's findings, and the evidence on which he based his rulings, DRH has not met its burden of proving a manifest disregard of the law.

For the reasons set forth above and in Plaintiff's memorandum, it was not a manifest disregard of the law for the arbitrator to find that the Plaintiff had the requisite standing and was a real party in interest. "Case law presupposes something beyond a mere error in construing or applying the law. Even a 'clearly erroneous interpretation of the contract' cannot be disturbed." *Gissel v. Hart*, 382 S.C. 235, 241, 676 S.E.2d 320, 323 (2009) (quoting *Trident Tech. College v. Lucas & Stubbs*, 286 S.C. 98, 108, 333 S.E.2d 781, 787 (1985)). The question is not whether the arbitrator made a wrong decision or made an error in construing or applying the law. Under South Caroling law, DRH has the burden of showing that Mr. Wills knew the law and intentionally refused to apply it. DRH has not met its burden or met this standard.

C. DAMAGES

The evaluation of the evidence and factual determination is in the sole purview of the arbitrator. "[W]hen a dispute is submitted to arbitration, the arbitrator[] shall determine questions of both law and fact." S.C. Code Ann. § 15-48-180. Disagreeing with the factual determination of the arbitrator is not grounds to vacate an arbitration award. "Factual and legal errors by arbitrators do not constitute an abuse of powers, and the court is not required to review the merits of the decision so long as the arbitrators do not exceed their powers. A party may not attempt to relitigate the merits of the arbitrators resolution of the arbitrable issues under the guise of questioning the arbitrators' power." *Pittman Mortg. Co. v. Edwards*, 327 S.C. 72, 76-77, 488 S.E.2d 335, 338 (1997).

In its Motion to Vacate, DRH argues that the Plaintiff's damages are speculative and that the arbitrator manifestly disregarded the law in awarding the Plaintiff damages. This argument was also raised by DRH and heard by the arbitrator. The arbitrator disagreed and didn't find DRH's position credible based on the evidence presented and certain inconsistencies in testimony of DRH's witnesses.

The arbitrator heard testimony of a qualified expert engineer, Russell T. Mease, P.E., regarding the building code and industry standard violations related to the installation of building components at issue in this case. Mr. Mease also testified that during his three (3) days of investigation of the construction at Mansfield, he identified evidence that siding had fallen off the buildings from being improperly installed, shingles had been replaced because of apparent shingle blow-off due to improper installation, and water entering into the wall assemblies. Further, DRH's own engineer expert, Steven Moore, P.E., did not perform intrusive testing and admitted there was evidence of water entering into the wall assemblies in ten (10) out of the eleven (11) different window locations where Mr. Mease removed siding to observe construction conditions. Plaintiff's estimating expert, local contractor Scott Dow, testified as to the cost of repair based on the repair scope and recommendations of engineer Mr. Mease and his own experience. The experts testified to the defects and damages to a reasonable degree of certainty.

Although there was evidence that water had intruded into the walls at ten (10) out of the eleven (11) locations where siding was removed during Mr. Mease's investigation, along with evidence that siding had cracked and fallen off and shingles had blown off of the buildings because of improper installation, DRH contends that the damages are speculative because the buildings are generally performing. "A builder is no less blameworthy in such a case where lady luck has smiled upon him and no physical harm has yet occurred." *Kennedy v. Columbia Lumber & Mfg. Co.*, 299

S.C. 335, 347, 384 S.E.2d 730, 737 (1989). Therefore, "[a] builder may be liable to a home buyer in tort despite the fact that the buyer suffered only 'economic losses' where: (1) the builder has violated an applicable building code; (2) the builder has deviated from industry standards; or (3) the builder has constructed housing that he knows or should know will pose serious risks of physical harm." *Id.* at 347, 384 S.E.2d at 738.

DRH does not meet its burden to vacate the arbitration Award in claiming the damages awarded are speculative. "Arbitrators need not specify their reasoning or the basis of the award so long as the factual inferences and legal conclusions supporting the award are 'barely colorable.'" *Pittman Mortg. Co. v. Edwards,* 327 S.C. 72, 77, 488 S.E.2d 335, 338 (1997) (quoting *Batten v. Howell*, 300 S.C. 545, 549, 389 S.E.2d 170, 172 (Ct. App. 1990)).

D. GROSS NEGLIGENCE

DRH contends it was not grossly negligent and seeks to disturb the factual findings of the arbitrator. "In most cases, gross negligence is a factually controlled concept whose determination bests rests with the jury." *Faile v. S.C. Dep't of Juvenile Justice*, 350 S.C. 315, 332, 556 S.E.2d 536, 545 (2002). Further, a violation of a building code may be admissible as evidence of gross negligence. S.C. Code Ann. § 15-3-670(b). The finding that DRH was grossly negligent is a factually controlled inquiry that rests solely with the arbitrator and is not grounds to vacate an arbitration award.

Generally, an arbitration award is conclusive, and courts will refuse to review the merits of an award. *Gissel v. Hart*, 382 S.C. 235, 242, 676 S.E. 2d 320, 324 (2009) (citing *Pittman Mortg. Co. v. Edwards*, 327 S.C. 72, 75-76, 488 S.E.2d 335, 337 (1997)). DRH has not meet its burden to vacate the arbitration award in claiming the arbitrator erred in finding DRH grossly negligent.

CONCLUSION

For all the reasons stated above, Defendant, D.R. Horton, Inc.'s Motion to Vacate or modify is **DENIED**. Having heard and resolved the Motion to Vacate the arbitration award, the Court **CONFIRMS** the arbitration award under S.C. Code Ann. § 15-48-130(d).

IT IS SO ORDERED.

Charleston Common Pleas

Case Caption: Mansfield At Park West Inc VS Dr Horton Inc

Case Number: 2021CP1001215

Type: Order/Confirm

So Ordered

s/ Thomas W. McGee III, Judge Code 2786