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SC Court of Appeals

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SC Court of Appeals

ELECTRONICALLY FILED - 2024 Nov 26 10:54 AM - ANDERSON - COMMON PLEAS - CASE#2017CP0400376

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

Case No.: 2017-CP-04-376

Raghu Athimoolam and Irene Athimoolam,.....Respondents,

v.

Meritage Homes of South Carolina, Inc.....Appellant.

AMENDED NOTICE OF APPEAL

Appellant, Meritage Homes of South Carolina, Inc., appeals the order of the Honorable R. Scott Sprouse filed on October 25, 2024, the order of Judge Sprouse filed November 6, 2024 denying Meritage's Rule 59(e) motion, and the second arbitration award in this matter. Appellant received notice of the filed orders from Judge Sprouse on October 25, 2024 and November 6, 2024. A copy of the orders are attached.

s/David S. Cobb
David S. Cobb (Bar Number 66569)
Turner Padget Graham & Laney P.A.
Post Office Box 22129
Charleston, South Carolina 29413
Phone: (843) 576-2803
dcobb@turnerpadget.com
Attorneys for Appellant

November 25, 2024

Other Counsel of Record:
Robert T. Lyles, Jr.
Attorneys for the Respondents

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SC Court of Appeals

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Raghu Athimoolam and Irene Athimoolam,.....Respondents,

v.

Meritage Homes of South Carolina, Inc.....Appellant.

PROOF OF SERVICE

The undersigned, an attorney in this matter for Appellant Meritage Homes of South Carolina, Inc., certifies that I have on November 25, 2024 served a copy of the Amended Notice of Appeal upon other counsel of record by electronic mail and by depositing a copy with sufficient postage in the United States mail to:

Robert T. Lyles, Jr.
1037 Chuck Dawley Boulevard, Suite G-100
Mount Pleasant, South Carolina 29464
rtl@lylesfirm.com
Attorney for Respondents

s/David S. Cobb
David S. Cobb (Bar Number 66569)
Turner Padget Graham & Laney P.A.
Post Office Box 22129
Charleston, South Carolina 29413
Phone: (843) 576-2803
dcobb@turnerpadget.com
Attorneys for Appellant

November 25, 2024

Turner Padget

DAVID S. COBB
Direct Dial: (843) 576-2803
Direct Fax: (843) 577-1629
dcobb@turnerpadget.com

RECEIVED

Nov 25 2024

SC Court of Appeals

November 25, 2024

Via regular mail and e-mail: ctappfilings@sccourts.org


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

Re: **Raghu Athimoolam and Irene Athimoolam v. Meritage Homes of South Carolina, Inc.**
Docket No.: 2017-CP-04-376
TP File No.: 15558.108

Dear Ms. Kitchings:

A Notice of Appeal was filed in this matter on November 21, 2024. Upon receipt of the filed document, a typographical error was noticed in the text. Enclosed is an Amended Notice of Appeal (without attachments) and Proof of Service to reflect the correct Judge who signed the Orders being appealed. By copy of this letter, I am serving counsel of record with the documents. If you have any questions or need additional information, please call me at your convenience. With kind regards,

TURNER PADGET


David S. Cobb

DSC/hah
enclosures
cc: Robert T. Lyles, Jr. (with enclosures)

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

Case No.: 2017-CP-04-376

Raghu Athimoolam and Irene Athimoolam,.....Respondents,

v.

Meritage Homes of South Carolina, Inc.....Appellant.

NOTICE OF APPEAL

Appellant, Meritage Homes of South Carolina, Inc., appeals the order of the Honorable R. Scott Sprouse filed on October 25, 2024, the order of Judge Sprouse filed November 6, 2024 denying Meritage's Rule 59(e) motion, and the second arbitration award in this matter. Appellant received notice of the filed orders from Judge Benjamin on October 25, 2024 and November 6, 2024. A copy of the orders are attached.

s/David S. Cobb
David S. Cobb (Bar Number 66569)
Turner Padget Graham & Laney P.A.
Post Office Box 22129
Charleston, South Carolina 29413
Phone: (843) 576-2803
dcobb@turnerpadget.com
Attorneys for Appellant

November 21, 2024

Other Counsel of Record:
Robert T. Lyles, Jr.
Attorneys for the Respondents

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

Case No.: 2017-CP-04-376

Raghu Athimoolam and Irene Athimoolam,.....Respondents,

v.

Meritage Homes of South Carolina, Inc.....Appellant.

