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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Appellate Case No. 2024-001248

Marka Danielle Rodgers Appellant,

v.

CNT Foundations.....Respondent.

RECORD ON APPEAL

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I certify that this designation contains all material proposed to be included by any of the parties and not any other material.

Respectfully submitted,

/s/ Daniel Summa

Daniel Summa
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Attorney for Appellant

March 10, 2025
Charleston, South Carolina

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP1005916

Marka Danielle Rodgers
PLAINTIFF(S)

Cnt Foundations
DEFENDANT(S)

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.
- ☐ **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
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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:

This matter came before the Court on September 8, 2023 as Defendant's Motion to Compel Arbitration. The Plaintiff was represented by Daniel Summa, and the Defendant was represented by Charles Krawczyk. Upon consideration of the competing Memorandums and the Arbitration Provision, Defendant's Motion is GRANTED. Moreover, the Court does not find proof that the parties did not mutually assent to the Arbitration Provision, and the Court does not find that the Provision is unenforceable. See Mart v. Great S. Homes, Inc., No. 2018-001598, 2023 WL 5944268, at 7 (S.C. Ct. App. Sept. 13, 2023). The Defendant is to submit a Formal Proposed Order within 10 days.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/17/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Marka Danielle Rodgers VS Cnt Foundations

Case Number: 2022CP1005916

Type: Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2023-10-17 16:34:21 page 3 of 3

ELECTRONICALLY FILED - 2023 Oct 18 8:34 AM - CHARLESTON - COMMON PLEAS - CASE#2022CP1005916

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

Civil Action No.: 2022-CP-10-05916

Marka Danielle Rodgers,

Plaintiff,

vs.

CNT Foundations, LLC,

Defendant.

ORDER

THIS MATTER came before the Court on Defendant's Motion to Stay Proceedings and Compel Arbitration. A hearing was held on September 8, 2023. After reviewing the briefs filed by both parties including all legal arguments made therein, and considering arguments made at the hearing, the Court finds the arbitration provision contained in Plaintiff's contract with Defendant is valid and enforceable under South Carolina law. Therefore, the Court **GRANTS** Defendant's Motion to Compel Arbitration. This matter shall be stricken subject to the right to restore to confirm, vacate or modify any arbitration award.

IT IS SO ORDERED.

The Honorable Jennifer B. McCoy
Ninth Judicial Circuit

October , 2023

Charleston, South Carolina



Charleston Common Pleas

Case Caption: Marka Danielle Rodgers VS Cnt Foundations

Case Number: 2022CP1005916

Type: Order/Other

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2023-11-02 08:11:09 page 2 of 2

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP1005916

Marka Danielle Rodgers
PLAINTIFF(S)

Cnt Foundations
DEFENDANT(S)

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.
- ☐ **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
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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:

This matter came before the Court on June 20, 2024 as Plaintiff's Motion to Amend the Judgment, filed November 10, 2023. "The purpose of Rule 59(e), SCRPC, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits." Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 8/34, 842 (1992). "A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004).
This Court was not served with this motion pursuant to Rule 59(g), and furthermore, based on the arguments of counsel presented, this Court DENIES Plaintiff's Motion to Reconsider.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/26/2024 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Marka Danielle Rodgers VS Cnt Foundations

Case Number: 2022CP1005916

Type: Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2024-06-26 12:19:51 page 3 of 3

ELECTRONICALLY FILED - 2024 Jun 26 4:36 PM - CHARLESTON - COMMON PLEAS - CASE#2022CP1005916

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

2022CV1010601017
CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

SUMMONS

Marka Danielle Rodgers
2107 Welch Ave
Charleston, SC 29412
(843) 452-8713
PLAINTIFF(S)

Vs

CNT Foundations, LLC
3362 Navajo Street
North Charleston, SC 29405
DEFENDANT(S)

Agent
Christopher T Bedson
3362 Navajo Street
North Charleston, SC 29405

TO THE DEFENDANT(S) NAMED ABOVE:

YOU ARE SUMMONED and required to answer the allegations of the attached complaint and present any appropriate counterclaims/crossclaims to the attached Complaint within THIRTY days from the first day after receipt of this summons. Your Answer must be received by the:

Small Claims - City
101 Meeting Street, 3Rd Floor
P. O. Box 941
Charleston, SC 29403
Phone: (843) 724-6720
Fax: (843) 724-6785

If you fail to answer within the prescribed time, a judgment by default may be rendered against you for the amount or other remedy requested in the attached complaint, plus interest and costs. **If you desire a jury trial, you must request one in writing at least five (5) working days prior to the date set for trial.** If no jury trial is timely requested, the matter will be heard and decided by the Judge.

READ ATTACHED INSTRUCTIONS CAREFULLY

September 12, 2022

Case No:

2022CV1010601017

Filed:

Served:

Default:

FILED IN CHARLESTON COUNTY

SEP 12 2022

CITY SMALL CLAIMS COURT

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE SMALL CLAIMS COURT

Marka Danielle Rodgers
Plaintiff

2107 Welch Ave
Street Address

Chas SC 29412
City State Zip

843.452.8713
Phone

CNT Foundations, LLC
Defendant
Christopher T. Bedson

3362 Navajo Road
Street Address

N. Chas SC 29409
City State Zip

843.970.1387
Phone

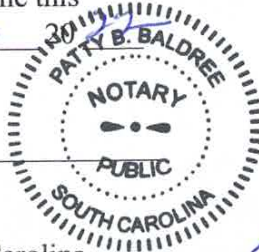
I, the plaintiff in this civil action, make the following claim against the defendant:

- 1.) I believe that the defendant is a resident of _____.
- 2.) Check a, b, or c to indicate the type of suit and supply documents required.
 - a. () This is a suit on a note; Two (2) copies of note attached. Defendant has defaulted in payment of said note with balance of \$ _____ now due and payable.
 - b. () This is a suit on an account; Two (2) copies of statement attached. Sign as affiant swearing to statement and have your signature notarized.

SWORN and subscribed before me this

8 day of September 2022

[Signature]



Attached to this complaint is a statement of account which I swear to be true and correct, with no part of the balance having been paid.

NOTARY PUBLIC, State of South Carolina

My Commission Expires: 6/20/2024

[Signature]

Affiant's Signature (Plaintiff)

- c. (☒) OTHER. This is a claim based on the following facts: (Describe Complaint)

Please see attached letters

(attach supplement if necessary)

3.) I believe because of the following information, that I am entitled to, and request a judgment for

\$ 6000 and/or other relief:
+ 1500⁰⁰ to repair trim work, etc.
+ Court Fees

(Include any costs resulting from this action. (Example: court costs, legal fees, interest))

I STATE UNDER PENALTY OF PERJURY THAT THE ABOVE IS CORRECT AND TRUTHFUL.

9/8/22
Date

C32-5270


Signature of Plaintiff or Attorney

FORM

FILED IN CHARLESTON COUNTY
SEP 12 2022
CITY SMALL CLAIMS COURT

To whom it may concern:

In July of 2021, I received a quote from CNT Foundations for foundation work that needed to be done at my home on James Island. At that time I also received quote from a competitor. A CNT employee, I believe his name was Chip, looked at some obvious settling points in my house, where some floor boards were just beginning to split apart and explained the work that their company could do to fix this problem. At the end of July, I decided to go with CNT and I signed the contract. Work was scheduled for September.

Things appeared to go smoothly. Shayn, I don't know his last name, was helpful in making sure work got done and assured me that if there were any problems, he would be able to return and help me, that he lived nearby and it would be "no problem at all". When I noticed from photos he showed me, that CNT didn't replace insulation that was supposed to be done, he came back later and said he fixed that, explaining that there was a glitch in your invoicing system.

I am a full time wheelchair user due to a spinal cord injury and am unable to go under my house so I had to trust Shayne that the work that I was told would get done, did. Unfortunately, the work was not done as was told to me.

Around Thanksgiving time, the cracks in my floor that I had originally called about began to get worse and a few other places in my house started to separate. I called CNT's office on numerous occasions with no satisfaction! I was told, "We'll get back you." but no one ever did. I was even left on hold for long periods of time. In mid-January, I finally sent a video of what was going on with my floors to Shayne via text and several days later he scheduled someone to come look.

On January 21, a crew came, led by Craig (?). He looked inside and then went under the house and started putting in shims to raise the concrete pilings that you installed. As he adjusted one part of the floor, it turned out they were creating another problem! My son tried to explain to him and show him some issues but he insisted that what they were doing could not effect the rest of the house and blamed the splitting of other boards on the weather and DIRT in my house! I don't know whether he thought I was stupid because I was in a wheelchair, but he took off and I called the office trying to explain what was going on. I was extremely upset at this point and it didn't help that I was treated with ugliness and disdain. I called several times trying to speak calmly with someone but that never happened as I kept getting put on hold.

I called the following Monday, letting the weekend pass and asked to speak with someone in charge, the manager or owner. After another laugh in my ear and a very long hold time, I spoke with someone named Taylor. He again told me none of the work that was done would effect anything, "not even 6" away" from the pilings you put in. I told him that all I wanted was someone in charge to come look at my house and tell me how that was possible. He told me they had done everything they were going to do on this job and that the only thing they could do was to send another estimator to give me a quote on more work to fix the problems. I told him that this was very poor customer service and that I would get a 2nd opinion.

I have now had 1 new company look at the resulting work from CNT and then hired the other company that I got a quote from back in July, return and re-do the work. I have been advised that the work that CNT did under my house did not address the original issue. The "vapor barrier" which was explained to me as "sealing up the entire foundation so everything will stay clean and dry", was nothing more than a plastic sheet, and humidity was seeping in underneath. The dehumidifier the installed was running excessively because of this and my electric bill was outrageous. This was also a fire hazard and I had to have the unit unplugged until final repairs were made.

This is not acceptable at all.

Please see the letter from David Johnson, System Designs Specialist for Canteay Foundations, attached after his re-inspection.

I want a refund on the work was done and compensation for new work that had to be done because of CNT not coming back in a timely manner to address the issues happening immediately after their work.

I feel as if I was taken advantage because of me being a single woman with a disability and I am angry!

Marka Danielle Rodgers



FILED IN CHARLESTON COUNTY
SEP 12 2022
CITY SMALL CLAIMS COURT

To whom it may concern,

On July 5th 2021, I inspected Marka Rodgers' Crawlspace after concerns with uneven floors and cracks in walls had prompted the homeowner to investigate the cause. My inspection revealed that the interior wall in the master bedroom, where sloping was most prevalent and cracks in the doorway above the closet door were present, was due to the interior wall not having proper support underneath. The wall runs perpendicular to the existing joists. This added weight, in addition to years of moisture consumption by the wood, led to a weakened flooring system in the master and front bedroom. Proposed solution in July 2021 was to install supplemental beam directly under the affected areas to stabilize the floors and install a full encapsulation system to prevent moisture issues in the future.

In February 2022, I received a call from Ms Rodgers. She was very concerned with the work that was done by CNT to address the same issues as stated above. Upon my inspection I discovered that 3 CMU piers were installed by CNT. However, the location of the aforementioned piers were not installed anywhere near the area of concern. It is my professional opinion that CNT created more issues than were previously there because they lifted the floors, in the incorrect area, past point of origin, therefore creating more uneven floors on other areas of the home and not addressing the problem areas for Ms Rodgers. Furthermore, the encapsulation system installed is not properly sealed and left in its current state has the potential to cause more issues than were present at time of inspection.

If pictures are required please feel free to contact me at your convenience should you require photo documentation.

Thank you,

David Johnson

David Johnson
System Design Specialist
804-874-3457

INSTRUCTIONS FOR DEFENDANT

If you do not wish to oppose plaintiff's claim you may:

Contact plaintiff and make an out-of-court settlement with the plaintiff before the trial date and file with the magistrate court a dismissal of the case signed by the plaintiff, or make no answer to the complaint. In that case, the plaintiff will be given a default judgment against you in the amount specified in the complaint.

If you wish to oppose the claim:

- a. You must file an answer with the magistrate's court within the time limit specified in the summons. If you fail to answer within that time period, you lose your right to defend the case and the plaintiff may be given a default judgment against you in the amount specified in the complaint. Your answer may be made in writing in a form approved by the magistrate, or your answer may be made orally to the magistrate's court if you appear in person within the time limit specified in the summons.
- b. If you answer within the specified time, you will be notified of the time and date of the trial. You must maintain a correct mailing address with the court and you must appear for trial. Should you fail to appear, you lose your right to defend the case and the plaintiff may be given a default judgment against you in the amount specified in the complaint.
- c. At the time for trial you must bring with you all books, papers, witnesses, and evidence you have to establish your defense. You are required to comply with the South Carolina Rules of Evidence.
- d. At your request the court will issue a subpoena for any witness you may need tendering a fee of \$8.00 (You must request the subpoena as soon as possible and before the trial date). A witness subpoenaed to attend a proceeding under these rules shall receive for each day's attendance and for the time necessarily occupied in going to and returning from the proceeding \$25.00 per day and mileage the same amount as provided by law for official travel of State officers and employees.

If you desire a jury trial, you must request one in writing at least **FIVE (5)** working days prior to the date set for trial. If no jury trial is timely requested, the matter will be heard and decided by the magistrate.

If you have a claim against the plaintiff that grows out of the same transaction or occurrence as the plaintiff's claim, you may file a counterclaim. The counterclaim must be filed with the magistrate within the time limit specified in the summons for answering. The counterclaim must be made in writing in a form approved by the magistrate, or it may be made orally to the magistrate's court if you appear in person within the time limit specified in the summons. Your counterclaim will be tried at the same time as the plaintiff's claim if it does not exceed the jurisdiction of the magistrate to hear. If the counterclaim exceeds the magistrate's jurisdiction, the entire matter will be transferred to the circuit court.

If you have a claim against the plaintiff that does not grow out of the same occurrence or transaction as the plaintiff's claim, you may file a claim (complaint) against the plaintiff. This claim would be heard separate and apart from the plaintiff's claim against you.

If you are a member of the Armed Services of the United States, please advise the court upon receipt of this summons.

If you are under 18 years of age, please advise the court upon receipt of this summons.

If you are a prisoner in any municipal, county, state, or federal jail or prison, please advise the court upon receipt of this summons.

You may be represented by an attorney, but are not required to have one. The magistrate's court will explain the procedure of the court and will help you prepare papers related to your action if you require such assistance. The court cannot, however, represent you or provide you with an attorney or give you any legal advice.

If you are a business and are going to be represented by a Non-Lawyer, a Non-Lawyer Authorization Form must be included with your Answer/Counterclaim. (See 33-1-103 SC Code of Laws)

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
)
)

2022CV1010601017
CIVIL CASE NUMBER
IN THE MAGISTRATE'S COURT
ANSWER

Marka Danielle Rodgers
2107 Welch Ave
Charleston, SC 29412
(843) 452-8713

PLAINTIFF(S)

Vs
CNT Foundations, LLC
3362 Navajo Street
North Charleston, SC 29405

DEFENDANT(S)

Agent
Christopher T Bedson
3362 Navajo Road
Charleston, SC 29409

On _____ I was served with a Complaint requiring me to answer within thirty days from the date of service. My Answer, which is hereby filed with the **Small Claims - City**, is as follows:

CHECK ONE:

A. ☐ I contest the jurisdiction of the court based on the following: (use additional pages if necessary)

B. ☐ I admit everything in the complaint and do not want a trial.

C. ☐ I admit that I am responsible, but not for the total amount claimed by the Plaintiff(s) because: (use additional pages if necessary) _____

D. ☐ I deny that I am responsible at all because: (use additional pages if necessary) _____

YOU MUST FILE THIS DOCUMENT WITH THE COURT WITHIN THIRTY DAYS

THE DEFENDANT/PLAINTIFF STATES THAT THE INFORMATION CONTAINED IN THIS ANSWER IS TRUE AND CORRECT TO THE BEST OF HIS/HER KNOWLEDGE.

DATED: _____

SIGNATURE OF DEFENDANT(S) (OR ATTORNEY)

IF MORE THAN ONE DEFENDANT, ALL MUST FILE ANSWER

PLEASE RETURN TO:

Small Claims - City
101 Meeting Street, 3Rd Floor
P. O. Box 941
Charleston, SC 29403
Phone: (843) 724-6720
Fax: (843) 724-6785

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
	)	CASE NUMBER: 2022-CP-_____
MARKA DANIELLE RODGERS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	SUMMONS
CNT FOUNDATIONS,	)	(Jury Trial Requested)
	)	
Defendant.	)	
_____	)	

TO: DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint

/s/ Daniel Summa

Daniel Summa
Attorney for Plaintiff
Summa Law Firm, LLC
3 Broad Street, #301
Charleston, SC 29401
843-277-9665 office
843-806-2920 fax
daniel@summalawfirm.com

December 27, 2022
Charleston, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
	)	CASE NUMBER: 2022-CP-_____
MARKA DANIELLE RODGERS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	COMPLAINT
CNT FOUNDATIONS,	)	(Jury Trial Requested)
	)	
Defendant.	)	
_____	)	

TO: THE DEFENDANT ABOVE-NAMED:

The Plaintiff complaining of the acts and omissions of the above-named Defendant, says as follows:

PARTIES

1. Plaintiff is and was at all times mentioned herein a citizen and resident of Charleston County, South Carolina.
2. Upon information and belief, Defendant CNT Foundations is a Limited Liability Company Incorporated in South Carolina and conducting substantial business in Charleston County.

JURISDICTION

3. The Court has subject-matter jurisdiction over the claims in this lawsuit under article V, § 11, of the South Carolina Constitution and South Carolina Code § 14-5-350.
4. The Court has personal jurisdiction over this Defendant as they conduct significant business in Charleston County.

