THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Hon. Thomas W. McGee III, Circuit Court Judge

Case No. 2021-cp-10-01215
Appellant Case No. 2024-001813

Mansfield at Park West, Inc. …… Respondent,

v.

D.R. Horton, Inc. ……..…… Appellant.

REPLY BRIEF OF APPELLANT D.R. HORTON, INC.

Table of Contents

TABLE OF AUTHORITIES

CASES

INTRODUCTION

In its Brief, Respondent did not dispute facts and issues that are fatal to its case. These are discussed in the first section of this Reply Brief.

To provide clarity and to address Respondent's assertions, the second portion of this Brief discusses each of the relevant provisions of the CCRs to highlight Appellant's continuing rights under the CCRs and Respondent's errors of interpretation. Respondent accused Appellant of cherry-picking a provision of the CCRs, but then predominately relied upon the last two sentences of §18.1, which would render most of §18.1 superfluous. Respondent's Brief also conflates §18.1 and §18.2, ignores the many provisions that provide Appellant continuing rights, and wrongly states that Appellant has no standing to complain about Respondent's amendments that violated the CCRs they purport to amend. Respondent's and the Circuit Court's reliance on § 1.3 is misplaced and caused the Circuit Court to err in understanding the amendment process, timing, and requirements.

This case is important because Respondent has attempted to destroy developer's rights and protections in the initial 20-year term of a development's CCRs while the developer still has rights to further develop the property, and as discussed in Appellant's Initial Brief, has engaged in an end run around the United States Supreme Court's precedent that litigants cannot be forced to arbitrate class actions without their explicit consent.

ARGUMENTS

It is important to understand what Respondent **did not dispute** in its Brief.

First, Respondent did not deny that the parties and arbitrator agreed that the arbitrator would provide a reasoned award. In fact, at no time and in no pleading has Respondent denied that

the parties and the arbitrator agreed to a reasoned award. This fact is not in dispute. Instead, Respondent asserts that a reasoned award was issued. It was not. As to the issue of standing, the arbitrator said only this:

> I have reviewed the Declaration of Covenants, Conditions, and Restrictions for Mansfield at Park West , along with the First and Second Amendments thereto and considered the testimony and arguments of counsel. I find the Plaintiff has standing to pursue the claims it has asserted. ROA.

The first sentence recites what the arbitrator said he reviewed. That is not a reasoned award or reasoning.

The second statement is a conclusion without any facts, issues, law, observations, analysis, or basis. That is also not a reasoned award or reasoning.

The arbitrator also said nothing about real party in interest or whether the CCRs could even be amended in the manner they were amended to create a *defacto* class action litigation opportunity. ROA. Saying nothing about important issues in the arbitration is not a reasoned award.

As to the issue of damages, the arbitrator only provided a lump sum figure. ROA. There was no discussion, no facts, issues, law, observations, analysis, calculations, offsets for age and useful life or for the roof that had already been replaced due to hail damage at no cost to the unit owner and no description or allocation of the damages to the roof, siding, and windows issues. Only a number was provided. That is not a reasoned award.

Gross negligence[1] is the only issue for which the arbitrator provided a reasoned award; but he then failed to complete the damages task when he provided a standard lump sum award – rather than the agreed upon reasoned award – as to the damages that the arbitrator knew would prevent Appellant's ability to seek recompense from its contractors and subcontractors for their work. ROA. This resulted in a punitive-type award against Appellant for the entire damage burden, which is not allowed.

No one has disputed that a reasoned award was agreed to. The arbitrator exceeded his authority when he failed to issue a reasoned award. Respondent attempts to overcome the arbitrator's failure to complete the job for which he was hired with a reasoned award by arguing that the Consent Order to arbitrate gave the arbitrator the authority to decide procedure. However, an agreement to issue a reasoned award was within the arbitrator's authority and once he agreed he was obligated to issue a reasoned award. Additionally, a reasoned award is substantive, not procedural. **Second**, Respondent did not dispute that this case falls within the purview of the Federal Arbitration Act. *See* 9 U.S.C. Section 10. Accordingly, Appellant's standard of review discussed in its Initial Brief as to the applicability of the Federal Arbitration

---

[1] Respondent makes claims that the construction for the windows, roofs, and siding was grossly negligent. It was not, but the only way the Respondent could recover, was for the arbitrator to find gross negligence because the statute of limitations had run. The arbitrator agreed that in the 12-14 years since the buildings were completed there had been no interior damage to the townhomes, which is what the siding, roof and windows are required to prevent. The arbitrator said, "I'm not saying it's prematurely failing. I'm not even arguing that because there's very little proof. There's leaks around the windows maybe and there's some problems with the shingle issue." (Motion to Vacate, Exhibit Y, 7/31/2023 Tr. pp 274 lines 20-24 and p. 279 lines 7-13). No roofs failed. Appellant has not challenged the gross negligence finding only because Courts do not review those types of factual conclusions after arbitration. However, the gross negligence finding, coupled with the lack of a reasoned award in the face of agreement for a reasoned award, coupled with a lump sum award to prevent the Appellant from seeking recompense from its responsible subcontractors, shows overwhelming bias. That requires reversal.