PROOF OF SERVICE

The undersigned, an attorney in this matter for Appellant Meritage Homes of South Carolina, Inc., certifies that I have on November 21, 2024 served a copy of the Notice of Appeal upon other counsel of record by electronic mail and by depositing a copy with sufficient postage in the United States mail to:

Robert T. Lyles, Jr.
1037 Chuck Dawley Boulevard, Suite G-100
Mount Pleasant, South Carolina 29464
rtl@lylesfirm.com
Attorney for Respondents

s/David S. Cobb
David S. Cobb (Bar Number 66569)
Turner Padget Graham & Laney P.A.
Post Office Box 22129
Charleston, South Carolina 29413
Phone: (843) 576-2803
dcobb@turnerpadget.com
Attorneys for Appellant

November 21, 2024

ELECTRONICALLY FILED - 2024 Nov 26 10:54 AM - ANDERSON - COMMON PLEAS - CASE#2017CP0400376
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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CIVIL ACTION NO.: 2017-CP-04-376

Raghu Athimoolam and Irene Athimoolam
PLAINTIFF(S)

Meritage Homes of South Carolina, Inc.
DEFENDANT(S)

Submitted By: Address:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
---------------------------	---

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

Defendant moves for reconsideration on the grounds that the Arbitrator lacked authority to modify the award and that the Court was mandated to vacate the January 23, 2024 award. Defendant relies on Smith v. Transport Workers Union of America, AFL-CIO Air Transport Local 556, 374 F.3d 372 (5th Cir. 2004). The Court notes that the Fifth Circuit case is distinguishable from the present case because the arbitration agreement in Smith specifically restricted the authority of the arbitrators to amend or correct their award in the arbitration agreement. Defendant further alleges that the relevant statutory law does not require an arbitration award to be filed with any Clerk or Clerk of Court for the award to be considered an official arbitration award. The Court finds there was not finality on the October 4, 2023 Award. Defendant additionally states that this Court has the power to vacate the January 23, 2024 Award. Although the Court has power to vacate an arbitration award in limited circumstances, none of the circumstances are present here. Finally, Defendant alleges that the Court did not address the issue of the confidential settlements. The Arbitrator expressly stated in her Order that she gave the confidential settlements no consideration. Therefore, the Court finds no evidence improper consideration was given to the confidential settlement.

Accordingly, Defendant's Motion for Reconsideration, pursuant to Rule 59(e), is DENIED.

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE PUBLIC INDEX Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
If applicable, describe the property, including tax map information and address, referenced in the order: _____ _____		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court for judgment details.**

Circuit Court Judge

2752
Judge Code

Date



Anderson Common Pleas

Case Caption: Raghu Athimoolam , plaintiff, et al VS Meritage Homes Corporation
, defendant, et al
Case Number: 2017CP0400376
Type: Order/Form 4

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

Electronically signed on 2024-11-05 14:55:31 page 4 of 4

ELECTRONICALLY FILED - 2024 Nov 26 10:54 AM - ANDERSON - COMMON PLEAS - CASE#2017CP0400376
ELECTRONICALLY FILED - 2024 Nov 06 10:45 AM - ANDERSON - COMMON PLEAS - CASE#2017CP0400376

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF ANDERSON
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CIVIL ACTION NO.: 2017-CP-04-00376

Raghu Athimoolam and Irene Athimoolam
 PLAINTIFF(S)

Meritage Homes of South Carolina, Inc.
 DEFENDANT(S)

Submitted By: Address:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
---------------------------	--

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
 - DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
 - ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRCP; Rule 41(a), SCRCP (Vol. Nonsuit); Rule 43(k), SCRCP (Settled); Other
 - ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRCP; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
 - DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other
- NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk: _____

INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court for judgment details.

Circuit Court Judge

2752
Judge Code

Date

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON)
PLEAS FOR THE TENTH JUDICIAL)
CIRCUIT)

RAGHU ATHIMOOLAM and)
IRENE ATHIMOOLAM,)

Civil Action No: 2017-CP-04-00376)

Plaintiffs,)

v.)

ORDER

MERITAGE HOMES OF SOUTH)
CAROLINA, INC.,)

Defendant.)