VENUE

5. Venue is proper in this circuit under South Carolina Code § 15-7-30

FACTS

6. In the spring and early summer of 2021, Plaintiff noticed that the floorboards of her home, located at 2107 Welch Avenue in Charleston County, were beginning to split apart and that her bedroom door frame had cracked.
7. Thereafter, Plaintiff began seeking contractors to repair her foundation.
8. On or around July of 2021, the Plaintiff received a quote from Defendant to repair her foundation to remedy the issues to her floorboards and doors.
9. Plaintiff needed this work done, in part, because she is a full-time wheelchair user and the uneven flooring affected her ability to move or remain stable in her home.
10. Defendant, in attempting to obtain Plaintiff's business, assured Plaintiff that their work would remedy the issues with her floorboards and doorframe.
11. Defendant assured Plaintiff that their work had a "lifetime warranty"
12. Defendant, in making these statements, knew or should have known that the work they were to complete would not, in fact, remedy any of the issues complained of.
13. Thereafter, Plaintiff paid Defendant Eleven Thousand Two Hundred Ten and 00/100 Dollars (\$11,210.00) to repair her foundation and encapsulate her crawlspace.
14. Defendant, after receiving payment, placed three concrete masonry unit piers (CMU piers) below Plaintiff's home that were not near the area of concern and caused more harm than good.
15. Defendant, after receiving payment, installed an incomplete encapsulation system that was left unsealed and thus was prone to cause more issues than were present before.
16. In October of 2021, Plaintiff noticed that her floorboards were once again becoming uneven.
17. Additionally, Plaintiff noticed that floorboards in areas besides the initial area of concern

were cracking.

18. Additionally, Plaintiff noticed cracks had appeared in new doors and door frames.

19. Plaintiff notified Defendant of these issues in November of 2021 but was repeatedly ignored in her requests to have Defendant come out and inspect the property.

20. Eventually, Defendant came out to the property in January 2022 and installed foundation shims.

21. These foundation shims did not repair Plaintiff's foundation and in fact caused even further damage.

22. When Plaintiff notified Defendant of the above, Defendant refused to conduct any additional work or remedy the issues.

23. Defendant has refused to issue a refund to Plaintiff.

24. As a result of Defendant's conduct, Plaintiff's home was left in a worse state than prior to Defendants' work therein and required substantial repairs.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

25. Plaintiff incorporates by reference all previous paragraphs above as if repeated herein verbatim.

26. The Plaintiff entered into a contract with Defendant to repair her foundation.

27. The Defendant breached this contract by failing to repair Plaintiff's foundation.

28. That as a result of this breach, Defendant has suffered from the following, including but not limited to: emotional distress, diminution of home value, costs to repair Defendants' improper work, and the consideration paid to Defendant.

29. That the injuries and damages complained of herein were directly and proximately caused by the Defendant's breach.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract Accompanied by Fraudulent Act)

30. Plaintiff incorporates by reference all previous paragraphs above as if repeated herein verbatim.

31. Defendant's assurances to Plaintiff that their work would remedy her foundation issues was made with fraudulent intent.

32. Defendant knew that Plaintiff was wheelchair-bound and could not easily check on the foundation work being performed.

33. Any reasonable person in Defendant's line of business would know that placing the CMU piers in the complained-of positions would cause more harm than good.

34. That the injuries and damages complained of herein were directly and proximately caused by the Defendant's fraudulent misrepresentation.

FOR A THIRD CAUSE OF ACTION
(Fraud; Constructive Fraud)

35. Plaintiff incorporates by reference all previous paragraphs above as if repeated herein verbatim.

36. Defendant stated to Plaintiff that their work would remedy her foundation issues.

37. Defendants, in mentioning that their work would remedy Plaintiffs' issues, made a false statement of material fact, either knowing its falsity or with a reckless disregard to its truth.

38. In the alternative, Defendant, even if they did not know the statement was false, should have known of its falsity at the time of making the statement.

39. Defendant made this statement with the intent that the representation would be acted upon by Plaintiff.

40. Plaintiff did not know the statement was false, and relied upon it when paying Defendant for their work.

41. Plaintiff had the right to rely on this statement as a consumer contracting for services from a foundation repair company.

42. That as a result of Defendant's fraudulent misrepresentation, Plaintiff suffered the above-mentioned harm.

FOR A FOURTH CAUSE OF ACTION
(Negligent Misrepresentation)

43. Plaintiff incorporates by reference all previous paragraphs above as if repeated herein verbatim.

44. Defendant represented to Plaintiff that their work would remedy Plaintiff's issues.

45. Plaintiff submits that this statement was, at a minimum, made negligently.

46. Defendant had a pecuniary interest in making this statement in that they accepted payment in consideration for work that would purportedly remedy Plaintiff's issues.

47. As a foundation repair company who had solicited business from Plaintiff, Defendant owed a duty of care to Plaintiff to communicate only truthful information about what type of work was required to repair her foundation.

48. At a minimum, Defendant breached this duty in assuring Plaintiff that their work would remedy her issues.

49. Plaintiff was justified in relying on these representations as she paid over \$11,000 for the express purpose of having Defendant remedy her issues.

50. Plaintiff, as a result of this misrepresentation, suffered a pecuniary loss as a direct and proximate result of her reliance therein.

FOR A FIFTH CAUSE OF ACTION

(Negligence)

51. Plaintiff incorporates by reference all previous paragraphs above as if repeated herein verbatim.

52. Defendant, as a company entitled “CNT Foundations” and marketing themselves as experts in foundation and framing repair, held themselves out as having special knowledge or skill that would make it reasonable for a lay person to rely on them to complete foundation and repair work with reasonable workmanship and diligence.

53. Defendant did in fact owe a duty of care to Plaintiff to complete their work with reasonable diligence and workmanship.

54. Defendant breached this duty by not fixing Plaintiff’s foundation and, in fact, making it worse

55. Defendant also breached this duty by undergoing encapsulation of a crawlspace that they left unsealed as to create more moisture issues than before their work was undertaken.

56. That as a result of this breach, Plaintiff has suffered damages in the form of: emotional distress, pecuniary loss, and diminution in the value of her home.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs request that judgement be entered against Defendant on this cause of action and that Plaintiff be awarded: actual damages; punitive damages; a trial by jury as to this cause of action; the costs of this action; and such other further relief as the court may deem just and proper.

[signature on following page]

Respectfully submitted,

/s/ Daniel Summa

Daniel Summa
Attorney for the Plaintiff
Summa Law Firm, LLC
3 Broad Street, #301
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843-277-9665 *office*
843-806-2920 *fax*
daniel@summalawfirm.com

December 27, 2022
Charleston, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
Marka Danielle Rodgers,	)	
	)	CASE NO.: 2022-CP-10-05916
Plaintiff.	)	
	)	
Vs.	)	
	)	MOTION TO STAY PROCEEDINGS AND
CNT Foundations, LLC,	)	COMPEL ARBITRATION AND/OR
	)	DISMISS PURUSANT TO RULES 12(B)(1),
Defendant.	)	12(B)(2), 12(B)(6) IN LIEU OF ANSWER
	)	

TO: PLAINTIFF ABOVE-NAMED AND HER ATTORNEY DANIEL SUMMA, ESQ.:

Defendant, CNT Foundations, LLC, by and through its undersigned counsel, files this *Motion to Stay Proceedings and Compel Arbitration* in lieu of an Answer pursuant to the South Carolina Uniform Arbitration Act ("SCUAA"), South Carolina Code § 15-48-20, and §§ 3 and 4 of the Federal Arbitration Act (the "FAA"), 9 U.S.C. § 1 *et seq.* AND Rules 12(b)(1-2),(6), SCRCF.

In support of its Motion, Plaintiff would respectfully show as follows:

1. Plaintiff voluntarily entered into a contract with Defendant which contains a binding arbitration provision. A true and accurate copy of that contract is attached hereto as **Exhibit A**.
2. That arbitration provision states, in relevant part,

IN THE EVENT DISPUTES CANNOT BE INFORMALLY RESOLVED, THEN ALL CLAIMS, CONTROVERSIES, OR DISPUTES, OTHER THAN FOR NONPAYMENT BY OWNER/OWNER'S REP OR AS STATED HEREIN, BETWEEN CONTRACTOR AND OWNER/OWNER'S REP ARISING OUT OF OR RELATING TO THIS CONTRACT, THE BREACH HEREOF, THE WORK PERFORMED HEREUNDER. OR OF ANY OTHER KIND, SHALL BE SETTLED BY ARBITRATION IN ACCORDANCE WITH THE CONSTRUCTION INDUSTRY ARBITRATION RULES OF THE AMERICAN

ARBITRATION ASSOCIATION ("AAA") OR SUCH OTHER ARBITRATION GROUP AS AGREED TO BY THE PARTIES.

DISPUTE RESOLUTION AND ARBITRATION, Pg. 3.

3. The arbitration provision in Plaintiff's contract is applicable to the claims in her Complaint.
4. SCUAA and the FAA both mandate a stay of legal proceedings if an agreement between the parties contains a binding arbitration provision. *See* 9 U.S.C. § 3; South Carolina Code § 15-48-20.
5. The mandatory arbitration provision divests this Court of jurisdiction over the dispute and parties. As a result, this Court lacks jurisdiction to hear this case and grant any relief to Plaintiff.
6. Defendant hereby demands and is entitled to arbitration pursuant to its contract with Plaintiff.

Defendant reserves the right to file a memorandum of law to the Court in advance of any hearing on this matter.

WHEREFORE, having fully set forth its *Motion to Stay Proceedings and Compel Arbitration and/or Dismiss Pursuant To Rules 12(B)(1), 12(B)(2), 12(B)(6) In Lieu Of Answer*, Defendant prays for the following relief:

- (a) An Order staying proceedings in this action and referring this matter to binding arbitration in accordance with Defendant's Contract and 9 U.S.C. § 3; South Carolina Code § 15-48-20.
- (b) An Order awarding Defendant reimbursement for all costs, expenses, and attorney's fees incurred as a result of this action; and

(c) For other such relief as the Court may deem just and proper.

FINKEL LAW FIRM LLC

s/ Dylan R. Glick
Charles A. Krawczyk (SC Bar #: 16832)
Dylan R. Glick (SC Bar #: 105210)
Post Office Box 1799 (Mailing Address)
1201 Main Street, Suite 1800 (Physical Address)
Columbia, South Carolina 29202
Email: ckrawczyk@finkellaw.com
Email: dglick@finkellaw.com
Phone: (803) 765-2935
Attorneys for the Defendant

Columbia, South Carolina
January 25, 2023



Residential Business License # 23096
General Contractors License # G 114384

3362 Navajo Street
N. Charleston, SC 29405
Office: 843-577-7268

**PORTIONS OF THIS AGREEMENT ARE SUBJECT TO ARBITRATION
PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION
ACT, § 15-48-10, S. C. CODE OF LAWS OF 1976, AS AMENDED**

This Agreement ("Agreement") is entered into by and between CNT Foundations, LLC ("Contractor") and Marka Rodgers ("Owner/Owner's Rep") relating to the property at 2107 Welch Ave Charleston, SC 29412 ("Property").

Estimate

Work specified in the attached document # 22543 in the amount of \$ 11,210 (Eleven Thousand, Two Hundred and Ten Dollars and Zero Cents)

will be performed. We are happy to perform other work not listed on the original estimate, "while we are there" but this work is not included in the original price and subject to charge.

Foundation work

Estimate does not cover any cracks or damage, including, but not limited to: (tile, sheetrock, countertops, wood trim, windows/doors), that may result from jacking, settling and/or any other work associated with the foundation stabilization. Contractor is also not responsible for hidden structural deficiencies. We are not responsible for underground items including, but not limited to, septic tanks, sprinkler systems, pipes and conduits, well pumps, filters, French drains, water proofing etc... Contractor is not responsible for any interior or exterior damage, to include but not limited to, sheet rock, plumbing, HVAC, electric systems, brick, finishes.... **Contractor guarantees stabilization. While attempts will be made to correct any inconsistencies, leveling of the structure is not guaranteed.** Contractor employees are not professional engineers. The recommendations and opinions herein are based on visual observations and Contractor experience with foundation repair and NOT based upon soils tests, surveys, blue prints or other technical reports, unless specifically addressed in the estimate document. Furthermore, Owner/Owner's Rep relies solely on the expertise of CNT Foundations to complete the work quoted in the estimate to the best of their capabilities based upon their experience in the foundation industry.

Limitations

Limitations to the work being performed in this Agreement include but are not limited to consequential damage to concrete, brick, mortar, sheetrock, wallpaper, paint, ridged materials, or furnishings as a result of stabilization. Due to the invasive nature of the work performed, the Owner/Owner's Rep indemnifies, holds harmless, and releases from all responsibility incidental damages including but not limited to; cracked concrete, driveways, sidewalks, hydraulic oil spills, ruts in the ground, and any and all other damages associated with the work. Separations in plumbing may exist prior to the work and /or may occur as a result of the work. The Owner/Owner's Rep releases CNT Foundations from all responsibility for damage to plumbing as a result of the work or consequential damages to the structure caused by plumbing leaks. CNT Foundations strongly recommends a hydrostatic plumbing test of all supply and waste systems immediately after repairs are completed. If bricks or mortar are repaired or replaced, contractor does not guarantee a match. The areas of the work are limited to that immediate portion of the foundation beam supported by a series of piers as indicated on the service plan beginning with the first pier and ending with the last pier. Plants that are affected by excavation may not survive. No warranty of any kind is extended to plant survival. The Owner/Owner's Rep may choose to hire a professional nurseryman to remove and replace plants in order to improve their chance of survival. The Owner/Owner's Rep releases CNT Foundations from all responsibility for



damages caused by pre-existing defects. Such defects may include, but are not limited to, insufficient steel or cable reinforcement, insufficient or weak concrete.

Moisture and Active Water Intrusion

Vapor Barriers and Encapsulation Systems are designed to only mitigate ambient moisture issues (water in vapor form), they are not designed to mitigate active water intrusion (water in liquid form). IF NO SUMP PUMP, DRAIN TILES OR OTHER PRODUCTS DESIGNED TO HANDLE LIQUID WATER ARE IN THE ATTACHED ESTIMATE, IT IS EXPLICITLY IMPLIED THAT THE CUSTOMER AND CNT HAVE JOINTLY DECIDED THAT THERE ISNT AN ACTIVE WATER INTRUSION ISSUE.

Active water intrusion mitigation methods have limitations, these systems are designed for normal seasonal rainfall and are not designed to handle Acts of God, Hurricanes, Floods, Excessive rainfalls, Deluge and all interpretations thereof.

Parameters of systems design are based upon the following published data:

Moderate rain — when the precipitation rate is between 2.5 mm (0.098 in) - **7.6 mm (0.30 in)** or **10 mm (0.39 in)** per hour. Heavy rain — when the precipitation rate is **> 7.6 mm (0.30 in)** per hour, or between **10 mm (0.39 in)** and **50 mm (2.0 in)** per hour. Monthly average of 5".

MDR

Payment

An initial payment of 50% is due upon Agreement signature. The balance is to be paid weekly as work progresses, based upon percentage of completion. Failure to make payment within 5 days will result in a stop work. All outstanding balances must be paid for work to resume. All invoices are to be paid upon receipt. Non Payment will result in a 1.5% monthly finance charge. Bounced checks will incur a \$30 fee. If customer cancels contract, a mobilization charge will be billed. No payments shall be made via standard mail. All payments must either be paid in person, whether it is picked up or dropped off, or by express tractable mail. If third party disputes arise (third party being defined as anyone other than Owner/Owner's Rep and authorized agent of Contractor), payments still must be made prior to the dispute and all disputes must be handled according to the disputes clause in this Agreement. If any disputes arise any and all discounts will be rescinded and billed at normal price, including any discounts given prior to Agreement signatures. CNT Foundations is authorized to charge your card whether there is a dispute or not and, Owner/Owner's Rep must pay within two (2) days once job is completed. Disputes cannot be used as reason to withhold payment.

MDR

There will be a 3% processing fee for all credit cards.

Financing

The contracted agrees to enter into this agreement, that if at any point before, during the duration of the job or after execution of this agreement, customer uses a prequalified application from Enerbank. Customer will sign Payment Release Form upon completion of work. This is an extension of uncollateralized credit and non-signatures upon completion of project will be treated as breach of contract.

MDR

Warranty

Limited Lifetime Warranty: The work performed is guaranteed against all defects in material and workmanship for the life of the structure. This warranty can be transferred to a new Owner/Owner's Rep. Written notice must be forwarded to CNT within 30 days of the sale. Should any movement occur in the area of repair on the location sketch-other than settlement or movement caused by earthquake, wind, flood, drought and other subsurface soil alterations, soil heave, landslide, slope creep, trees roots, hidden structural deficiencies, war, and acts of God-

CNT will at no cost, correct or adjust, any area of a given pier group that has experienced continued settlement/movement. If finishes have been applied in areas where warranty work is performed, Owner/Owner's Rep will be responsible for replacement of finishes. Only the area of repair starting at the first pier and extending to the last pier in a given group of piers is warranted. Non-piered areas spanning between groups of piers are not

MDR

CNT  Owner/Owner's Rep



warranted. CNT at its sole discretion may place temporary crack monitoring devices, equipment and/or benchmarks on any questioned area to determine the direction of movement. The foregoing is the sole and exclusive warranty.

ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED. OWNER/OWNER'S REPS' SOLE AND EXCLUSIVE REMEDY SHALL BE FOR CORRECTION OF ANY DEFECTS IN MATERIAL AND WORKMANSHIP. AS SET FORTH ABOVE. IN NO EVENT SHALL OWNER/OWNER'S REP BE ENTITLED TO CONSEQUENTIAL AND/OR INCIDENTAL DAMAGES, REGARDLESS OF WHETHER THE CLAIM IS BASED ON WARRANTY, CONTRACT, TORT, EQUITY OR OTHERWISE.

Piers are guaranteed for the life of the home. Warranty does not cover any cracks or damage including, but not limited to: tile, sheetrock, countertops, wood trim, windows/doors, that may result from jacking, settling and/or any other work associated with the foundation stabilization. CNT Foundations, LLC guarantees stabilization, while all attempts will be made to correct the inconsistencies as much as possible leveling of the structure is not guaranteed. Warranty is null and void if damage occurs as the result of renovations and/or repairs not contracted by CNT Foundations, LLC. Should a problem arise that does not fall into the above categories or any other unforeseen circumstance the cost of repairs rest solely upon CNT Foundations, LLC and no cost will be transferred to the original contracted.