Act is uncontested. *See* 9 U.S.C. Section 10. The Court erred when it only applied South Carolina arbitration law.

Third, Respondent does not dispute that the HOA Board has pursued the rights and obligations of each individual townhome owner as a *defacto* class action. The amendment that gave the HOA Board the discretion to pursue individual claims of townhome owners was an end run around the federal arbitration caselaw that does not allow class action in arbitration unless it is explicitly agreed to. Appellant never agreed. Respondent also does not challenge Appellant's assertion and case law that parties in arbitration cannot be compelled to arbitrate class actions without specifically agreeing to arbitrate a class action case. *Lamps Plus. Inc. v. Varela*, 139 S. Ct. 1407 (2019); *Epic Systems Corp. v. Lewis*, 138 S. Ct. 1612 (2018) (enforcing as written arbitration agreements that preclude class action arbitration). Respondent tries to avoid this issue by saying that the arbitration itself was agreed to in a Consent Order, but nowhere in that Consent Order does D.R. Horton agree to class action arbitration.[2] Consent Order. ROA. In fact, at every turn, Appellant has argued that Respondent cannot stand in the place of the individual townhome owners. ROA. Respondent also tries to avoid this issue by arguing that it did not file a class action lawsuit. That is why the maneuver in which Respondent engaged is referred to as a *defacto* class action.

Fourth, Respondent does not deny that it lacks any obligation to any townhome owner to use any damages award on any specific townhome owner's home for any alleged construction defect. Everything is only at the discretion of the HOA Board, whereas the

[2] The Consent Order to arbitrate, provides that the selection of the arbitrator would be under South Carolina law. ROA. That Consent Order does not waive any other rights under the FAA.

townhome owners remain solely obligated to maintain their townhomes. CCRs, as amended. The townhome owners are the real parties in interest, not the HOA Board, who could simply keep all the money for decades.

Fifth, Respondent does not dispute that the original CCRs and First Amendment were the CCRs that were in place when Respondent attempted to amend the CCRs. Respondent attempted to imbue itself with standing by modifying the CCRs in a Second Amendment; however, the CCRs itself prohibit application of any such modification for three years from the date an amendment is recorded. Additionally, any amendment pursuant to §18.1 may not be made until *after* the initial twenty-year term, which does not expire until September 20, 2027. ROA. Respondent attempts to evade this fact by asking the Court to ignore all of §18.1, except the last two sentences. But doing so would give no meaning to the phrase "in whole or in part" in §18.1, as discussed more fully in the next section on the contract provisions. ROA. It also does not protect the developer's interest in a twenty-year duration for the CCRs that does not allow amendments that diminish its rights, especially where the developer has reserved the right to annex and develop additional units. CCRs § 8.1 and 3.3. ROA. Contracts in South Carolina are to be enforced. *See e.g., Jordan v. Security Group, Inc.,* 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993). "Where an agreement is clear and capable of legal interpretation, the court's only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it." *Id.* Sound public policy demands that courts enforce contracts. Likewise, sound public policy requires that arbitrators not be allowed to dispense their own contract nullification proclivities over basic contract law.

In this case, the arbitrator failed to apply clear and well-defined South Carolina law that

contracts are to be enforced when he failed to enforce the CCRs and when he failed to grant D.R. Horton summary judgment on the issue of Respondent's lack of standing and real party in interest status – all in manifest disregard or perverse misconstruction of the law.