This matter came before the Court upon Defendant's Motion to Vacate the January 23, 2024 Arbitration Award and Motion to Reinstate the October Arbitration Award. Ms. Rebecca Laffitte ("Arbitrator") served as the arbitrator in the above matter in September of 2023. The Arbitrator prepared an Order on October 4, 2023 for an amount of Fifty-One Thousand Four Hundred Thirteen and 88/100 Dollars (\$51,413.88). The October 4, 2023 Order was sent to all parties but was not filed. Subsequently, Plaintiffs filed a Motion to Reconsider with the Arbitrator. After review, the Arbitrator entered an award on January 23, 2024 for Three Hundred Twenty Thousand Nine Hundred Seventeen and 63/100 Dollars (\$320,917.63). Defendant then filed a Motion to Vacate the January 23, 2024 Arbitration Award and to Reinstate the October Arbitration Award, which was heard before this Court. In its subject Motions, Defendant alleged that the Arbitrator improperly changed her award.

This Court issued a Form 4 on the matter on September 5, 2024, noting that the modified award differed significantly from the original arbitration award. As written, the January 23, 2024

Order made it difficult for the Court to ascertain why the Arbitrator changed her award. This Court remanded the matter so that the Arbitrator could set forth specific findings of legal and factual error, consistent with relevant statutory and case law, that were corrected to ensure that the interests of all parties were protected. The Court also noted that it was difficult to evaluate whether the modifications to the October 2023 Order were done outside the scope of relevant authority.

After receiving this Court's Order, the Arbitrator sent a letter to the Court, via email, explaining why the award was changed. In part, the Arbitrator stated the following:

I served as the arbitrator in the above matter in September 2023. Although an Order was prepared in November 2023, it was not filed but provided to counsel for all parties. Thereafter, counsel for the Athimoolams filed a Motion to Reconsider, after which counsel for Meritage Homes submitted a reply brief. I then requested a conference call with all counsel given my belief that I had inadvertently misapplied the law to evidence and testimony of the expert witnesses who testified at the arbitration. This call was held on November 17, at which time I requested additional information for clarification and consideration. Additional documentation, opinions, and objections were received from all counsel.

Letter from Ms. Rebecca Laffitte dated October 3, 2024 [EXHIBIT 1]

The Court finds that this was a factual/evidentiary error, not the type of error that would have triggered the statute. The Court notes that the Arbitrator prepared an Order in November; however, the subject Order was not filed—rather, the Arbitrator provided a copy of the Order for all parties. The Arbitrator held the record open and allowed additional evidence to be presented. After conferring with the parties and considering additional evidence that was not originally presented, the Arbitrator then officially filed the final award on January 23, 2024. Because of the deference given to arbitrators and the fact that an official award was not filed in November, the Court is limited in its review of the award.

South Carolina law states that an arbitrator can change an award; however, the situations in which an award can be changed are limited. The arbitrator may change an

award on the application of a party where (1) there is an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the award, (2) the award is imperfect in a matter of form, not affecting the merits of the controversy, or (3) for the purpose of clarifying the award. See S.C. Code Ann. § 15-48-100 (2005). Based on the explanation of the arbitrator, none of the subject statutory grounds are met.

Additionally, the Circuit Court is limited in its review of an arbitrator's award. The Court is only able to modify an arbitrator's award where:

(1) [t]here was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award; (2) [t]he arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or (3) [t]he award is imperfect in a matter of form, not affecting the merits of the controversy.

S.C. Code Ann. § 15-48-140 (2005).

Similarly, the ability of a court to vacate an award is limited as well. The Court is only allowed to vacate an arbitrator's award when:

(1) The award was procured by corruption, fraud or other undue means; (2) There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party; (3) The arbitrators exceeded their powers; (4) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of § 15-48-50, as to prejudice substantially the rights of a party; or (5) There was no arbitration agreement and the issue was not adversely determined in proceedings under § 15-48-20 and the party did not participate in the arbitration hearing without raising the objection"

S.C. Code Ann. § 15-48-130 (2005).

The Court is restrained from vacating or restricting the award.

The vital question is now whether an arbitrator can revisit an award before an official filing has been made. “[T]he scope of judicial review for an arbitrator’s decision ‘is among the narrowest known at law because to allow full scrutiny of such awards would frustrate the purpose of having arbitration at all . . .’” *Three S Del., Inc. v. DataQuick Info. Sys., Inc.*, 492 F.3d 520, 527 (4th Cir. 2007). “The ‘widely recognized’ policy ‘to encourage the use of arbitration’ required this limited scope of judicial review.” *UBS Fin. Servs., Inc., v. Padussis*, 842 F.3d 36, 339 (4th Cir. 2016). Most importantly, “courts defer to the [arbitrator] both on the merits of the final decision and on procedural questions that ‘grow out of the dispute,’ even where those questions ‘bear on its final disposition’.” *Group III Mgmt. v. Suncrete of Carolina, Inc.*, 425 S.C. 141, 819 S.E.2d 781 (Ct. App. 218) (quoting *UBS Fin. Servs., Inc.*, 842 F.3d 336, 339 (4th Cir. 2016)).