DISPUTE RESOLUTION AND ARBITRATION

CONTRACTOR AND OWNER/OWNER'S REP WILL COOPERATE WITH ONE ANOTHER IN AVOIDING DISPUTES AND INFORMALLY RESOLVING DISPUTES BETWEEN THEM. IN THE EVENT DISPUTES CANNOT BE INFORMALLY RESOLVED, THEN ALL CLAIMS, CONTROVERSIES, OR DISPUTES, OTHER THAN FOR NONPAYMENT BY OWNER/OWNER'S REP OR AS STATED HEREIN, BETWEEN CONTRACTOR AND OWNER/OWNER'S REP ARISING OUT OF OR RELATING TO THIS CONTRACT, THE BREACH HEREOF, THE WORK PERFORMED HEREUNDER, OR OF ANY OTHER KIND, SHALL BE SETTLED BY ARBITRATION IN ACCORDANCE WITH THE CONSTRUCTION INDUSTRY ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION ("AAA") OR SUCH OTHER ARBITRATION GROUP AS AGREED TO BY THE PARTIES. JUDGMENT ON THE AWARD RENDERED BY THE ARBITRATOR SHALL BE FINAL AND BINDING, SHALL NOT BE APPEALABLE, AND MAY BE ENTERED IN ANY COURT HAVING JURISDICTION. AAA FAST TRACK ARBITRATION SHALL BE USED IF POSSIBLE AND THE ARBITRATION SHALL BE CONDUCTED BY ONLY ONE (1) ARBITRATOR UNLESS ALL PARTIES AGREE OTHERWISE OR THE AAA REFUSES TO GO FORWARD WITH JUST ONE (1) ARBITRATOR. THE ARBITRATION PROCEEDING SHALL BE CONDUCTED IN CHARLESTON COUNTY, SC, BEFORE A NEUTRAL ARBITRATOR WHO HAS SUBSTANTIAL EXPERIENCE IN THE SUBJECT MATTER OF THE DISPUTE. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, CONTRACTOR MAY FILE (I) A MECHANIC'S LIEN, (II) A JUDICIAL PROCEEDING AGAINST OWNER/OWNER'S REP FOR NONPAYMENT, AND/OR (III) AN EQUITABLE JUDICIAL PROCEEDING AGAINST OWNER/OWNER'S REP FOR AN INJUNCTION OR SPECIFIC PERFORMANCE OF ANY BREACH OR UNLAWFUL ACTION IN CONNECTION WITH ANY OBLIGATIONS HEREUNDER; AND SUCH SHALL NOT CONSTITUTE A WAIVER OF CONTRACTOR'S RIGHT TO COMPEL ALL CLAIMS THAT MAY BE ASSERTED AGAINST IT TO BE ARBITRATED. ALL COSTS AND EXPENSES OF ARBITRATION, INCLUDING CNT FOUNDATION, LLC'S ATTORNEYS' FEES, SHALL BE PAID BY OWNER/OWNER'S REP.

MISCELLANEOUS

If the customer cancels there is a fee for termination of contract equaling 20% of the contract price.

Notwithstanding anything to the contrary herein, all amounts due and payable hereunder shall also be subject to an interest charge of eighteen (18 %) percent per annum, or the maximum allowed by law, compounded monthly, until paid in full.

If Contractor is required to retain an attorney or collection agency to enforce any provision of this Agreement, Owner/Owner's Rep shall pay all of Contractor's reasonable costs and expenses relating thereto, including, but not limited to, collection fees, attorneys' fees and costs, expert witness fees, arbitration fees and court fees, regardless of



whether at trial, on appeal, in any bankruptcy proceeding, in an arbitration or without commencement of a legal proceeding. The parties agree that if a court holds any part, term, or provision of this Agreement to be illegal or in conflict with any law of the state where made, the validity of the remaining portions or provisions will not be affected, and the rights and obligations of the parties will be constructed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

In consideration of the Contractor extending credit to the Owner/Owner's Rep and at the Owner/Owner's Rep's request, the Owner/Owner's Rep hereby personally guarantees payment to the Contractor of any obligation and hereby agrees to bind the Owner/Owner's Rep to pay the Contractor on demand any sum which may become due to the Contractor.

Owner/Owner's Rep represents and certifies that he is the sole fee simple Owner/Owner's Rep of the Property and accordingly is fully empowered to execute this Agreement. Further, the Owner/Owner's Rep hereby authorizes the Contractor to do the work specified herein. This Agreement and any dispute concerning this Agreement shall be decided pursuant to the laws of South Carolina. This Agreement sets forth the entire understanding between the parties and supersedes all previous agreements, arrangements and understandings between the parties, whether oral or written, pertaining to the representation contracted for herein.

The captions and headings used in this Agreement are for convenience only and do not in any way limit, amplify, or otherwise modify the provisions of this Agreement. Any reference to this instrument to the singular shall include the plural, and vice versa. Any reference to one gender shall include the others, including the neuter.

All agreements contingent upon strikes, accidents, and/or delays beyond our control

CNT Foundations reserves the right to cancel this contract at any time.

PHOTOGRAPHY/VIDEO RELEASE

Owner/Owner's Rep will allow CNT Foundations to take during and after photos of their work products.

Initial Beside Each Line:

1. MDR Additional Footage will be billed at \$ 22 / linear feet after an average 30 feet, in 7' increments.
2. MDR Excavations greater than 3 feet in depth will be billed at \$100.00 per vertical linear foot. This applies to the excavations needed to expose the footings for the installation of helical piers.
3. MDR Buried obstructions such as excessive tree roots, overpoured concrete, hard pan soils, railroad ties, lawnmowers, tractor trailer tires and any other unforeseen obstruction that causes delays in the excavation process will be billed at \$250.00 per hour. This applies to the excavations needed to expose the footings for the installation of helical piers.
4. MDR Final payment or signed Enerbank form to be given at time of completion to the team leader assigned to your job
5. MDR Stabilization is guaranteed. While attempts will be made, level and crack closure are not guaranteed.
6. MDR No Charge Items are not cause for withholding payment

MDR I have had the option to negotiate and change this contract



CNT Foundations, LLC: Fida Wheeler Date 7.20.21
Owner/Owner's Rep: MDR Printed Name: Marka Danielle Rodgers Date July 20, 2021

ELECTRONICALLY FILED - 2023 Jan 25 3:22 PM - CHARLESTON - COMMON PLEAS - CASE#2022CP1005916

CNT Fida Wheeler Owner/Owner's Rep MDR

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
	)	CASE NUMBER: 2022-CP-10-05916
MARKA DANIELLE RODGERS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	MEMO IN OPPOSITION TO
CNT FOUNDATIONS,	)	DEFENDANT'S MOTION TO COMEPL
	)	ARBITRATION
Defendant.	)	
	)	

Plaintiff respectfully opposes the Defendant's motion to compel arbitration because the arbitration clause's requirement that a homeowner pay all costs and attorney's fees in arbitration is so one-sided and oppressive as to render the arbitration clause unconscionable.

STANDARD OF REVIEW

SC Code § 15-48-2(a) states in relevant part that if a party "denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue so raised and shall order arbitration if found for the moving party, otherwise, the application shall be denied."

To question the validity of an arbitration agreement on the grounds of unconscionability is to deny its existence for the purposes of § 15-48-2(a). *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 23–24 (2007).

"General contract principles of state law apply in a court's evaluation of the enforceability of an arbitration clause." *Simpson*, at 24 (citing *Munoz v. Green Tree Financial Corp.*, 343 S.C. 531, 539 (2001)).

RELEVANT LAW

“Unconscionability has been recognized as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them.” *Carolina Care Plan, Inc. v. United HealthCare Servs., Inc.*, 361 S.C. 544, 554 (2004) (citing *Fanning v. Fritz's Pontiac–Cadillac–Buick, Inc.*, 322 S.C. 399, 403, (1996)). Whether a contract is unconscionable depends on all the facts and circumstances of a particular case. *Holler v. Holler*, 364 S.C. 256, 269 (Ct.App.2005).

If a court as a matter of law finds that a contract or clause therein to be unconscionable the court may refuse to enforce the contract or may enforce the remainder thereof without the unconscionable clause. SC Code § 36-2-302(a).

Absence of meaningful choice “generally speaks to the fundamental fairness of the bargaining process in the contract at issue.” *Simpson*, at 25. In determining the absence of meaningful choice, “courts should consider, *inter alia*, the relative disparity in the parties’ bargaining power, the parties’ relative sophistication, whether the parties were presented by independent counsel, and whether the plaintiff is a substantial business concern.” *Smith v. D.R. Horton, Inc.*, 417 S.C. 42, 49 (2016) (quoting *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 541 (2001) (internal quotation marks omitted).

Contracts of adhesion are standard form contracts offered on a “take-it-or-leave-it” basis with terms that are not negotiable. *Simpson*, at 26-27 (citing *Munoz* at 541). While not per se unreasonable, contracts of adhesion are viewed with “considerable skepticism because they give rise to considerable doubt that any true agreement ever existed to submit disputes to arbitration.” *Smith* at 49 (quoting *Simpson*, at 26-27).

ARGUMENT

Plaintiff lacked meaningful choice in entering into this arbitration agreement. The agreement was formed between a homeowner and a foundation repair company billing themselves as “foundation experts” whose website features a prominent “lifetime warranty” emblem.¹ Plaintiff is unsophisticated as to the requested repair work and holds unequal bargaining power compared to this foundation repair company. See *Kennedy v. Columbia Lumber & Mfg. Co.*, 299 S.C. 335, 343 (1989) (holding that “a modern buyer of new residential housing is normally in an unequal bargaining position against the seller.”); *Sapp v. Ford Motor Co.*, 386 S.C. 143, 147-48 (2009) (“courts have shifted from following the doctrine of *caveat emptor* (‘let the buyer beware’) to the doctrine of *caveat venditor* (‘let the seller beware’)”). The agreed-upon work was especially important to Plaintiff, as she is wheelchair-dependent and her foundation problems made remaining in a static position difficult, frustrating everyday tasks like chopping vegetables.

The terms of this arbitration agreement are oppressive and one-sided on their face, as it requires the homeowner to pay the legal fees of both parties in arbitration regardless of who prevails. The agreement provides that “All costs and expenses of arbitration, including CNT Foundation, LLC’s attorneys’ fees, shall be paid by Owner/Owner’s rep.” (original in all caps). Thus, even if Plaintiff were to recover the entire amount of the contract (approximately \$11,000), she might end up losing money to support Defendant’s legal expenses in asserting a meritless defense.

In other states, one-sided attorney fee arrangements such as the instant one have been held unconscionable. In *Sosa v. Paulos*, 924 P.2d 357 (Utah 1996), a patient who underwent knee surgery was required to sign an arbitration agreement. Under the agreement, if the

¹ <https://yourfoundationexperts.com>

arbitrator awarded the patient less than half of his/her initially-sought amount, the patient would be responsible for the doctor's attorneys' fees along with arbitration fees and other costs. The Court, separately from its consideration of contract formation process, found the clause to be wholly unconscionable, stating "[w]e find no precedent in law for the award of attorney fees to the loser in malpractice arbitration, and we hold that such a contractual term embedded in a non-negotiated agreement is not only substantively unconscionable but against public policy." *Id* at 362. See also *Carmona v. Lincoln Millennium Car Wash, Inc.*, 226 Cal.App.4th 74, 88 (Cal. Ct. App. 2014) (holding that a one sided attorney fee provision was "oppressively one-sided and unenforceable as written"); *Ajamian v. CantorCO2e, L.P.*, 203 Cal.App.4th 771, 799 (Cal. Ct. App. 2012) (a clause requiring an employee but not an employer to pay both parties' attorneys' fees unconscionable because it was not mutual).

In conclusion, the arbitration agreement, if upheld, would require one party to shoulder arbitration's entire cost while essentially allowing the Defendant to litigate the claim for free even if their Defense is found to be meritless. Such an agreement is unconscionable in that it is one sided and oppressive, and the unequal bargaining power and sophistication between the parties deprived Plaintiff of a meaningful choice. Thus, the Plaintiff respectfully requests that the Court deny arbitration or reform the agreement to exclude the attorney's fee provision.

Respectfully submitted,

/s/ Daniel Summa

Daniel Summa
Attorney for the Plaintiff
Summa Law Firm, LLC
3 Broad Street, #301
Charleston, SC 29401

Page 4 of 5

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February 8, 2023
Charleston, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
	)	CASE NUMBER: 2022-CP-10-05916
MARKA DANIELLE RODGERS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	AMENDED MEMO IN OPPOSITION TO
CNT FOUNDATIONS,	)	DEFENDANT'S MOTION TO COMEPL
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Defendant.	)	
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RELEVANT LAW

“Unconscionability has been recognized as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them.” *Carolina Care Plan, Inc. v. United HealthCare Servs., Inc.*, 361 S.C. 544, 554 (2004) (citing *Fanning v. Fritz's Pontiac–Cadillac–Buick, Inc.*, 322 S.C. 399, 403, (1996)). Whether a contract is unconscionable depends on all the facts and circumstances of a particular case. *Holler v. Holler*, 364 S.C. 256, 269 (Ct.App.2005).

If a court as a matter of law finds that a contract or clause therein to be unconscionable the court may refuse to enforce the contract or may enforce the remainder thereof without the unconscionable clause. SC Code § 36-2-302(a).

Absence of meaningful choice “generally speaks to the fundamental fairness of the bargaining process in the contract at issue.” *Simpson*, at 25. In determining the absence of meaningful choice, “courts should consider, *inter alia*, the relative disparity in the parties’ bargaining power, the parties’ relative sophistication, whether the parties were presented by independent counsel, and whether the plaintiff is a substantial business concern.” *Smith v. D.R. Horton, Inc.*, 417 S.C. 42, 49 (2016) (quoting *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 541 (2001) (internal quotation marks omitted).

Contracts of adhesion are standard form contracts offered on a “take-it-or-leave-it” basis with terms that are not negotiable. *Simpson*, at 26-27 (citing *Munoz* at 541). While not per se unreasonable, contracts of adhesion are viewed with “considerable skepticism because they give rise to considerable doubt that any true agreement ever existed to submit disputes to arbitration.” *Smith* at 49 (quoting *Simpson*, at 26-27).

ARGUMENT

Plaintiff lacked meaningful choice in entering into this arbitration agreement. The agreement was formed between a homeowner and a foundation repair company billing themselves as “foundation experts” whose website features a prominent “lifetime warranty” emblem.¹ Plaintiff is unsophisticated as to the requested repair work and holds unequal bargaining power compared to this foundation repair company. See *Kennedy v. Columbia Lumber & Mfg. Co.*, 299 S.C. 335, 343 (1989) (holding that “a modern buyer of new residential housing is normally in an unequal bargaining position against the seller.”); *Sapp v. Ford Motor Co.*, 386 S.C. 143, 147-48 (2009) (“courts have shifted from following the doctrine of *caveat emptor* (‘let the buyer beware’) to the doctrine of *caveat venditor* (‘let the seller beware’)”). The agreed-upon work was especially important to Plaintiff, as she is wheelchair-dependent and her foundation problems made remaining in a static position difficult, frustrating everyday tasks like chopping vegetables.

The terms of this arbitration agreement are oppressive and one-sided on their face, as it requires the homeowner to pay the legal fees of both parties in arbitration regardless of who prevails. The agreement provides that “All costs and expenses of arbitration, including CNT Foundation, LLC’s attorneys’ fees, shall be paid by Owner/Owner’s rep.” (original in all caps). Thus, even if Plaintiff were to recover the entire amount of the contract (approximately \$11,000), she might end up losing money to support Defendant’s legal expenses in asserting a meritless defense.

In other states, one-sided attorney fee arrangements such as the instant one have been held unconscionable. In *Sosa v. Paulos*, 924 P.2d 357 (Utah 1996), a patient who underwent knee surgery was required to sign an arbitration agreement. Under the agreement, if the

¹ <https://yourfoundationexperts.com>

arbitrator awarded the patient less than half of his/her initially-sought amount, the patient would be responsible for the doctor's attorneys' fees along with arbitration fees and other costs. The Court, separately from its consideration of contract formation process, found the clause to be wholly unconscionable, stating "[w]e find no precedent in law for the award of attorney fees to the loser in malpractice arbitration, and we hold that such a contractual term embedded in a non-negotiated agreement is not only substantively unconscionable but against public policy." *Id* at 362. See also *Carmona v. Lincoln Millennium Car Wash, Inc.*, 226 Cal.App.4th 74, 88 (Cal. Ct. App. 2014) (holding that a one sided attorney fee provision was "oppressively one-sided and unenforceable as written"); *Ajamian v. CantorCO2e, L.P.*, 203 Cal.App.4th 771, 799 (Cal. Ct. App. 2012) (a clause requiring an employee but not an employer to pay both parties' attorneys' fees unconscionable because it was not mutual).

In conclusion, the arbitration agreement, if upheld, would require one party to shoulder arbitration's entire cost while essentially allowing the Defendant to litigate the claim for free even if their Defense is found to be meritless. Such an agreement is unconscionable in that it is one sided and oppressive, and the unequal bargaining power and sophistication between the parties deprived Plaintiff of a meaningful choice. Thus, the Plaintiff respectfully requests that the Court deny arbitration or reform the agreement to exclude the arbitration costs provision.

Respectfully submitted,

/s/ Daniel Summa

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September 6, 2023
Charleston, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
Marka Danielle Rodgers,	)	
	)	CASE NO.: 2022-CP-10-05916
Plaintiff.	)	
	)	
Vs.	)	
	)	DEFENDANT’S MEMORANDUM IN
CNT Foundations, LLC,	)	SUPPORT OF THE MOTION TO STAY
	)	PROCEEDINGS AND COMPEL
	)	ARBITRATION AND/OR DISMISS
Defendant.	)	PURUSANT TO RULES 12(B)(1), 12(B)(2),
	)	12(B)(6) IN LIEU OF ANSWER

Defendant, CNT Foundations, LLC, by and through its undersigned counsel, files this *Motion in Support of Defendant’s Motion to Stay Proceedings and Compel Arbitration* in lieu of an Answer pursuant to the South Carolina Uniform Arbitration Act (“SCUAA”), South Carolina Code § 15-48-20, and §§ 3 and 4 of the Federal Arbitration Act (the “FAA”), 9 U.S.C. § 1 *et seq.*

Factual and Procedural History

Defendant entered into a service contract (hereinafter the “Contract”) with Plaintiff on July 20, 2021 to perform construction work to stabilize Plaintiff’s foundation. Defendant completed the work per the terms of the Contract, but Plaintiff did not want to make final payment as agreed upon in the Contract. Plaintiff, instead, filed a Summons & Complaint in the Magistrate Court in Charleston County. Defendant filed an Answer in that action asserting the Arbitration provision of the contract. When Plaintiff’s counsel was informed of the jurisdictional limit of that forum, he dismissed that action and filed this action in the Court of Common Pleas on or about December 27, 2022. In response to those pleadings, Defendant filed a *Motion to Stay Proceedings and Compel Arbitration* in lieu of an Answer, or, in the alternative, Motion to Dismiss. In response to

Defendant's Motion, Plaintiff filed a *Memorandum of Law in Opposition* to Defendant's motion. As the Court will see the arbitration provisions in this contract have already been challenged in Charleston County Circuit Court under the exact circumstances and have been held as enforceable.