CCRs Provisions

Respondent claims that Appellant lacks standing to challenge its putative amendment to the CCRs. Respondent's argument is contradicted by the terms of the CCRs that provide Appellant continuing rights as the Declarant. CCRs §1.2, §3.2, §3.3, §8.1, §13.2, §14.3, §14.4, §14.5, §14.6, §14.7, and 18.1. ROA. In §1.2 D.R. Horton has the right to an initial twenty-year term for the CCRs. ROA. In §3.2 maintenance and staffing of the common areas is required and may not be amended except pursuant to Article VIII. ROA. This benefits and is important to D.R. Horton because Appellant has a continuing right to annex any property in Exhibit B to expand the development pursuant to §8.1 and add additional recreation facilities under §3.3 to support the additional development. ROA. Sections 13.2 and 14.3-14.7 provide D.R. Horton a variety of continuing rights- which are needed if it decides to add more property to the development. ROA. Finally, §18.1 protects the terms of the CCRs for the first twenty years (expiry September 2027) and sets forth an amendment process for amendments thereafter, which also provides benefits to D.R. Horton to protect its possible expansion of the project. Respondent ignores all these rights that D.R. Horton retains in the CCRs that are not dependent on Appellant remaining an owner of a townhouse unit. D.R. Horton has a business reason for the protections it retained in the CCRs. Respondent advocates for a strained reading of the CCRs that it argues allows it to make material amendments during the initial twenty-year term under the guise that it can do so because Appellant no longer owns a townhouse unit, but Appellant retained many ongoing rights under the CCRs and can today still develop additional units. If Respondent is

allowed to prematurely amend the CCRs as it tried to do here, it will wreak havoc on many developments in South Carolina and upend decades of real estate contract law.

Respondent has made assertions about Appellant's right to question the amendment and the process required to amend the CCRs and argued that Appellant has no interest in the CCRs or the Mansfield development. Each relevant provision in the CCRs is discussed below to address Respondent's false claims and misunderstanding of the CCRs.

CCRs § 1.2: Taking the relevant provisions in chronological order as they are listed in the contract, § 1.2 of the CCRs provides:

> This Declaration, as it may be amended and supplemented from time to time, shall remain in effect and ***shall be enforceable by the Declarant***, the Townhome Association, [and] any Owner . . . for a term of Twenty (20) years from the date this Declaration is Recorded." After such time, this Declaration shall be extended automatically for successive periods of Ten (10) years each . . ..

CCRs, § 1.2. ROA. (Emphasis added). The original CCRs were filed on September 13, 2007. Therefore, by the express terms of the CCRs, D.R. Horton has the right to enforce the CCRs and its amendments or supplements until September 2027. Reading § 1.2 with § 18.1 makes clear that the Declarant has the right to not have the CCRs amended in the manner Respondent did. Amendments are limited to post-the initial 20 years, except in very limited circumstances not applicable here.

Additionally, the Second Amendment removed certain rights that were provided to D.R. Horton in the Original Dispute Resolution Provision and gave to Respondent the right to bring *defacto* class action litigation in arbitration without D.R. Horton's consent. D.R. Horton has

standing to contest the effectiveness of, and the process used to enact the Second Amendment. Nothing in § 1.2 limits Declarant's right to enforce the CCRs to townhome ownership.

CCRs § 1.3 This provision disallows any additional covenants, conditions, or restrictions affecting any portion of Mansfield while Appellant owns any of the property unless Appellant consents. After Appellant's ownership ends, additional covenants, conditions, or restrictions may be made if 75% of the owners vote in favor and the instrument with the required consents is recorded. If the instrument is recorded without the required consent, it is void and of no force and effect. The provision states:

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

Respondent relies on this provision to support its ability to amend the CCRs prior to the end of the initial 20-year term and to avoid the 3-year waiting period set forth in § 18.1. The Court also referenced this provision in support of its Order. Reliance on § 1.3 is misplaced. Section 1.3 is for *additional covenants, conditions, or restrictions* affecting Mansfield. Respondent **amended** the **existing** covenants. Respondents did not burden the land and townhomes with *additional covenants, conditions, or restrictions*, which is what § 1.3 addresses. Section 1.3 does not mention *amendment* and does not provide a means for amending the CCRS. ROA. Amendments

must follow the process in § 18.1, which allows amendments after the initial 20-year period and after the amendment has been recorded for at least 3 years. ROA.

Additionally, nothing in Respondent's Second Amendment to the CCRs includes the Owners' consents nor does it mention the word "consent" at all. Second Amendment. ROA. It certainly does not include the consents of at least 75% of the Owners. Accordingly, as a consent for *additional covenants, conditions, or restrictions* affecting Mansfield pursuant to § 1.3, the instrument is void and of no force and effect.

CCRs § 5.2: Section 5.2 clarifies why the townhome owners are the real parties in interest. The homeowners are deeded the interior and exterior of their specific units and they are individually responsible for the maintenance to the interior and exterior of their townhomes. Pursuant to the CCRs for Mansfield at Park West, the individual homeowners have the right and obligation to maintain and repair the units. The original CCRs provide that:

> Each Owner shall maintain his or her Unit and all structures, parking areas, backyards and other improvements comprising the Unit in a manner consistent with the standards of Mansfield at Park West and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Townhome Association[.]
>
> ... Each Owner's maintenance responsibility shall include, but shall not be necessarily limited to, the following:
>
> (b) maintenance, repair, and replacement as necessary of the exterior surfaces of the Units ... and,

(e) maintenance, repair and replacement as necessary of the roof including shingle and roof decking of the Unit.