This Court finds that the arbitrator assumes the same role that a judge in a bench trial would assume having the right to reconsider his or her decision based on application of either party and presentation of evidence. Additionally, this Court finds that the arbitrator in this case was well within her rights to reconsider her opinion before the official award was filed in January 2024. While there is a great variance between the original amount and the amended amount, the Court must give deference to the decision of the arbitrator. This is purely a factual determination and does not fall within the scenarios in which a Circuit court can either modify or vacate an arbitration award.

Accordingly, Defendant’s Motion to Vacate the January 23, 2024 Arbitration Award and Motion to Reinstate the October Arbitration Award is DENIED.

AND IT IS SO ORDERED.

R. SCOTT SPROUSE
Judge, Tenth Judicial Circuit

Anderson, South Carolina
October ____, 2024

ELECTRONICALLY FILED - 2024 Nov 26 10:54 AM - ANDERSON - COMMON PLEAS - CASE#2017CP0400376
ELECTRONICALLY FILED - 2024 Oct 25 3:52 PM - ANDERSON - COMMON PLEAS - CASE#2017CP0400376



**ROBINSON
GRAY**

Litigation + Business

REBECCA LAFFITTE

DIRECT: 803 231.7831 DIRECT FAX: 803 231.7888

rlaffitte@robinsongray.com

October 3, 2024

VIA E-MAIL

The Honorable R. Scott Sprouse
Circuit Court Judge
Tenth Judicial Circuit
Post Office Box 1277
Walhalla, South Carolina 29691

RE: Raghu Athimoolam and Irene Athimoolam v. Meritage Homes of South
Carolina, Inc.
Civil Action No.: 2017-CP-04-00376
Our File No.: 5160/5753

Dear Judge Sprouse:

I served as the arbitrator in the above matter in September 2023. Although an Order was prepared in November 2023, it was not filed but provided to counsel for all parties. Thereafter, counsel for the Athimoolams filed a Motion to Reconsider, after which counsel for Meritage Homes submitted a reply brief. I then requested a conference call with all counsel given my belief that I had inadvertently misapplied the law to evidence and testimony of the expert witnesses who testified at the arbitration. This call was held on November 17, at which time I requested additional information for clarification and consideration. Additional documentation, opinions and objections were received from all counsel.

The Order was submitted on January 19, 2024, and filed on January 23, 2024. All counsel filed motions requesting a review by this Honorable Court.

To ensure that I prepare the appropriate response to your recent Form 4 Order (enclosed), would it be possible to have a conference call with you and all attorneys so that I can better understand the specifics of your request?

I regret any issues that I have caused and created for you, the attorneys, and parties, as this was not my intent. I look forward to hearing from you and appreciate further guidance from you on this matter.



Anderson Common Pleas

Case Caption: Raghu Athimoolam , plaintiff, et al VS Meritage Homes Corporation
, defendant, et al
Case Number: 2017CP0400376
Type: Order/Form 4

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

Electronically signed on 2024-10-25 15:43:07 page 10 of 10

ELECTRONICALLY FILED - 2024 Nov 26 10:54 AM - ANDERSON - COMMON PLEAS - CASE#2017CP0400376
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Turner Padget

DAVID S. COBB
Direct Dial: (843) 576-2803
Direct Fax: (843) 577-1629
dcobb@turnerpadget.com

November 26, 2024

by regular mail and e-mail: ctappfilings@sccourts.org

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

Re: **Raghu Athimoolam and Irene Athimoolam v. Meritage Homes of South Carolina, Inc.**

Appellate Case No.: 2024-001996

Docket No.: 2017-CP-04-376

TP File No.: 15558.108

Dear Ms. Kitchings:

Pursuant to the Court's letter dated November 26, 2024, I enclose filed copies of Appellant's Notice of Appeal and Amended Notice of Appeal, filed with the Clerk of Court for Anderson County. By copy of this letter, I am serving counsel of record with same. If you have any questions or need additional information, please call me at your convenience. With kind regards,

TURNER PADGET

s/David S. Cobb
David S. Cobb

DSC/sqb
enclosures

cc: Robert T. Lyles, Jr. (by email with enclosures)