Argument

Pursuant to the South Carolina Uniform Arbitration Act (hereinafter "UAA"), if one party denies the existence of an arbitration agreement, a court must "immediately determine whether the agreement exists." *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 21 (2007). Here, the contract entered into between Defendant and Plaintiff was a standard form contract consistently used in Defendant's business transactions. The Contract states in capitalized and underlined text, in relevant part:

IN THE EVENT DISPUTES CANNOT BE INFORMALLY RESOLVED, THEN ALL CLAIMS, CONTROVERSIES, OR DISPUTES, OTHER THAN FOR NONPAYMENT BY OWNER/OWNER'S REP OR AS STATED HEREIN, BETWEEN CONTRACTOR AND OWNER/OWNER'S REP ARISING OUT OF OR RELATING TO THIS CONTRACT, THE BREACH HEREOF, THE WORK PERFORMED HEREUNDER. OR OF ANY OTHER KIND, SHALL BE SETTLED BY ARBITRATION IN ACCORDANCE WITH THE CONSTRUCTION INDUSTRY ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION ("AAA") OR SUCH OTHER ARBITRATION GROUP AS AGREED TO BY THE PARTIES.

DISPUTE RESOLUTION AND ARBITRATION, Pg. 3.

In determining whether an agreement to arbitrate exists, "the court should apply 'ordinary state-law principles that govern the formation of contracts.'" *Johnson v. Circuit City Stores*, 148 F.3d 373, 377 (4th Cir. 1998) (quoting *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944, 131 L. Ed. 2d 985, 115 S. Ct. 1920 (1995)).

The South Carolina Uniform Arbitration Act (UAA) provides that in any contract evidencing a transaction involving commerce, a written provision to settle by arbitration shall be

valid, irrevocable, and enforceable. S.C. Code Ann. § 15-48-10(a) (2005). Notice must be provided on the first page of a contract that creates an arbitration agreement pursuant to S.C. Code Ann. Title on the first page of the contract. Id. Unless a court can say with positive assurance that the arbitration clause is not susceptible to an interpretation that covers the dispute, arbitration should generally be ordered. Zabinski v. Bright Acres Assocs., 346 S.C. at 597, 553 S.E.2d at 118 (2001).

Additionally, per the South Carolina Supreme Court, adhesions contracts have not been found to be per se unconscionable, even in situations wherein signees were not advised that it was included in the contract. Munoz v. Green Tree Fin. Corp., 542 S.E.2d 360, 343 S.C. 531 (2001). Generally, an adhesion contract is a standard form contract offered on a take-it or leave-it basis with terms that are not negotiable. Lackey v. Green Tree Fin. Corp., 330 S.C. 388, 498 S.E.2d 898 (Ct. App. 1998). Under state law, an adhesion contract is not per se unconscionable. Fanning v. Fritz's Pontiac-Cadillac-Buick, Inc., 322 S.C. 399, 472 S.E.2d 242 (1996).

In addition to S.C. Code Ann. Title 15, The Federal Arbitration Act ("FAA"), 9 U.S.C. § § 1-16, provides that "[a] written provision in any . . . contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such a contract or transaction . . . shall be valid, irrevocable, [*7] and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. Unless the parties have contracted to the contrary, the FAA applies in federal or state courts to any arbitration agreement regarding a transaction that involves interstate commerce, regardless of whether or not the parties contemplated an interstate transaction." Munoz 542 S.E.2d at 364.

The FAA reflects an "emphatic federal policy in favor of arbitral dispute resolution." KPMG LLP v. Cocchi, 565 U.S. 18, 21, 132 S. Ct. 23, 25 (2011) (internal quotations omitted). As the United States Supreme Court has observed, "[t]he preeminent concern of Congress in passing the Act was to enforce private agreements into which parties had entered, a concern which requires that we rigorously enforce agreements to arbitrate." Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 413 U.S. 614, 625-26, 105 S. Ct. 3346, 3353 (1985) (internal quotations omitted).

Likewise, the South Carolina appellate courts have consistently recognized that there is "a strong presumption in favor of the validity of arbitration agreements" arising from "the strong policy favoring arbitration" under both federal and state law. See Towles v. United Healthcare Corp., 524 S.E.2d 839, 844 (S.C. Ct. App. 1999). As the South Carolina Supreme Court summarized in the 2014 opinion in *Dean v. Heritage Healthcare*:

"[T]he basic purpose of the [FAA] is to overcome courts' refusals to enforce agreements to arbitrate," Allied-Bruce Terminix Cos. v. Dobson, 513 U.S. 265, 270, 115 S.Ct. 834, 130 L.Ed.2d 753 (1995), and ensure that arbitration will proceed in the event a state law would have a preclusive effect on an otherwise valid arbitration agreement. To that end, the United States Supreme Court held in Allied-Bruce that, unless the parties specifically contracted otherwise, the FAA would apply whenever an **arbitration** agreement involves interstate commerce. 513 U.S. at 273-77, 115 S. Ct. 834. Moreover, the Supreme Court clarified that the reach of interstate commerce-and thus the FAA-was coextensive with the broad reach of the Commerce Clause. Allied-Bruce, 513 U.S. at 277, 115 (S.C. Ct. 834.) Thus, in practice, arbitration agreements enjoy a strong presumption of validity in federal and state courts.

Dean v. Heritage Healthcare of Ridgeway, LLC, 759 S.E.2d 727, 731-32 (2014) (S.C. citations omitted); see also Landers v. FDIC, 739 S.E.2d 209, 214 (S.C. 2013) ("The heavy presumption of arbitrability requires that when the scope of the arbitration clause is open to question, a court must decide the question in favor of arbitration." (internal citations omitted)).

Plaintiff has not contended that any issue exists within the arbitration agreement under S.C. Code Ann. Title 15, but merely that the Contract was an adhesion contract, that its terms are unconscionable, and that Plaintiff was not presented with opportunity to negotiate the terms of the Contract. Contrary to Plaintiff's assertion that Plaintiff was not presented with the opportunity to negotiate any terms of the contract, the Contract, attached hereto as **Exhibit A**, clearly shows a portion of the standard form contract on Page 4 of the same at the bottom of the page reads, in relevant part, with Plaintiff's initials affixed thereto:

MDR I have had the option to negotiate and change this contract

Plaintiff had not only the opportunity to have meaningful input regarding the contract but had the most meaningful input of either party. In fact, Defendant regularly alters the terms of its contracts based on potential customer suggestions. The foundation repair business is a crowded and highly competitive business and Defendant routinely changes terms of the contract to be competitive in getting jobs. Plaintiff actively sought out this contract with Defendant, despite the numerous other options readily available to Plaintiff in the form of other such companies that perform just this manner of construction work. "In determining whether a contract was "tainted by an absence of meaningful choice", courts should take into account: 1) the nature of the injuries suffered by the plaintiffs; 2) whether plaintiff is a substantial business concern; 3) the relative

disparity in the parties bargaining power; 4) the parties' relative sophistication; 5) whether there is an element of surprise in the inclusion of the challenged clause; and 6) the conspicuousness of the clause." *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 25 (2007).

This case, however, is readily distinguishable from *Simpson*. In *Simpson*, the Court relied heavily on the one-sided provisions found within the contract at issue that are simply not at issue here. There, the arbitration clause provided for such things as, "[i]n no event shall the arbitrator be authorized to award punitive, exemplary, double, or treble damages (or any other damages which are punitive in nature or effect) against either party." *Id.* 28. The Court concluded that, "we find the provision prohibiting double and treble damages to be oppressive, one-sided, and not geared toward achieving an unbiased decision by a neutral decision-maker." *Id.* 30.

Rather, the facts of this case are similar to the facts found in Munoz. There, the Munozes entered into an installment contract and security agreement to finance home improvements secured by a mortgage on their home. The Munozes brought action against Defendant Creditor ("Creditor") alleging that they had been overcharged for materials and work performed, unconscionable practices, and unfair trade practices among others. The Creditor moved to compel arbitration pursuant to an arbitration clause in the contract. The arbitration clause in Munoz also allowed Creditor to retain the option to use judicial or non-judicial relief as they saw fit but did not afford the same option to the Munozes. Further, the contract in Munoz was determined to be an adhesion contract, but the South Carolina Supreme Court held that the provision therein was not invalidated due to that fact. Further, a person who can read is bound to read an agreement before signing it. Hood v. Life & Cas. Ins. Co. of Tennessee, 173 S.C. 139, 175 S.E. 76 (1934).

The Munozes went on to contend that the arbitration clause was invalid due to the lack of mutuality because it allowed Creditor to seek foreclosure on the mortgage and denied the Munozes the opportunity to litigate any counterclaim in said foreclosure action. The South Carolina Supreme Court held that “[a]n agreement providing for arbitration does not determine the remedy for a breach of contract but only the forum in which the remedy for the breach is determined.” Ex parte McNaughton, 728 So. 2d 592, 598 (Ala. 1998). As such, the Munozes were not deprived of a remedy, but merely had to seek such a remedy through arbitration. The Court further noted that the language in the arbitration clause did not hinder the Munozes from being able to defend any action brought against them by the Creditor.

Here, the arbitration clause at issue allows for all traditional remedies to be afforded to the moving party and contains a provision for attorney’s fees merely for the purpose of discouraging frivolous, wrongful actions. For example, this clause would still allow for such things as punitive or otherwise increased levels of damages from actual damages should Defendant have been found to have acted in a manner befitting such remedies, and thus ensuring that an individual in Plaintiff’s shoes would be made whole. Furthermore, here, the Plaintiff, in no uncertain terms and with initials affixed thereto, did acknowledge that Plaintiff had the opportunity to both negotiate and change the contract. As such, it is clear that Plaintiff, as is affirmed by Plaintiff herself, entered into the legally binding Contract, including the inconspicuous and duly emphasized arbitration clause, knowingly, intelligently, and voluntarily with due opportunity to negotiate and change the Contract.

Prior Rulings of this Court

While not binding upon the Court, the arbitration provision in the exact contract under the exact factual dispute with another Plaintiff was upheld by the Honorable Bently Price in the Charleston Court of Common Pleas in an Order dated August 15, 2023 in the case of *Sue Kornegay v. CNT Foundations LLC Civil Action No. 2022-CP-10-03418* (order attached as **Exhibit B**). In the Kornegay case the Plaintiff disputed the arbitration provision in the standard CNT Contract. That Contract is attached hereto as **Exhibit C**. Ms. Kornegay filed a memorandum of law and at the hearing of the motion argued the exact defenses which Plaintiff set forth in her memorandum. The defenses included that the Contract was unconscionable, lacked meaningful choice, and the terms (including the attorney fee provision) were oppressive and one-sided. Ms. Kornegay cited all the same cases as Plaintiff and made the same pleas. In the Order, on the motion to compel arbitration Judge Price held that.

“After reviewing the briefs filed by both parties and considering arguments made at the hearing, the Court finds the arbitration provision contained in Plaintiff’s contract with Defendant complies with the requirements set forth in S.C. Code Ann § 15-48-10 et. seq. and is therefore valid and enforceable.

While this ruling does not bind the Court in this matter, the facts and contracts are identical as are the arguments put forth by Plaintiffs’ counsel and should offer the Court persuasive argument in favor of granting Defendant’s Motion to enforce Arbitration consistent with other court rulings on the Contract.

Conclusion

Defendant’s Motion to Stay Proceedings and Compel Arbitration should be granted because South Carolina law and federal law alike establish a strong presumption in favor of

arbitration, there is no question as to the enforceability of Defendant's arbitration clause under South Carolina Law, and Plaintiff's claims of unconscionability are unfounded.

FINKEL LAW FIRM LLC

s/ Charles A. Krawczyk

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Attorneys for the Defendant

Columbia, South Carolina
September 7, 2023



Residential Business License # 23096
General Contractors License # G 114384

3362 Navajo Street
N. Charleston, SC 29405
Office: 843-577-7268

**PORTIONS OF THIS AGREEMENT ARE SUBJECT TO ARBITRATION
PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION
ACT, § 15-48-10, S. C. CODE OF LAWS OF 1976, AS AMENDED**

This Agreement ("Agreement") is entered into by and between CNT Foundations, LLC ("Contractor") and Marka Rodgers ("Owner/Owner's Rep") relating to the property at 2107 Welch Ave Charleston, SC 29412 ("Property").

Estimate

Work specified in the attached document # 22543 in the amount of \$ 11,210 (Eleven Thousand, Two Hundred and Ten Dollars and Zero Cents)

will be performed. We are happy to perform other work not listed on the original estimate, "while we are there" but this work is not included in the original price and subject to charge.

Foundation work

Estimate does not cover any cracks or damage, including, but not limited to: (tile, sheetrock, countertops, wood trim, windows/doors), that may result from jacking, settling and/or any other work associated with the foundation stabilization. Contractor is also not responsible for hidden structural deficiencies. We are not responsible for underground items including, but not limited to, septic tanks, sprinkler systems, pipes and conduits, well pumps, filters, French drains, water proofing etc... Contractor is not responsible for any interior or exterior damage, to include but not limited to, sheet rock, plumbing, HVAC, electric systems, brick, finishes.... **Contractor guarantees stabilization. While attempts will be made to correct any inconsistencies, leveling of the structure is not guaranteed.** Contractor employees are not professional engineers. The recommendations and opinions herein are based on visual observations and Contractor experience with foundation repair and NOT based upon soils tests, surveys, blue prints or other technical reports, unless specifically addressed in the estimate document. Furthermore, Owner/Owner's Rep relies solely on the expertise of CNT Foundations to complete the work quoted in the estimate to the best of their capabilities based upon their experience in the foundation industry.

Limitations

Limitations to the work being performed in this Agreement include but are not limited to consequential damage to concrete, brick, mortar, sheetrock, wallpaper, paint, ridged materials, or furnishings as a result of stabilization. Due to the invasive nature of the work performed, the Owner/Owner's Rep indemnifies, holds harmless, and releases from all responsibility incidental damages including but not limited to; cracked concrete, driveways, sidewalks, hydraulic oil spills, ruts in the ground, and any and all other damages associated with the work. Separations in plumbing may exist prior to the work and /or may occur as a result of the work. The Owner/Owner's Rep releases CNT Foundations from all responsibility for damage to plumbing as a result of the work or consequential damages to the structure caused by plumbing leaks. CNT Foundations strongly recommends a hydrostatic plumbing test of all supply and waste systems immediately after repairs are completed. If bricks or mortar are repaired or replaced, contractor does not guarantee a match. The areas of the work are limited to that immediate portion of the foundation beam supported by a series of piers as indicated on the service plan beginning with the first pier and ending with the last pier. Plants that are affected by excavation may not survive. No warranty of any kind is extended to plant survival. The Owner/Owner's Rep may choose to hire a professional nurseryman to remove and replace plants in order to improve their chance of survival. The Owner/Owner's Rep releases CNT Foundations from all responsibility for



damages caused by pre-existing defects. Such defects may include, but are not limited to, insufficient steel or cable reinforcement, insufficient or weak concrete.

Moisture and Active Water Intrusion

Vapor Barriers and Encapsulation Systems are designed to only mitigate ambient moisture issues (water in vapor form), they are not designed to mitigate active water intrusion (water in liquid form). IF NO SUMP PUMP, DRAIN TILES OR OTHER PRODUCTS DESIGNED TO HANDLE LIQUID WATER ARE IN THE ATTACHED ESTIMATE, IT IS EXPLICITLY IMPLIED THAT THE CUSTOMER AND CNT HAVE JOINTLY DECIDED THAT THERE ISNT AN ACTIVE WATER INTRUSION ISSUE.

Active water intrusion mitigation methods have limitations, these systems are designed for normal seasonal rainfall and are not designed to handle Acts of God, Hurricanes, Floods, Excessive rainfalls, Deluge and all interpretations thereof.

Parameters of systems design are based upon the following published data:

Moderate rain — when the precipitation rate is between 2.5 mm (0.098 in) - **7.6 mm (0.30 in)** or **10 mm (0.39 in)** per hour. Heavy rain — when the precipitation rate is **> 7.6 mm (0.30 in)** per hour, or between **10 mm (0.39 in)** and **50 mm (2.0 in)** per hour. Monthly average of 5".

MDR

Payment

An initial payment of 50% is due upon Agreement signature. The balance is to be paid weekly as work progresses, based upon percentage of completion. Failure to make payment within 5 days will result in a stop work. All outstanding balances must be paid for work to resume. All invoices are to be paid upon receipt. Non Payment will result in a 1.5% monthly finance charge. Bounced checks will incur a \$30 fee. If customer cancels contract, a mobilization charge will be billed. No payments shall be made via standard mail. All payments must either be paid in person, whether it is picked up or dropped off, or by express tractable mail. If third party disputes arise (third party being defined as anyone other than Owner/Owner's Rep and authorized agent of Contractor), payments still must be made prior to the dispute and all disputes must be handled according to the disputes clause in this Agreement. If any disputes arise any and all discounts will be rescinded and billed at normal price, including any discounts given prior to Agreement signatures. CNT Foundations is authorized to charge your card whether there is a dispute or not and, Owner/Owner's Rep must pay within two (2) days once job is completed. Disputes cannot be used as reason to withhold payment.

MDR

There will be a 3% processing fee for all credit cards.

Financing

The contracted agrees to enter into this agreement, that if at any point before, during the duration of the job or after execution of this agreement, customer uses a prequalified application from Enerbank. Customer will sign Payment Release Form upon completion of work. This is an extension of uncollateralized credit and non-signatures upon completion of project will be treated as breach of contract.

MDR

Warranty

Limited Lifetime Warranty: The work performed is guaranteed against all defects in material and workmanship for the life of the structure. This warranty can be transferred to a new Owner/Owner's Rep. Written notice must be forwarded to CNT within 30 days of the sale. Should any movement occur in the area of repair on the location sketch-other than settlement or movement caused by earthquake, wind, flood, drought and other subsurface soil alterations, soil heave, landslide, slope creep, trees roots, hidden structural deficiencies, war, and acts of God-

CNT will at no cost, correct or adjust, any area of a given pier group that has experienced continued settlement/movement. If finishes have been applied in areas where warranty work is performed, Owner/Owner's Rep will be responsible for replacement of finishes. Only the area of repair starting at the first pier and extending to the last pier in a given group of piers is warranted. Non-piered areas spanning between groups of piers are not

MDR

CNT  Owner/Owner's Rep



warranted. CNT at its sole discretion may place temporary crack monitoring devices, equipment and/or benchmarks on any questioned area to determine the direction of movement. The foregoing is the sole and exclusive warranty.

ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED. OWNER/OWNER'S REPS' SOLE AND EXCLUSIVE REMEDY SHALL BE FOR CORRECTION OF ANY DEFECTS IN MATERIAL AND WORKMANSHIP. AS SET FORTH ABOVE. IN NO EVENT SHALL OWNER/OWNER'S REP BE ENTITLED TO CONSEQUENTIAL AND/OR INCIDENTAL DAMAGES, REGARDLESS OF WHETHER THE CLAIM IS BASED ON WARRANTY, CONTRACT, TORT, EQUITY OR OTHERWISE.

Piers are guaranteed for the life of the home. Warranty does not cover any cracks or damage including, but not limited to: tile, sheetrock, countertops, wood trim, windows/doors, that may result from jacking, settling and/or any other work associated with the foundation stabilization. CNT Foundations, LLC guarantees stabilization, while all attempts will be made to correct the inconsistencies as much as possible leveling of the structure is not guaranteed. Warranty is null and void if damage occurs as the result of renovations and/or repairs not contracted by CNT Foundations, LLC. Should a problem arise that does not fall into the above categories or any other unforeseen circumstance the cost of repairs rest solely upon CNT Foundations, LLC and no cost will be transferred to the original contracted.

DISPUTE RESOLUTION AND ARBITRATION

CONTRACTOR AND OWNER/OWNER'S REP WILL COOPERATE WITH ONE ANOTHER IN AVOIDING DISPUTES AND INFORMALLY RESOLVING DISPUTES BETWEEN THEM. IN THE EVENT DISPUTES CANNOT BE INFORMALLY RESOLVED, THEN ALL CLAIMS, CONTROVERSIES, OR DISPUTES, OTHER THAN FOR NONPAYMENT BY OWNER/OWNER'S REP OR AS STATED HEREIN, BETWEEN CONTRACTOR AND OWNER/OWNER'S REP ARISING OUT OF OR RELATING TO THIS CONTRACT, THE BREACH HEREOF, THE WORK PERFORMED HEREUNDER, OR OF ANY OTHER KIND, SHALL BE SETTLED BY ARBITRATION IN ACCORDANCE WITH THE CONSTRUCTION INDUSTRY ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION ("AAA") OR SUCH OTHER ARBITRATION GROUP AS AGREED TO BY THE PARTIES. JUDGMENT ON THE AWARD RENDERED BY THE ARBITRATOR SHALL BE FINAL AND BINDING, SHALL NOT BE APPEALABLE, AND MAY BE ENTERED IN ANY COURT HAVING JURISDICTION. AAA FAST TRACK ARBITRATION SHALL BE USED IF POSSIBLE AND THE ARBITRATION SHALL BE CONDUCTED BY ONLY ONE (1) ARBITRATOR UNLESS ALL PARTIES AGREE OTHERWISE OR THE AAA REFUSES TO GO FORWARD WITH JUST ONE (1) ARBITRATOR. THE ARBITRATION PROCEEDING SHALL BE CONDUCTED IN CHARLESTON COUNTY, SC, BEFORE A NEUTRAL ARBITRATOR WHO HAS SUBSTANTIAL EXPERIENCE IN THE SUBJECT MATTER OF THE DISPUTE. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, CONTRACTOR MAY FILE (I) A MECHANIC'S LIEN, (II) A JUDICIAL PROCEEDING AGAINST OWNER/OWNER'S REP FOR NONPAYMENT, AND/OR (III) AN EQUITABLE JUDICIAL PROCEEDING AGAINST OWNER/OWNER'S REP FOR AN INJUNCTION OR SPECIFIC PERFORMANCE OF ANY BREACH OR UNLAWFUL ACTION IN CONNECTION WITH ANY OBLIGATIONS HEREUNDER; AND SUCH SHALL NOT CONSTITUTE A WAIVER OF CONTRACTOR'S RIGHT TO COMPEL ALL CLAIMS THAT MAY BE ASSERTED AGAINST IT TO BE ARBITRATED. ALL COSTS AND EXPENSES OF ARBITRATION, INCLUDING CNT FOUNDATION, LLC'S ATTORNEYS' FEES, SHALL BE PAID BY OWNER/OWNER'S REP.

MISCELLANEOUS

If the customer cancels there is a fee for termination of contract equaling 20% of the contract price.

Notwithstanding anything to the contrary herein, all amounts due and payable hereunder shall also be subject to an interest charge of eighteen (18 %) percent per annum, or the maximum allowed by law, compounded monthly, until paid in full.

If Contractor is required to retain an attorney or collection agency to enforce any provision of this Agreement, Owner/Owner's Rep shall pay all of Contractor's reasonable costs and expenses relating thereto, including, but not limited to, collection fees, attorneys' fees and costs, expert witness fees, arbitration fees and court fees, regardless of



whether at trial, on appeal, in any bankruptcy proceeding, in an arbitration or without commencement of a legal proceeding. The parties agree that if a court holds any part, term, or provision of this Agreement to be illegal or in conflict with any law of the state where made, the validity of the remaining portions or provisions will not be affected, and the rights and obligations of the parties will be constructed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

In consideration of the Contractor extending credit to the Owner/Owner's Rep and at the Owner/Owner's Rep's request, the Owner/Owner's Rep hereby personally guarantees payment to the Contractor of any obligation and hereby agrees to bind the Owner/Owner's Rep to pay the Contractor on demand any sum which may become due to the Contractor.

Owner/Owner's Rep represents and certifies that he is the sole fee simple Owner/Owner's Rep of the Property and accordingly is fully empowered to execute this Agreement. Further, the Owner/Owner's Rep hereby authorizes the Contractor to do the work specified herein. This Agreement and any dispute concerning this Agreement shall be decided pursuant to the laws of South Carolina. This Agreement sets forth the entire understanding between the parties and supersedes all previous agreements, arrangements and understandings between the parties, whether oral or written, pertaining to the representation contracted for herein.

The captions and headings used in this Agreement are for convenience only and do not in any way limit, amplify, or otherwise modify the provisions of this Agreement. Any reference to this instrument to the singular shall include the plural, and vice versa. Any reference to one gender shall include the others, including the neuter.

All agreements contingent upon strikes, accidents, and/or delays beyond our control

CNT Foundations reserves the right to cancel this contract at any time.

PHOTOGRAPHY/VIDEO RELEASE

Owner/Owner's Rep will allow CNT Foundations to take during and after photos of their work products.

Initial Beside Each Line:

1. MDR Additional Footage will be billed at \$ 22 / linear feet after an average 30 feet, in 7' increments.
2. MDR Excavations greater than 3 feet in depth will be billed at \$100.00 per vertical linear foot. This applies to the excavations needed to expose the footings for the installation of helical piers.
3. MDR Buried obstructions such as excessive tree roots, overpoured concrete, hard pan soils, railroad ties, lawnmowers, tractor trailer tires and any other unforeseen obstruction that causes delays in the excavation process will be billed at \$250.00 per hour. This applies to the excavations needed to expose the footings for the installation of helical piers.
4. MDR Final payment or signed Enerbank form to be given at time of completion to the team leader assigned to your job
5. MDR Stabilization is guaranteed. While attempts will be made, level and crack closure are not guaranteed.
6. MDR No Charge Items are not cause for withholding payment

MDR I have had the option to negotiate and change this contract



CNT Foundations, LLC: Fida Wheeler Date 7.20.21
Owner/Owner's Rep: MDR Printed Name: Marka Danielle Rodgers Date July 20, 2021

ELECTRONICALLY FILED - 2023 Sep 07 10:36 AM - CHARLESTON - COMMON PLEAS - CASE#2022CP1005916

CNT [Signature] Owner/Owner's Rep MDR

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2022 CP-10-03418

SUE KORNEGAY
PLAINTIFF(S)

CNT FOUNDATIONS, LLC
DEFENDANT(S)

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
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **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.

This matter came before the Court on Defendant's Motion to Stay Proceedings and Compel Arbitration. A hearing was held on June 1, 2023. After reviewing the briefs filed by both parties and considering arguments made at the hearing, the Court finds the arbitration provision contained in Plaintiff's contract with Defendant complies with the requirements set forth in S.C. Code Ann. § 15-48-10 *et. seq.* and is therefore valid and enforceable. Therefore, the Court **GRANTS** Defendant's Motion to Compel Arbitration. This matter shall be stricken subject to right to restore to confirm, vacate or modify any arbitration award.

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ELECTRONICALLY FILED -- 2023 Sep 05 10:48 AM -- CHARLESTON -- COMMON PLEAS -- CASE#2022CP1008416



Charleston Common Pleas

Case Caption: Sue Kornegay VS Cnt Foundations Llc

Case Number: 2022CP1003418

Type: Order/Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2023-08-15 10:53:24 page 3 of 3

ELECTRONICALLY FILED -- 2023-08-15 10:53:24 PM -- CHARLESTON -- COMMON PLEAS -- CASE#2022CP1003418



Residential Business License # 23096
General Contractors License # G 114384

3362 Navajo Street
N. Charleston, SC 29405
Office: 843-577-7268

**PORTIONS OF THIS AGREEMENT ARE SUBJECT TO ARBITRATION
PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION
ACT, § 15-48-10, S. C. CODE OF LAWS OF 1976, AS AMENDED**

This Agreement ("Agreement") is entered into by and between CNT Foundations, LLC ("Contractor") and Sue Kameney ("Owner/Owner's Rep") relating to the property at 7975 Madison Ave N. Charleston SC 29405 ("Property").

Estimate

Work specified in the attached document #6536 in the amount of \$ Twenty five thousand four hundred ten (\$25,410.00) will be performed. We are happy to perform other work not listed on the original estimate, "while we are there" but this work is not included in the original price and subject to charge.

Foundation work

Estimate does not cover any cracks or damage, including, but not limited to: (tile, sheetrock, countertops, wood trim, windows/doors), that may result from jacking, settling and/or any other work associated with the foundation stabilization. Contractor is also not responsible for hidden structural deficiencies. We are not responsible for underground items including, but not limited to, septic tanks, sprinkler systems, pipes and conduits, well pumps, filters, French drains, water proofing etc... Contractor is not responsible for any interior or exterior damage, to include but not limited to, sheet rock, plumbing, HVAC, electric systems, brick, finishes.... **Contractor guarantees stabilization. While attempts will be made to correct any inconsistencies, leveling of the structure is not guaranteed.** Contractor employees are not professional engineers. The recommendations and opinions herein are based on visual observations and Contractor experience with foundation repair and NOT based upon soils tests, surveys, blue prints or other technical reports, unless specifically addressed in the estimate document. Furthermore, Owner/Owner's Rep relies solely on the expertise of CNT Foundations to complete the work quoted in the estimate to the best of their capabilities based upon their experience in the foundation industry.

Limitations

Limitations to the work being performed in this Agreement include but are not limited to consequential damage to concrete, brick, mortar, sheetrock, wallpaper, paint, ridged materials, or furnishings as a result of stabilization. Due to the invasive nature of the work performed, the Owner/Owner's Rep indemnifies, holds harmless, and releases from all responsibility incidental damages including but not limited to; cracked concrete, driveways, sidewalks, hydraulic oil spills, ruts in the ground, and any and all other damages associated with the work. Separations in plumbing may exist prior to the work and /or may occur as a result of the work. The Owner/Owner's Rep releases CNT Foundations from all responsibility for damage to plumbing as a result of the work or consequential damages to the structure caused by plumbing leaks. CNT Foundations strongly recommends a hydrostatic plumbing test of all supply and waste systems immediately after repairs are completed. If bricks or mortar are repaired or replaced, contractor does not guarantee a match. The areas of the work are limited to that immediate portion of the foundation beam supported by a series of piers as indicated on the service plan beginning with the first pier and ending with the last pier. Plants that are affected by excavation may not survive. No warranty of any kind is extended to plant survival. The Owner/Owner's Rep may choose to hire a professional nurseryman to remove and replace plants in order to improve their chance of survival. The Owner/Owner's Rep releases CNT Foundations from all responsibility for damages caused by pre-existing defects. Such defects may include, but are not limited to, insufficient steel or cable reinforcement, insufficient or weak concrete.



Moisture and Active Water Intrusion

Vapor Barriers and Encapsulation Systems are designed to only mitigate ambient moisture issues (water in vapor form), they are not designed to mitigate active water intrusion (water in liquid form). IF NO SUMP PUMP, DRAIN TILES OR OTHER PRODUCTS DESIGNED TO HANDLE LIQUID WATER ARE IN THE ATTACHED ESTIMATE, IT IS EXPLICITLY IMPLIED THAT THE CUSTOMER AND CNT HAVE JOINTLY DECIDED THAT THERE ISNT AN ACTIVE WATER INTRUSION ISSUE.

Active water intrusion mitigation methods have limitations, these systems are designed for normal seasonal rainfall and are not designed to handle Acts of God, Hurricanes, Floods, Excessive rainfalls, Deluge and all interpretations thereof.

Parameters of systems design are based upon the following published data:

Moderate rain — when the precipitation rate is between 2.5 mm (0.098 in) - 7.6 mm (0.30 in) or 10 mm (0.39 in) per hour. Heavy rain — when the precipitation rate is > 7.6 mm (0.30 in) per hour, or between 10 mm (0.39 in) and 50 mm (2.0 in) per hour. Monthly average of 5".

Payment

An initial payment of 50% is due upon Agreement signature. ~~The balance is to be paid weekly as work progresses, based upon percentage of completion. Failure to make payment within 5 days will result in a stop work. All outstanding balances must be paid for work to resume.~~ All invoices are to be paid upon receipt. Non Payment will result in a 1.5% monthly finance charge. Bounced checks will incur a \$30 fee. If customer cancels contract, a mobilization charge will be billed. No payments shall be made via standard mail. All payments must either be paid in person, whether it is picked up or dropped off, or by express tractable mail. If third party disputes arise (third party being defined as anyone other than Owner/Owner's Rep and authorized agent of Contractor), payments still must be made prior to the dispute and all disputes must be handled according to the disputes clause in this Agreement. If any disputes arise any and all discounts will be rescinded and billed at normal price, including any discounts given prior to Agreement signatures. CNT Foundations is authorized to charge your card whether there is a dispute or not and, Owner/Owner's Rep must pay within two (2) days once job is completed. Disputes cannot be used as reason to withhold payment.

There will be a 3% processing fee for all credit cards.

Financing

The contracted agrees to enter into this agreement, that if at any point before, during the duration of the job or after execution of this agreement, customer uses a prequalified application from Enerbank. Customer will sign Payment Release Form upon completion of work. This is an extension of uncollateralized credit and non-signatures upon completion of project will be treated as breach of contract.

Warranty

Limited Lifetime Warranty: The work performed is guaranteed against all defects in material and workmanship for the life of the structure. This warranty can be transferred to a new Owner/Owner's Rep. Written notice must be forwarded to CNT within 30 days of the sale. Should any movement occur in the area of repair on the location sketch-other than settlement or movement caused by earthquake, wind, flood, drought and other subsurface soil alterations, soil heave, landslide, slope creep, trees roots, hidden structural deficiencies, war, and acts of God-

CNT will at no cost, correct or adjust, any area of a given pier group that has experienced continued settlement/movement. If finishes have been applied in areas where warranty work is performed, Owner/Owner's Rep will be responsible for replacement of finishes. Only the area of repair starting at the first pier and extending to the last pier in a given group of piers is warranted. Non-piered areas spanning between groups of piers are not warranted. CNT at its sole discretion may place temporary crack monitoring devices, equipment and/or benchmarks on any questioned area to determine the direction of movement. The foregoing is the sole and exclusive warranty.

ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF



MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED. OWNER/OWNER'S REPS' SOLE AND EXCLUSIVE REMEDY SHALL BE FOR CORRECTION OF ANY DEFECTS IN MATERIAL AND WORKMANSHIP. AS SET FORTH ABOVE. IN NO EVENT SHALL OWNER/OWNER'S REP BE ENTITLED TO CONSEQUENTIAL AND/OR INCIDENTAL DAMAGES, REGARDLESS OF WHETHER THE CLAIM IS BASED ON WARRANTY, CONTRACT, TORT, EQUITY OR OTHERWISE.

Piers are guaranteed for the life of the home. Warranty does not cover any cracks or damage including, but not limited to: tile, sheetrock, countertops, wood trim, windows/doors, that may result from jacking, settling and/or any other work associated with the foundation stabilization. CNT Foundations, LLC guarantees stabilization, while all attempts will be made to correct the inconsistencies as much as possible leveling of the structure is not guaranteed. Warranty is null and void if damage occurs as the result of renovations and/or repairs not contracted by CNT Foundations, LLC. Should a problem arise that does not fall into the above categories or any other unforeseen circumstance the cost of repairs rest solely upon CNT Foundations, LLC and no cost will be transferred to the original contracted.

DISPUTE RESOLUTION AND ARBITRATION

CONTRACTOR AND OWNER/OWNER'S REP WILL COOPERATE WITH ONE ANOTHER IN AVOIDING DISPUTES AND INFORMALLY RESOLVING DISPUTES BETWEEN THEM. IN THE EVENT DISPUTES CANNOT BE INFORMALLY RESOLVED, THEN ALL CLAIMS, CONTROVERSIES, OR DISPUTES, OTHER THAN FOR NONPAYMENT BY OWNER/OWNER'S REP OR AS STATED HEREIN, BETWEEN CONTRACTOR AND OWNER/OWNER'S REP ARISING OUT OF OR RELATING TO THIS CONTRACT, THE BREACH HEREOF, THE WORK PERFORMED HEREUNDER, OR OF ANY OTHER KIND, SHALL BE SETTLED BY ARBITRATION IN ACCORDANCE WITH THE CONSTRUCTION INDUSTRY ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION ("AAA") OR SUCH OTHER ARBITRATION GROUP AS AGREED TO BY THE PARTIES. JUDGMENT ON THE AWARD RENDERED BY THE ARBITRATOR SHALL BE FINAL AND BINDING, SHALL NOT BE APPEALABLE, AND MAY BE ENTERED IN ANY COURT HAVING JURISDICTION. AAA FAST TRACK ARBITRATION SHALL BE USED IF POSSIBLE AND THE ARBITRATION SHALL BE CONDUCTED BY ONLY ONE (1) ARBITRATOR UNLESS ALL PARTIES AGREE OTHERWISE OR THE AAA REFUSES TO GO FORWARD WITH JUST ONE (1) ARBITRATOR. THE ARBITRATION PROCEEDING SHALL BE CONDUCTED IN CHARLESTON COUNTY, SC, BEFORE A NEUTRAL ARBITRATOR WHO HAS SUBSTANTIAL EXPERIENCE IN THE SUBJECT MATTER OF THE DISPUTE. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, CONTRACTOR MAY FILE (I) A MECHANIC'S LIEN, (II) A JUDICIAL PROCEEDING AGAINST OWNER/OWNER'S REP FOR NONPAYMENT, AND/OR (III) AN EQUITABLE JUDICIAL PROCEEDING AGAINST OWNER/OWNER'S REP FOR AN INJUNCTION OR SPECIFIC PERFORMANCE OF ANY BREACH OR UNLAWFUL ACTION IN CONNECTION WITH ANY OBLIGATIONS HEREUNDER; AND SUCH SHALL NOT CONSTITUTE A WAIVER OF CONTRACTOR'S RIGHT TO COMPEL ALL CLAIMS THAT MAY BE ASSERTED AGAINST IT TO BE ARBITRATED. ALL COSTS AND EXPENSES OF ARBITRATION, INCLUDING CNT FOUNDATION, LLC'S ATTORNEYS' FEES, SHALL BE PAID BY OWNER/OWNER'S REP.

MISCELLANEOUS

If the customer cancels there is a fee for termination of contract equaling 20% of the contract price.

Notwithstanding anything to the contrary herein, all amounts due and payable hereunder shall also be subject to an interest charge of eighteen (18 %) percent per annum, or the maximum allowed by law, compounded monthly, until paid in full.

If Contractor is required to retain an attorney or collection agency to enforce any provision of this Agreement, Owner/Owner's Rep shall pay all of Contractor's reasonable costs and expenses relating thereto, including, but not limited to, collection fees, attorneys' fees and costs, expert witness fees, arbitration fees and court fees, regardless of whether at trial, on appeal, in any bankruptcy proceeding, in an arbitration or without commencement of a legal proceeding. The parties agree that if a court holds any part, term, or provision of this Agreement to be illegal or in conflict with any law of the state where made, the validity of the remaining portions or provisions will not be affected,

CNT  Owner/Owner's Rep 



and the rights and obligations of the parties will be constructed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

In consideration of the Contractor extending credit to the Owner/Owner's Rep and at the Owner/Owner's Rep's request, the Owner/Owner's Rep hereby personally guarantees payment to the Contractor of any obligation and hereby agrees to bind the Owner/Owner's Rep to pay the Contractor on demand any sum which may become due to the Contractor.

Owner/Owner's Rep represents and certifies that he is the sole fee simple Owner/Owner's Rep of the Property and accordingly is fully empowered to execute this Agreement. Further, the Owner/Owner's Rep hereby authorizes the Contractor to do the work specified herein. This Agreement and any dispute concerning this Agreement shall be decided pursuant to the laws of South Carolina. This Agreement sets forth the entire understanding between the parties and supersedes all previous agreements, arrangements and understandings between the parties, whether oral or written, pertaining to the representation contracted for herein.

The captions and headings used in this Agreement are for convenience only and do not in any way limit, amplify, or otherwise modify the provisions of this Agreement. Any reference to this instrument to the singular shall include the plural, and vice versa. Any reference to one gender shall include the others, including the neuter.

All agreements contingent upon strikes, accidents, and/or delays beyond our control

CNT Foundations reserves the right to cancel this contract at any time.

PHOTOGRAPHY/VIDEO RELEASE

Owner/Owner's Rep will allow CNT Foundations to take during and after photos of their work products.

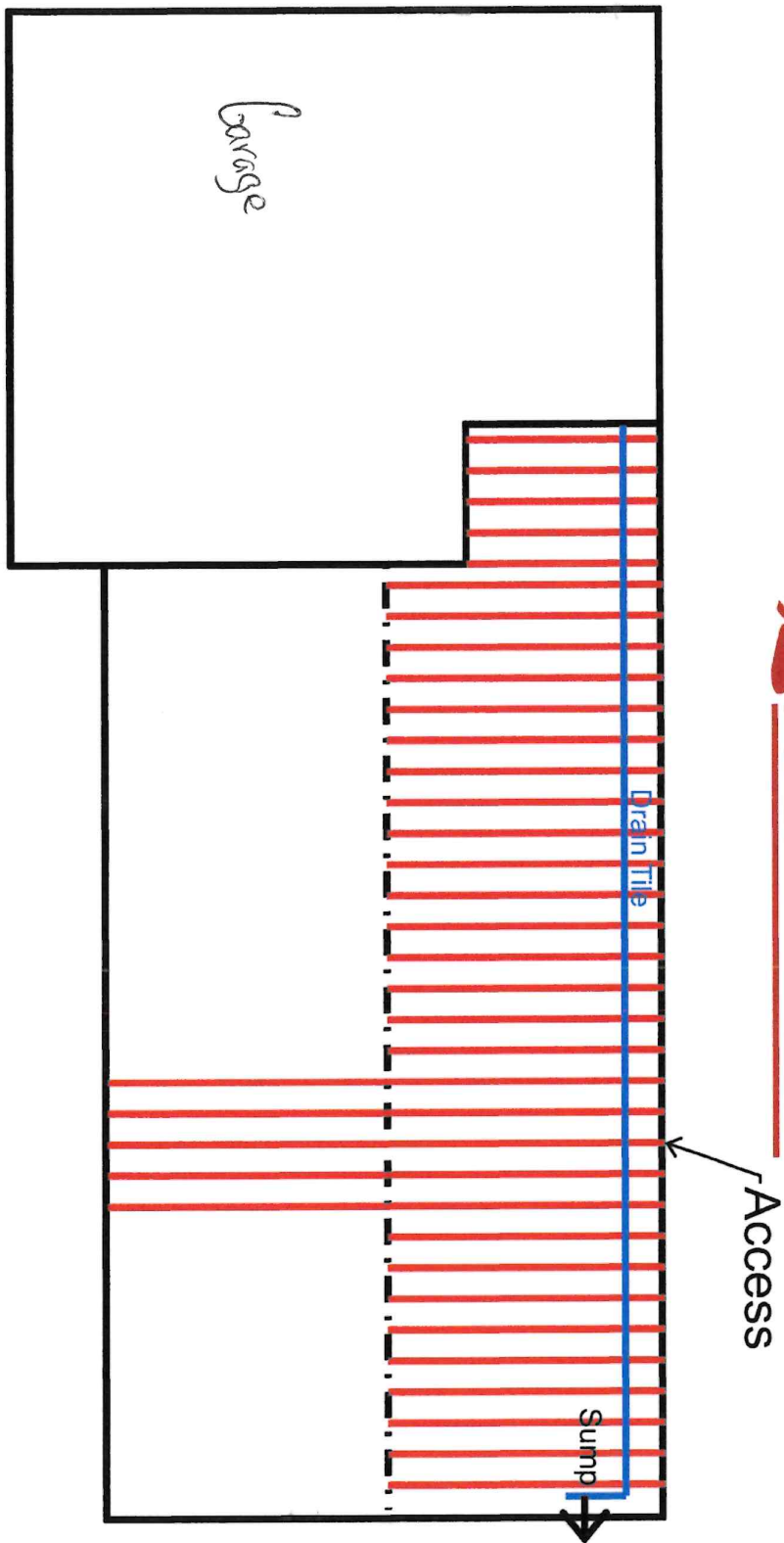
Initial Beside Each Line:

1. ☒ Additional Footage will be billed at \$ 22 / linear feet after an average 30 feet, in 7' increments.
2. ☒ Excavations greater than 3 feet in depth will be billed at \$100.00 per vertical linear foot. This applies to the excavations needed to expose the footings for the installation of helical piers.
3. ☒ Buried obstructions such as excessive tree roots, overpoured concrete, hard pan soils, railroad ties, lawnmowers, tractor trailer tires and any other unforeseen obstruction that causes delays in the excavation process will be billed at \$250.00 per hour. This applies to the excavations needed to expose the footings for the installation of helical piers.
4. ☒ Final payment to be given at time of completion to the team leader assigned to your job
5. ☒ Stabilization is guaranteed. While attempts will be made, level and crack closure are not guaranteed.
6. ☒ No Charge Items are not cause for withholding payment

☒ I have had the option to negotiate and change this contract

CNT Foundations, LLC: Date _____

Owner/Owner's Rep: Printed Name: Suet Koenig Date 6-21-2021



Sue Kornegay
7975 Malden Ave
North Charleston SC 29420

Block 3

- | | | | |
|--|----------------------------------|--|-------------------------|
| | Existing Pier | | Sister joist |
| | New CMU | | R/R girder or bandboard |
| | Quickwall existing pier | | Drop sill |
| | Helical Pile | | Existing girder |
| | Remove and replace existing pier | | Steel lintel |
| | Direction of movement | | Continuous footings |
| | Cracks | | |

Diagram is the property of CNT Foundations
Not to be used for repair or diagnosis by any other parties

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
	)	CASE NUMBER: 2022-CP-10-05916
MARKA DANIELLE RODGERS,	)	
	)	
Plaintiff,	)	
	)	REPLY TO DEFENDANT'S
v.	)	MEMORANDUM IN SUPPORT OF
	)	MOTION TO COMPEL ARBITRATION
CNT FOUNDATIONS,	)	
	)	
Defendant.	)	
	)	

Plaintiff respectfully replies herein to Defendant's August 7th Memorandum in Support of the Motion to Stay Proceedings And Compel Arbitration ("Defendant's memo").

ARGUMENT

While it's true that arbitration is favored in South Carolina, the terms of SC Code § 15-48-10(a) state plainly that arbitration agreements are valid and enforceable *save upon such grounds as exist at law or in equity for the revocation of any contract*.

Defendant points to a provision in their contract where a customer is to indicate that they've had an opportunity to negotiate the contract, but admits that this is "the standard form contract" offered by Defendant. Defendant's memo p. 5. "[A]n adhesion contract is a standard form contract offered on a take-it or leave-it basis with terms that are not negotiable." *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 541, 542 S.E.2d 360, 365 (2001).

Even if the Court views this not as a contract of adhesion, a Plaintiff needn't prove a contract of adhesion to show unconscionability. Indeed, "in determining whether an absence of meaningful choice taints a contract term, such as an arbitration provision, courts must consider, among all facts and circumstances, the relative disparity in the parties' bargaining power, the

parties' relative sophistication, and whether the plaintiffs are a substantial business concern of the defendant.” *Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 613, 879 S.E.2d 746, 755 (2022), reh'g denied (Nov. 17, 2022), cert. denied (June 5, 2023), cert. denied, 143 S. Ct. 2581 (2023). All of these factors weigh in favor of Plaintiff: (1) she is an individual homeowner compared to a large foundation repair company, (2) she is wheelchair bound and unable to even get into her crawlspace compared to the held-out-as-experts of the foundation repair company, and (3) she is a typical, normal customer that Defendant seeks out business with on a regular basis. See *Kennedy v. Columbia Lumber & Mfg. Co.*, 299 S.C. 335, 343 (noting that a buyer of a residential home is normally in an unequal bargaining position against the seller.).

Further, the determination of whether or not a contract or a clause therein is unconscionable is a two-pronged inquiry and both “need not be present to the same degree.” *Damico*, at 612 (quoting 17A Am. Jur. 2d *Contracts* § 272). Indeed “the agreement may be judged on a sliding scale: the more substantively oppressive the contract term, the less evidence of procedural unconscionability¹ is required to come to the conclusion that the term is unenforceable, and vice versa.” *Id.* Moreover, “a court may find that a contract provision is so outrageous as to warrant holding it unenforceable on the grounds of substantive unconscionability alone.” *Id.*

Such may be the case here, but regardless, Defendant’s memo doesn’t focus on whether the contract is one sided and claims that it “contains a provision for attorney’s fees merely for the purpose of discouraging frivolous, wrongful actions.” Certainly, if Defendant were to prevail in the action they might be able to recover attorney’s fees if the arbitrator finds it appropriate, but this clause unreasonable shifts all financial burden of litigation on the Plaintiff regardless of the

¹ Courts often refer to the “meaningful choice” prong as “procedural unconscionability” and the “oppressive” prong as “substantive unconscionability.” 17 C.J.S. *Contracts* § 9

outcome.

A contract may be considered substantively unconscionable when a clause or term in the contract is totally one-sided or overly harsh, such that it oppresses or unfairly surprises an innocent party, there is an overall imbalance in the obligations and rights imposed by the bargain, and there is a significant cost-price disparity. A term may also be said to be substantively suspect if, viewed at the time the contract was formed, it reallocates the risks of the bargain in an objectively unreasonable or unexpected way. Mutuality, therefore, is a paramount consideration when assessing the substantive unconscionability of a contract term.

17A Am. Jur. 2d *Contracts* § 272

Defendant claims that the case is similar to *Munoz*. It is not. The issues in *Munoz* were whether or not the arbitration agreement was subject to the Federal Arbitration Act (FAA), whether the agreement was enforceable given that it was a contract of adhesion, and whether or not it was unconscionable given the Plaintiffs' supposed lack of remedies being mutual to the Defendant. *Munoz*, at 537.

The Court ruled that the contract was subject to the FAA because it involved "interstate commerce" vis a vis the mortgage having been assigned to an out-of-state party. The Court found that a contract of adhesion is not *per se* unconscionable, and it found that the doctrine of mutuality did not apply as the arbitration agreement still provided those plaintiffs a remedy as well as the ability to raise defenses to foreclosure. *Id*, 539-542.

Notably, the arbitration agreement in *Munoz* is far flung from the one at issue in the instant case. Nothing in the *Munoz* agreement forced one party to pay the entirety of the costs of arbitration regardless of who prevailed. Indeed, as previously outlined, even if the Plaintiff is awarded damages that would theoretically make her whole, she might actually end up losing money overall simply by being forced to pay for Defendant's assertion of a potentially frivolous defense. No reasonable person would make, and no fair and honest person would accept, terms that provide for one party to fund a frivolous defense.

Defendant's also state that a previous plaintiff "cited all the same cases as Plaintiff and made the same pleas." Defendant's memo, p. 8. The Plaintiff would disagree as the undersigned provided several examples of similar one-side fee provisions being held unconscionable which were not included in the prior plaintiff's brief, along with other cases such as *Kennedy v. Columbia Lumber & Mfg. Co.*, that were not included. See Exhibit A. Additionally, Plaintiff is asking that **should the court decide to enforce the arbitration agreement, Plaintiff would request that, in the alternative, the Court reform the agreement to exclude the one-sided cost provisions.** Such a plea was not made by the referenced plaintiff, but was made by the instant Plaintiff in her memo in opposing of Defendant's motion to compel arbitration.

CONCLUSION

In conclusion, the arbitration agreement, if upheld, would require one party to shoulder arbitration's entire cost while essentially allowing the Defendant to litigate the claim for free even if their Defense is found to be frivolous. Such an agreement is unconscionable in that it is one sided and oppressive, and the unequal bargaining power and sophistication between the parties deprived Plaintiff of a meaningful choice. Thus, the Plaintiff respectfully requests that the Court deny arbitration or reform the agreement to exclude the arbitration costs provision.

Respectfully submitted,

/s/ Daniel Summa

Daniel Summa
Attorney for the Plaintiff
Summa Law Firm, LLC
3 Broad Street, #301
Charleston, SC 29401
843-277-9665 *office*
843-806-2920 *fax*

Page 4 of 5

daniel@summalawfirm.com

September 7, 2023
Charleston, SC

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL DISTRICT
COUNTY OF CHARLESTON	)	CIVIL ACTION NO.: 2022-CP-10-03418
Sue Kornegay,	)	
	)	
Plaintiff,	)	PLAINTIFF'S MEMORANDUM OF
	)	LAW IN OPPOSITION TO
vs.	)	DEFENDANT'S MOTION TO STAY
	)	AND COMPEL ARBITRATION OR IN
CNT Foundations, LLC,	)	THE ALTERNATIVE MOTION TO
	)	DISMISS
Defendant.	)	

COMES NOW PLAINTIFF, Sue Kornegay (hereinafter "Plaintiff"), by and through undersigned counsel, and submits the following Memorandum of Law in Opposition to Defendant CNT, Foundations, LLC's (hereinafter "Defendant") Motion to Stay Proceedings and Compel Arbitration in Lieu of Answer, or in the alternative, Motion to Dismiss.

Factual and Procedural History

Plaintiff executed a service contract (hereinafter "the Contract") with Defendant on June 21, 2021 to perform construction work to stabilize Plaintiff's foundation. Subsequent to Defendant's performance, Plaintiff observed extensive defects with the work performed by Defendant. On or about February 8, 2022, Plaintiff afforded Defendant its statutory opportunity to cure these defects in accordance with S.C. Code Ann. § 40-59-840 et seq., however, Defendant failed to offer to remedy the defects and damage present at the Property.

This matter was filed in the Charleston County Court of Common Pleas on or about July 29, 2022. In response to the Summons & Complaint, Defendant filed a Motion to Stay Proceedings and Compel Arbitration in Lieu of Answer, or in the Alternative, Motion to Dismiss. Attached as an exhibit to the Motion, Defendant included a copy of the contract signed between Plaintiff and

Defendant. The Contract contains the following language under the Section Header “DISPUTE RESOLUTION AND ARBITRATION”:

IN THE EVENT DISPUTES CANNOT BE INFORMALLY RESOLVED, THEN ALL CLAIMS, CONTROVERSIES, OR DISPUTES, OTHER THAN FOR NONPAYMENT BY OWNER/OWNER’S REP OR AS STATED HEREIN... SHALL BE SETTLED BY ARBITRATION...THE AWARD RENDERED BY THE ARBITRATOR SHALL BE FINAL AND BINDING, SHALL NOT BE APPEALABLE, AND MAY BE ENTERED IN ANY COURT HAVING JURISDICTION...NOT WITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, CONTRACTOR MAY FILE (I) A MECHANIC’S LIEN, (II) A JUDICIAL PROCEEDING AGAINST OWNER/OWNER’S REP FOR AN INJUNCTION OR SPECIFIC PERFORMANCE OF ANY BREACH OR UNLAWFUL ACTION IN CONNECTION WITH ANY OBLIGATIONS HEREUNDER; AND SUCH SHALL NOT CONSTITUTE A WAIVER OF CONTRACTOR’S RIGHT TO COMPEL ALL CLAIMS THAT MAY BE ASSERTED AGAINST IT TO BE ARBITRATED. ALL COSTS AND EXPENSES OF ARBITRATION, INCLUDING CNT FOUNDATION, LLC’S ATTORNEY’S FEES, SHALL BE PAID BY OWNER/OWNER’S REP.

Argument

The arbitration clause is unconscionable because Plaintiff was not afforded a meaningful choice regarding its acceptance and the terms within are both oppressive and one-sided.

The arbitration clause contained in the contract between Plaintiff and Defendant was an adhesion contract subject to enhanced judicial scrutiny in determining if the Plaintiff was given a meaningful choice in the transaction and if the terms are both oppressive and one-sided.

Pursuant to the South Carolina Uniform Attribution Act (hereinafter “UAA”), if one party denies the existence of an arbitration agreement, a court must “immediately determine whether the agreement exists” and if no agreement is found, “the court must deny any application to arbitrate.” *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 21 (2007). In determining if there is a valid arbitration agreement, the trial court is to consider general contract defenses to “ensure a meeting

of the minds to arbitrate existed, and that such an agreement was not the result of fraud, duress, or unconscionability. *York v. Dodgeland of Columbia, Inc.*, 406 S.C. 67, 77 (Ct. App. 2013). South Carolina’s Supreme Court has defined unconscionability as “the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them.” *Parsons v. John Wieland Homes & Neighborhoods of the Carolinas, Inc.*, 418 S.C. 1, 13 (2016). If a trial court finds that any clause of a contract was unconscionable at the time of execution the court may either refuse to enforce the unconscionable clause, or “so limit its application as to avoid any unconscionable result.” *Simpson*, 373 S.C. 14, 21 (2007); S.C. Code Ann § 36-2-302(1) (2003). In analyzing claims of unconscionable arbitration provisions, courts must focus generally on whether “the arbitration clause is geared towards achieving an unbiased decision by a neutral decision-maker.” *Id.*

“The presumption in favor of arbitration clauses is substantially weaker when there are strong indications that the contract at issue is an adhesion contract, and that the arbitration clause itself appears to be adhesive in nature. In this situation there arises considerable doubt that any true agreement ever existed to submit disputes to arbitration.” *Id.* at 26. “An adhesion contract is a standard form contract offered on a ‘take-it-or-leave-it’ basis with terms that are not negotiable.” Furthermore, an adhesion contract is a contract in which the complaining party did not contribute to the agreement or possess the bargaining power to negotiate the terms of the contract. The court will additionally factor in whether the thing contracted for was a “necessity”. *See Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 26 (2007) (primary automobile a “necessity” and as such the adhesion contract’s validity subject to ‘considerable skepticism’).

Here, the contract entered into between Plaintiff and Defendant was a standard form contract consistently used in Defendant's business transactions. Plaintiff, a customer of Defendant, was not presented with the opportunity to negotiate any terms of the contract, did not draft any portion of the contract, and was simply asked to sign if she agreed to the offered terms. Therefore, this contract was clearly an adhesion contract subject to an enhanced level of scrutiny regarding its validity.

A. Plaintiff lacked meaningful choice in the terms of the arbitration clause.

Plaintiff was not afforded with the opportunity to have meaningful input regarding the construction of the contract or any of its provisions. "In determining whether a contract was "tainted by an absence of meaningful choice", courts should take into account: 1) the nature of the injuries suffered by the plaintiffs; 2) whether plaintiff is a substantial business concern; 3) the relative disparity in the parties bargaining power; 4) the parties' relative sophistication; 5) whether there is an element of surprise in the inclusion of the challenged clause; and 6) the conspicuousness of the clause." *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 25 (2007). The loss of the right to a jury trial and foregoing statutorily provided remedies are also relevant to this determination. *York v. Dodgeland of Columbia, Inc.*, 406 S.C. 67, 83 (Ct. App. 2013).

In *Simpson*, the Plaintiff had signed a contract to trade-in their automobile that contained a purported arbitration provision requiring any claim made by the consumer had to be submitted to arbitration while the Automobile-Dealer Defendant was not required to submit any claim for arbitration. The court found that the arbitration agreement was an adhesion contract made between a sophisticated corporation and an individual, unsophisticated, consumer. The court, in examining the above listed factors, determined that the consumer lacked any meaningful choice, relaying on

the facts that she contracted for a necessity; had no relevant business judgment as a non-business entity; and did not have a lawyer present.

Here, Plaintiff has suffered extensive injuries in the form of severe and ongoing damages to the foundation of her primary residence which can only be remedied by a final adjudication of this matter. In addition, under the purported arbitration provision, Plaintiff is responsible for paying Defendant's attorney's fees *regardless of the outcome at arbitration*. This requirement works to immediately diminish any award for damages Plaintiff would receive subsequent to a successful arbitration. Similar to the *Simpson* case, the Plaintiff's home is a necessity in which she relies upon on a daily basis just as a primary automobile. Furthermore, like in *Simpson*, Plaintiff does not operate or have knowledge regarding the field of the contract, and as such does not possess the business judgment "necessary to make her aware of the implications of the arbitration agreement" and "did not have a lawyer present to provide assistances in the matter". *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 25 (2007).

Therefore, it is clear from the facts mentioned herein that Plaintiff did not have meaningful choice in selecting the terms or procedures contained within the arbitration provision of the contract and, as such, the arbitration agreement must be severed out of the contract and Defendant's motion to compel arbitration or, alternatively, motion to dismiss should be denied.

B. The terms contained in the arbitration provision are both oppressive and one-sided.

The terms contained in the arbitration provision heavily favor Defendant so much so that no reasonable and prudent person would agree to them. "Terms are oppressive when no reasonable person would make them and no fair and honest person would accept them." *York v. Dodgeland of Columbia, Inc.*, 406 S.C. 67, 83 (Ct. App. 2013). The arbitration provision contains three

specific provisions which neither a reasonable person would make nor a fair and honest person would accept.

The most blatantly one-sided and oppressive term contained within the arbitration clause is the last sentence stating, “ALL COSTS AND EXPENSES OF ARBITRATION, INCLUDING CNT FOUNDATION, LLC’S ATTORNEY’S FEES, SHALL BE PAID BY OWNER/OWNERS REP.” The effect of this provision logically is that no matter how obvious, reckless, and/or wanton of a breach committed by Defendant during performance of this contract, Plaintiff will be forced to pay both her fees and costs as well as those of the wrong-doer associated with arbitration. This provision is in complete contradiction to the public policy of this state, as Plaintiff’s arbitration award can never, by virtue of the reduction for fees and costs, make her whole again. Furthermore, this provision works to drastically decrease the likelihood that those injured by Defendant will attempt to seek a remedy at all. In short, this provision has a chilling effect on Plaintiff’s exercise of her fundamental rights and remedies and would work to isolate Defendant from liability even in cases where Defendant exhibits gross and willful behavior.

The second of these oppressive and one-sided provisions is the non-mutuality of remedies available pursuant to the arbitration provision. As cited above, Plaintiff may not, under any circumstances, forgo mandatory arbitration of any claim it may bring against Defendant, including negligence and misrepresentation. In contrast, Defendant is practically limitless in its ability to file claims through the normal judicial process, including specifically the ability to “FILE (I) A MECHANIC’S LIEN, (II) A JUDICIAL PROCEEDING AGAINST OWNER/OWNER’S REP FOR NONPAYMENT, AND/OR (III) AN EQUITABLE JUDICIAL PROCEEDING AGAINST OWNER/OWNER’S REP FOR AN INJUNCTION OR SPECIFIC PERFORMANCE OF ANY BREACH OR UNLAWFUL ACTION IN CONNECTION WITH ANY OBLIGATIONS

HEREUNDER". The South Carolina Supreme court has held that provisions within an arbitration clause that lack mutuality will only be upheld if "the [protections] bore a reasonable relationship to the business risks inherent in secured transactions." *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 25 (2007). As this is not a secured transaction, the lack of mutuality further evidences the one-sided nature of this adhesion contract.

Lastly, the arbitration agreement contains a provision prohibiting Plaintiff from appealing the final arbitration decision to the state judiciary in direct violation of S.C. Code 15-48-200 and the state's public policy. Therefore, there is significant evidence that the arbitration agreement entered into by contains multiple oppressive and one-sided terms. Combined with the Plaintiff's total lack of meaningful choice regarding the terms, the arbitration provision is clearly unconscionable.

Conclusion

For all of the above reasons, Defendant's Motion to Compel Arbitration or, alternatively, Motion to Dismiss should be denied.

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 Attorney for Plaintiff

May 25, 2023
 North Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
	)	CASE NUMBER: 2022-CP-10-05916
MARKA DANIELLE RODGERS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	MOTION TO AMEND JUDGEMENT
CNT FOUNDATIONS,	)	PURSUANT TO SCRCP 59(e) and 52(b)
	)	
Defendant.	)	
	)	

Plaintiff respectfully requests that the Court reconsider its judgment rendered on October 18th, 2023 in light of the following:

ARGUMENT

Defendant's "litigate for free" arbitration clause makes it practically immune to any legal liability whatsoever. It forces any potential plaintiff to foot Defendants' entire legal bill and costs of litigation, which will often exceed the price of the contract itself. This discourages Defendants from meeting their contractual obligations, and effectively makes any claim against Defendants prohibitively expensive. CNT shouldn't be able to take payment for a job, fail to perform, and then prevent litigants from pursuing a claim because they'd have to bankroll CNT's assertion of a frivolous defense. CNT took over \$11,000.00 from the Plaintiff, failed to meet their promises, and are now forcing her to pay CNT's legal bills for even making the complaint to begin with.

This is effectively the same situation that was held unconscionable in *Smith v. D.R. Horton, Inc.*, 417 S.C. 42 (2016). There, the Court rendered a very short opinion holding that an

arbitration agreement that prohibited monetary damages from a plaintiff as “clearly one-sided and oppressive.” *Id* at 50.

This case produces the same result. CNT’s contract with Plaintiff was for \$11,210. The arbitration clause forces Plaintiff to pay all attorney’s fees and costs regardless of outcome. Arbitration will likely cost \$2,500.00, and assuming an all-day arbitration and rates of \$500 an hour, Defendants’ legal bill *for the one day of arbitration alone* would be \$4,000.00 assuming only one attorney. This set-up basically forbids Plaintiff from recovering anything as a result of CNT’s tortious conduct or breach of their contract, which is exactly what happened in *Smith v. D.R. Horton*.

The Court cites *Mart v. Great South Homes* to say that nothing is unenforceable in the arbitration agreement, but the court in *Mart* was rejecting an argument that the unconscionability **of a contract as a whole** prevents arbitration. *Mart v. Great South Homes*, 2023 WL 5944268, at *6 (“The crux of Mart’s complaint is that GSH’s sales practice of seeking “a disclaimer of critical warranty rights implied by law in South Carolina and designed to protect the new homebuyer, who the law recognizes is at a significant disadvantage in sophistication and bargaining power with a large volume homebuilder such as Great Southern” is in itself unconscionable”).

Mart didn’t involve any arguments at all that the arbitration clause standing alone was unconscionable, it was addressing whether two separate, conflicting agreements prevented a meeting of the minds as to the contract as a whole *and* whether the waiver of the implied warranty of habitability in a sales contract rendered arbitration unconscionable. *Id* (“Because Mart did not separately challenge the standalone arbitration provision in the GSH Sales Contract as unconscionable or as lacking material terms, we are handcuffed with respect to Mart’s

challenge of the validity of the waiver of implied warranties.”) The Court in *Mart* simply enforced the *Prima Paint* doctrine and indicated that the arbitration clause needed to be considered separately from the underlying contract. *Id.*

Unlike the plaintiff in *Mart*, Ms. Rodgers is challenging the arbitration clause standing alone and arguing that when she’s forced to pay for all attorney’s fees and costs regardless of the merits of either parties’ claim, it creates an unconscionable result which no reasonable person would agree to. Thus, the Plaintiff would respectfully request that the Court amend its prior judgment as to deny Defendants’ motion to compel arbitration or reform the arbitration agreement to exclude the one-sided costs clause.

Respectfully submitted,

/s/ *Daniel Summa*

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October 27, 2023
Charleston, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
	)	CASE NUMBER: 2022-CP-10-05916
MARKA DANIELLE RODGERS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	MOTION TO AMEND JUDGEMENT
CNT FOUNDATIONS,	)	PURSUANT TO SCRCP 59(e)
	)	
Defendant.	)	
	)	

The Plaintiff hereby requests that the Court amend its orders entered on October 18th and on November 2nd, 2023.

PROCEDURAL HISTORY

On December 27th, 2022, the Plaintiff initiated the above-captioned action. On January 25th, 2023, the Defendant moved to compel arbitration. On September 8th, 2023, the Court held a hearing and heard from both parties. On October 18th, 2023, the Court entered a form order granting Defendant's motion and directing Defendant to thereafter submit a formal proposed order. On October 27th, Plaintiff filed a motion to amend judgment pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. On November 2nd, the Court entered an order granting Defendant's original motion to compel arbitration which does not appear to address Plaintiff's October 27th motion to amend. Now, Plaintiff moves to amend the November 2nd order under the same grounds as the October 27th order.

ARGUMENT

Defendant's "litigate for free" arbitration clause makes it practically immune to any legal liability whatsoever. It forces any potential plaintiff to foot Defendants' entire legal bill and

costs of litigation, which will often exceed the price of the contract itself. This discourages Defendant from meeting their contractual obligations, and effectively makes any claim against Defendant prohibitively expensive. CNT shouldn't be able to take payment for a job, fail to perform, and then prevent litigants from pursuing a claim because they'd have to bankroll CNT's assertion of a frivolous defense. CNT took over \$11,000.00 from the Plaintiff, failed to meet their promises, and are now forcing her to pay CNT's legal bills for even making the complaint to begin with.

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Respectfully submitted,

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November 10, 2023
Charleston, SC

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS
C.A. NO. 2022-CP-10-05916

MARKA DANIELLE RODGERS,

PLAINTIFF,

vs.

CNT FOUNDATIONS,

DEFENDANT.

H E A R I N G
BEFORE THE HONORABLE JENNIFER MCCOY

DATE: SEPTEMBER 8, 2023
TIME: N/A
LOCATION: SOUTH CAROLINA CIRCUIT COURT 9
TRANSCRIBED BY: AMANDA WATSON

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EXHIBITS

(NONE MARKED)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS
REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

P R O C E E D I N G S

THE COURT: All right. The next matter I have on the docket is *Marka Danielle Rodgers versus CNT Foundations*.

MR. SUMMA: Good morning, Your Honor.

THE COURT: Good morning. You gentlemen can state your first and last names and who you represent and we can get started.

MR. KRAWCZYK: Your Honor, I'm Charlie Krawczyk. I represent CNT Foundations.

MR. SUMMA: I'm Daniel Summa representing the Plaintiff, Marka Rodgers.

THE COURT: All right. Is -- for some reason there is a strange echo. Are either one of y'all logged on twice or on two devices, by any chance?

MS. RODGERS: Ma'am, that might be me. This is Marka Rodgers and I am on my cell phone. I will mute myself.

THE COURT: Okay. Okay. All right. Well, attorneys, I'm happy to hear from you.

MR. KRAWCZYK: Yes, Your Honor, this is my motion for CNT. This is a case arising out of residential construction here in South Carolina. My client is a foundation repair company who was contracted with the Plaintiff in this case to do a very specific repair to the foundation. As is many times in a -- in a situation that my client is involved in, the Plaintiff has a house with a lot of problems, but not the

1 full amount of money necessary to fix all those problems.

2 They hired my client to do a specific scope of work,
3 which they performed. In the end, evidentially the Plaintiff
4 was not -- either didn't want to pay or was not satisfied
5 with the client -- with my client's work and initially filed
6 an action in the magistrate's court where she sought a --
7 basically, a rescission of the contract and return of her
8 money, which amounted to \$6,000, and then -- and then --
9 which was filed pro se. We filed an answer in that action
10 asserting an arbitration provision and filing an answer.

11 Quite frankly, we were -- we were okay being in the
12 magistrate's court if that's what it -- you know, was easier,
13 quicker, faster, but then when Counsel was hired, and they
14 saw that the jurisdictional limit was less than they wanted,
15 they dismissed that case and filed this action in circuit
16 court. So and then we filed our answer -- well, not answer.
17 We filed a motion to dismiss, to enforce arbitration pursuant
18 to the arbitration provisions in the contract.

19 The -- you already heard it today, so I'm not going to
20 go into all the law and how we believe arbitration is -- is,
21 particularly in South Carolina, favored. It is particularly
22 favored in construction litigation, in which time and time
23 again the courts have held -- are not only subject to South
24 Carolina, you know, arbitration provision, but the FAA
25 arbitration. Because the materials and everything else do

1 follow the, you know, interstate commerce, and so there's a
2 long held history of enforcing arbitration provisions in --
3 in residential construction cases.

4 And I think Plaintiff's counsel has cited a number of
5 out-of-state course -- you know, findings because I think
6 really there isn't anything in South Carolina to -- to -- to
7 disagree with that. Now, it's important to understand that
8 there is no argument from Plaintiff that the provision itself
9 as it's drafted meets the requirements. Under the South
10 Carolina statute, it's properly drafted. The client had the
11 opportunity to change the documents.

12 What -- what I'm hearing from the Plaintiff is the usual
13 thing when somebody doesn't want to go and -- and deal with a
14 contract they signed with -- and that's that we've got a --
15 we've got a provision that is one-sided, it's an adhesion
16 contract. It's -- and all the usual -- all the usual things
17 that they tried to do to get out of the contract.

18 In particular, this Plaintiff is -- is claiming that the
19 cost and fee shifting provision in -- which is not in the
20 arbitration provision, but which is in the contract -- is
21 somehow -- makes the arbitration provision un-enforceable,
22 which I think is incorrect. I have filed the brief and quite
23 frankly, Your Honor, we were in front of Judge Price on this
24 exact facts situation -- almost identical facts situation --
25 identical contract, identical arguments, both from the

1 unconscionability, from the fee-shifting provision;
2 everything else was raised. We've gone through this.

3 And I -- like I said, I know it's not necessarily
4 binding on the Court, but it is persuasive to the Court to
5 know that the -- Judge Price, less than a -- just about a
6 month ago, ruled that this arbitration provision is fully
7 enforceable under South Carolina law. So we're just here,
8 Your Honor, to -- to push the fact that this case needs to go
9 to arbitration. That's what the -- what the parties agreed
10 to do.

11 All the arguments that the Plaintiff raises in his brief
12 regarding the enforceability of specific contracts and
13 provisions, he can raise to the arbitrator, the same that he
14 could raise to the Court. The arbitration -- the arbitrator
15 has the same powers as the Court would have to decide all the
16 legal issues, all the factual issues. All we're talking
17 about today is what the proper venue is, and what we're
18 saying, Your Honor, is the proper venue in this particular
19 case is arbitration and not circuit court.

20 THE COURT: All right. I'm happy to hear from you
21 Mr. Summa.

22 MR. SUMMA: Thank you, Your Honor. It basically comes
23 down to -- he's correct that we could, in theory, raise those
24 same arguments, but that would be after we paid their
25 attorneys' fees and all of the costs of arbitration. This

1 arbitration agreement requires the Plaintiff, the customer,
2 to pay all costs, including opposing side's attorneys' fees
3 even if their defense is found to be meritless, and we think
4 that's unconscionable.

5 I know that he said a lot about, you know, generally
6 this is the same, but we know that these arbitration
7 agreements are interpreted (indiscernible) contract laws,
8 provision of a contract. And whether a contract is
9 unconscionable depends on all the facts and circumstances of
10 a particular case. It's not bright line, all contracts are
11 to be treated the same, and I think in this case, it's a
12 little bit unique in the fact that she was -- she's
13 wheelchair bound. So her, in her house and her foundation,
14 it means she can't sit still while trying to cut vegetables.

15 It's an urgent -- it's especially important to her, and
16 that goes into the absence of meaningful choice, which is
17 also called the procedural unconscionability prong of the
18 analysis. All the other factors weigh in favor of
19 Ms. Rodgers on that aspect. She's a customer to a foundation
20 repair company. She doesn't have the expertise they do. She
21 can't even go under her house.

22 We know in South Carolina that a -- someone who's buying
23 a vehicle from a car dealership is similarly in that
24 situation, where they have unequal bargaining power and
25 perhaps an absence of meaningful voice. And so -- and even

1 then, regardless of whether she -- she, you know, had a
2 meaningful choice or not, I mean, we know that if a contract
3 provision is so one-sided, the showing for absence of
4 meaningful choice is less than. It's kind of like a sliding
5 scale, so to speak, and we think it's so oppressive here.

6 I mean, in theory, if we go to mediation, and we win,
7 and they find that the defense was completely meritless, I
8 mean, she might still lose money because she's going to have
9 to pay their attorneys' fees. And I don't think the defense
10 has been able to cite any example of that specific provision
11 being held up.

12 I know that there was a prior Plaintiff in front of
13 Judge Price, but we think our arguments are a little bit
14 different. We think they're more fleshed out. And then
15 importantly, Your Honor, we're asking that the Court -- even
16 if they find the arbitration agreement is generally
17 acceptable, we'd ask that they reform it to exclude the
18 one-sided attorney fee and cost provisions.

19 So it doesn't make sense, and it's a serious deprivation
20 of her statutorily ordinary rights. You have to pay the
21 other side's attorneys' fees even if she were to win, and we
22 think that no fair, reasonable person would enter into such
23 an agreement. And so that's why we'd argue it's
24 unconscionable to ask the Court to deny arbitration or at
25 least reform it so that she shouldn't have to shoulder all

1 the costs, even if she wins. Obviously, if her argument is
2 found to be meritless or frivolous or whatever, they still
3 have all the regular available rights to get attorneys' fees
4 from their side. Just -- it shouldn't be automatic that she
5 pays all of their costs.

6 THE COURT: All right. Mr. Krawczyk?

7 MR. KRAWCZYK: Well, I -- again, I don't think that
8 whatever the Plaintiff's particular situation is as far as
9 being in a wheelchair -- I don't think that had anything to
10 do with her ability to -- to negotiate. She -- actually in
11 her original pleadings in the magistrate's court, she
12 indicated that she got more than one estimate. She got
13 estimates from multiple people. She's had multiple people
14 out there.

15 She's had the opportunity to negotiate this contract,
16 and her being in the wheelchair doesn't have anything to do
17 with whether or not she had the cognitive ability to -- to
18 understand what she was signing. And all -- again, what
19 we're here today to discuss is the -- is the forum in which
20 this -- all these arguments will take place. And it's clear
21 that the law says when we're just looking at the forum, that
22 the Courts will enforce an arbitration provision.

23 And Plaintiff can raise all these issues with -- with
24 the arbitrator in the same way that they can raise it with
25 the Court. What we're asking for is just to have the -- the

1 forum for these arguments to take place with the arbitration,
2 which is what we all agreed to.

3 THE COURT: Yeah, I mean, I don't know, Mr. Summa, that
4 -- that, you know, even if I decide that, you know, this
5 isn't a fit -- a valid arbitration agreement, that your
6 rights to try and lay it on the line to have attorneys' fees
7 sort of reconsidered, I don't think that's off the table, by
8 any means. So -- but I'll take a look at the agreement and
9 the briefs and issue a ruling hopefully very soon. Hopefully
10 by the end of next week, okay?

11 MR. KRAWCZYK: Thank you, Your Honor.

12 MR. SUMMA: Thank you, Your Honor. And I did provide
13 some authority to reform part of an agreement in my briefing,
14 so thanks so much.

15 MR. KRAWCZYK: I really didn't address that, Your Honor.
16 And I don't think you can blue line your contracts in South
17 Carolina, but I'll leave that up to you.

18 THE COURT: All right. Thank y'all.

19
20
21
22
23 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED)
24
25

CERTIFICATE OF TRANSCRIBER

I, AMANDA WATSON, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Charleston County, South Carolina, on the 8th day of September, 2023.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

AMANDA WATSON, TRANSCRIBER

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS
C.A. NO. 2022-CP-10-05916

MARKA DANIELLE RODGERS,

PLAINTIFF,

VS.

CNT FOUNDATIONS,

DEFENDANT.

H E A R I N G
BEFORE THE HONORABLE JENNIFER MCCOY

DATE: JUNE 20, 2024
TIME: N/A
LOCATION: SOUTH CAROLINA CIRCUIT COURT 9
TRANSCRIBED BY: AMANDA WATSON

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(NONE MARKED)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS
REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

P R O C E E D I N G S

THE COURT: Okay. *Marka Danielle Rodgers versus CNT Foundations.*

MS. RODGERS: I'm here.

THE COURT: Great. Who's that?

MS. RODGERS: Marka.

THE COURT: What's your full name, please, ma'am.

MS. RODGERS: Marka Danielle Rogers.

THE COURT: Okay. Are you represented by counsel?

Ms. RODGERS: I am.

THE COURT: Excellent.

MR. SUMMA: I'm here, Your Honor.

THE COURT: He'll probably take over at this point, but thank you, Ms. Rogers. You can hit mute again.

Ms. RODGERS: Yes, ma'am. Thank you.

THE COURT: All right. Hey, Mr. Summa, how are you doing?

MR. SUMMA: I'm fine. How are you?

THE COURT: I'm fine. Welcome. Okay, Mr. Krawczyk?

MR. KRAWCZYK: Good morning.

THE COURT: Who do you represent today?

MR. KRAWCZYK: Good afternoon.

THE COURT: Good afternoon. Okay. Mr. Summa filed a motion to amend a judgment -- that right?

MR. SUMMA: That's correct, Your Honor.

1 THE COURT: Happy to hear from you.

2 MR. SUMMA: Thank you, Judge. We're asking the Court to
3 amend its prior order and find that the arbitration clause in
4 this case is unconscionable. We're asking that because the
5 clause itself contains a one-sided fee provision that could
6 potentially allow a party who breaches the contract to
7 recover attorneys' fees and arbitration fees from the non-
8 breaching party.

9 Little bit of background, just as a reminder,
10 Ms. Rodgers, she had a faulty foundation. She was in
11 somewhat of a dire situation. She paid the Defendant's
12 company over \$11,000 to fix that foundation. We've alleged
13 they did not uphold their end of the bargain. They didn't
14 meet the terms of the contract, and, in fact, they made it
15 worse, and she had to pay \$19,000 to another company to come
16 and fix it. So obviously -- we've said that the arbitration
17 clause itself says that CNT's attorneys' fees are covered by
18 the other party no matter what, including the arbitration
19 fees.

20 We think that offends common sense, and we think that it
21 is unconscionable because it's one-sided and oppressive.
22 Such that no reasonable person would agree to it -- provided
23 the Court with cases all around the country, really,
24 that's -- that agree, that have been faced with this decision
25 and say, well, obviously, it's unconscionable. Why would

1 someone who, you know, breaches a contract get to take
2 attorney' fees from the non-breaching party.

3 And, obviously, the defense hasn't provided any
4 appellate court that's agreed with their position and found
5 this to be conscionable. And in addition, Judge, I didn't
6 mention this before, but, I mean, I really think it would
7 change the landscape here. I think that it would make South
8 Carolina uniquely un-consumer friendly, and I think it might
9 even encourage litigation, because the defense gets to
10 litigate for free.

11 I mean, why would they uphold their contract if the
12 worst thing they -- that happens to them in court is they
13 have to give a refund and they don't have to pay for their
14 own attorneys; they don't have to pay the arbitrator?

15 THE COURT: Yeah, makes sense.

16 MR. SUMMA: Correct. So based on that, we just ask the
17 Court to amend their prior judgments. And thank you for
18 hearing us, and I'm happy to answer any questions the Court
19 has.

20 THE COURT: Okay. Mr. Krawczyk, do you want to respond?

21 MR. KRAWCZYK: Yeah, Your Honor, we're here on a rule 59
22 motion. Mr. Summa has argued all this before the Court
23 already. It was already in his prior motion. You know, the
24 purpose of rule 59 is if -- if the -- if the party believes
25 the Court has misunderstood or failed to fully consider a

1 rule -- an argument. I don't think Mr. Summa has -- has
2 provided anything to the Court that hasn't already been
3 before the Court. This -- both of these ---

4 THE COURT: Well, I think the first time we really
5 focused on the arbitration enforceability, and he -- this
6 time he sort of honed in on the attorneys' fees portion, so
7 that's a little different.

8 MR. KRAWCZYK: Okay.

9 THE COURT: So why don't we talk about that?

10 MR. KRAWCZYK: Well, I think -- again, this is in my
11 memorandum from the original thing, and it is something that
12 we did -- he did argue this the first time, and we did
13 discuss this the first time, and that there is case law in
14 South Carolina that says that we're merely arguing over the
15 venue in which this dispute will take place. If there is an
16 argument over the unconscionableness of a particular portion
17 of that agreement, the arbitrator can address that, as well.

18 That is the -- the Munoz (phonetic) case that I cited in
19 my original case, and the -- the -- excuse me, my phone just
20 went off. The -- the issue you have here, Your Honor, is
21 again in the rule 59 motion, there -- well, there's two
22 problems. One, the contract -- the term of the -- of the
23 costs and the attorneys' fee shifting provision will be in
24 place whether we are in court or whether we are in
25 arbitration.

1 The contract has -- has two provisions, both for the
2 same -- saying the cost provision -- the same cost provision
3 will -- is -- is included within the regular attorneys' fee
4 provision. So it's going to be something that is going to be
5 addressed over time, anyway. I think what's going on here is
6 -- is, Ms. Marka is unhappy with the fact that she's been
7 asked to go to arbitration.

8 To give you some better background of this, Ms. Marka
9 originally filed this case in magistrate's court, and we
10 agreed in magistrate's court to waive the arbitration
11 provision, and they didn't want to do that, so they dismissed
12 that case and then filed in circuit court because they
13 thought they might have a bigger counter -- bigger claim.
14 After Your Honor's ruling, my client actually offered
15 Ms. Marka to waive the provisions he's concerned about,
16 meaning we would agree to pay half. I have an email to that
17 effect, Your Honor ---

18 MR. SUMMA: Okay.

19 MR. KRAWCZYK: --- that we have agreed to waive the --
20 the cost, that we would pay half of the cost of the
21 arbitration, and we would waive the attorney provision in the
22 event that -- in the event that she should win, which is what
23 their complaint is. And, Your Honor, I can read for you from
24 that particular email, which was sent to Mr. Summa on --
25 looks like November -- November 11 of 2023. Where ---

1 MR. SUMMA: I'm not contesting that you sent that. I
2 mean ---

3 MR. KRAWCZYK: Yeah, so ---

4 THE COURT: Yeah, I'll take your word for it.

5 MR. KRAWCZYK: So it's not a matter of the provision
6 that I think that -- that the -- that the Plaintiff doesn't
7 like. They just don't want to be in arbitration. I think
8 the case law says -- the case law he cites, which is the DR
9 Horton case, and in the DR Horton case, the arbitration
10 provision went throughout the contract and basically
11 incorporated all kinds of waivers of all kinds of causes of
12 action and made them dismiss, you know, warranty claims.

13 And the Court in that particular case found that
14 particular arbitration clause to be unconscionable. In this
15 particular case, I would also point out that the contract
16 itself has a provision in which, you know, if -- which is
17 agreed to -- and if a portion -- basically, if this Court
18 should deem a validity, a portion of the provisions will not
19 be affected. If the Court finds a portion of this contract
20 invalid, that the remaining portions would remain.

21 So, again, I think all of that -- we are in the same
22 position we were before, the same argument as before. It's
23 the same argument that's been made, Your Honor. I -- I cited
24 three other -- or at least two other Charleston County judges
25 that have found the same as you did in your first hearing.

1 And so I don't think Mr. Summa has raised anything pursuant
2 to rule 59 that is new.

3 THE COURT: Okay.

4 MR. KRAWCZYK: I think his client is unhappy with the
5 decision and so ---

6 THE COURT: Okay. Mr. Summa, did you serve a copy of
7 this on my office, because we don't have record of that.

8 MR. SUMMA: A copy of our motion for 59(e)?

9 THE COURT: Yes.

10 MR. SUMMA: I e-filed it, so I assumed that would be
11 sufficient.

12 THE COURT: Not -- no, that's not service on me. No.
13 But anyway -- just -- okay. In the future, you should know
14 that we don't get e-filing. Like there is -- that -- there
15 is no such thing. So when you file a motion to reconsider,
16 as you know under the rule, there's a specific provision that
17 provides you must serve the judge with a copy. Either, you
18 know, mail or email, but you can't just -- no, e-filing does
19 not actually -- just -- just FYI, does not reach me. This is
20 the first I've ever known. Okay.

21 MR. SUMMA: Thank you, Your Honor.

22 THE COURT: It just happened to appear on my docket. I
23 mean, honestly, it's kind of happenstance that it even made
24 my docket, and not like Judge Young's down the hallway.

25 MR. KRAWCZYK: Well, actually, it did make Judge Young's

1 docket, and I told the Court that only you have the ability
2 to affect your own order, Your Honor.

3 THE COURT: Well, there you go. And there in -- just so
4 y'all know, just in the future -- just so you know,
5 Mr. Summa, the rule does require service on me. I could -- I
6 can dismiss it just for failure to comply with that within
7 ten days. But anyway, I'll take a look at your memos and
8 everything in the rule and get you a ruling ASAP, okay.

9 MR. KRAWCZYK: Thanks, Your Honor.

10 MR. SUMMA: Thanks, Your Honor.

11 THE COURT: I understand your various positions and just
12 in the future, know that you do -- you must serve a separate
13 notice on the judge you are seeking to amend, okay?

14 MR. SUMMA: Thank you, Your Honor. Sorry about that.

15 THE COURT: Sure. That's okay. Take care.

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22
23
24 (THERE BEING NOTHING FURTHER, THIS HEARING CONCLUDED)
25

CERTIFICATE OF TRANSCRIBER

I, AMANDA WATSON, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Charleston County, South Carolina, on the 20th day of June, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

AMANDA WATSON, TRANSCRIBER

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Jul 22 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Appellate Case No. 2024-001248

Marka Danielle Rodgers Appellant,

v.

CNT Foundations.....Respondent.

PROOF OF SERVICE

I certify that I have served the final Record on Appeal to counsel for Respondent by
emailing the same to charley@cak-law.com and dglick@gwblawfirm.com on July 22nd, 2025.

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July 22, 2025
Charleston, South Carolina