Original CCRs, § 5.2. ROA. Notably, Respondent had zero obligation or responsibility to do any of the above before the Second Amendment, and the Second Amendment does not *require* Respondent to do any exterior maintenance on any townhouse. ROA. The amendment allows Respondent to choose if it wants to bring a claim and if it wants to provide any repairs, at its sole discretion. No unit owner is entitled to a single dollar from the lawsuit, and nothing can compel Respondent to provide any benefit to the townhome owners. The Second Amendment was enacted only to be an expedient way to circumvent the townhome owners having to prove their individual damages on each of their units and to evade the limits on forced a *defacto* class action arbitration. (Motion to Vacate Arbitration) ROA. Based on § 5.2, the homeowners would be the real parties in interest. Moreover, Respondent agreed that no amendment to the CCRs has changed the homeowners' obligation to repair and maintain the exterior, roof, and fencing. Exhibit P, (30(b)(6) Depo. of Respondent, 23:15-24:5, 25:22-26:10, 27:11-17, 52:9-53: 1, 60:18-22, 61:3-8, 76:5-9). ROA.

CCRs, § 17.1-17.6 The Second Amendment replaced the section entitled "Dispute Resolution and Limitation on Litigation" (the "Original Dispute Resolution Provision") and amended it with a resolution process that diminishes Appellant's rights. CCRs; Second Amendment. ROA. The Original Dispute Resolution Provision provided procedures that all of the bound parties had to follow in order to bring a claim related to an alleged construction defect. CCRs, § 17.1-17.6. ROA. The Original Dispute Resolution Provision provided that "[D.R. Horton] shall have the right to meet in good faith and discuss the subject of the proceeding with the Owners, or the particular Owner, and to access, inspect, correct the condition of, or redesign

any portion of the Community, including any improvement as to which a defect is alleged." (Id., § 17.1). It is undisputed that this did not occur.

Moreover, the Original Dispute Resolution Provision provided the following procedure for bringing construction defect claims:

- notice of claim in writing;
- the parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the claim by good faith negotiation;
- if such meeting is unsuccessful, then the claimant must submit the claim to mediation; and
- if the mediation is unsuccessful, then the claimant must submit the claim to arbitration.

CCRs, § 17.4. ROA.

The amended Dispute Resolution provision amends the dispute resolution process, and it allows the HOA Board *to change anything else in the CCRs they decide to amend without a vote of the owners*. The amended provision states:

ARTICLE XVII

Dispute Resolution

> Any dispute between the Association and the Declarant shall be submitted to binding arbitration with a single arbitrator agreed to by the parties or appointed by the Court. The arbitrator shall have the sole discretion to determine the rules and procedures of the arbitration and any law applicable thereto. The award of the arbitrator shall be final and binding.

> To the extent that there is any provision in the Declarations that conflict with this Amendment, the terms of this Amendment shall govern. The Board of the Association shall have the right to give the final meaning and interpretation of any term of the Declaration and Amendments thereto and shall have the right to modify any provision for which it determines impedes it from fulfilling its duties and obligations to the members of the Association provided that a least two-thirds (2/3) of the Board votes in favor of such interpretation and/or modification.

Amended Dispute Resolution Provision. ROA. Based on the Second Amendment, Respondent contends that it does not have to comply with the requirements laid out in the Original Dispute Resolution Provision.

The second paragraph also makes a material change to the entirety of the CCRs because it imbues the Board with sole authority to determine the "final meaning and interpretation of any term of the" CCRs and changes entirely the method to make any amendments to the CCRs in direct contravention of the CCRs. Second Amendment. ROA. The CCRs expressly state that D.R. Horton has the right to enforce the CCRs until 2027. *See* CCRs, § 1.2. ROA. D.R. Horton has been denied its rights under the CCRs.

CCRs, §18.1: Section 18.1, Duration and Amendments sets forth the process to amend the CCRs. The provision states:

> The covenants and restrictions of this Declaration shall run with and bind the land . . . until September 30, 2027, unless otherwise expressly limited herein, ***after which time*** said covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by Seventy-five (75%) percent of the Unit Owners has been recorded, ***agreeing to change*** said

covenants and restrictions in ***whole or in part***. Provided, however, that ***no such agreement to change*** shall be effective unless made and recorded three (3) years in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken. (Emphasis added). Notwithstanding the forgoing, the easements, licenses, rights and privileges established and created with respect to the Properties shall be perpetual, run with the land and shall survive any destruction, reconstruction and relocation of the physical structures, unless said provision is abrogated by the unanimous written consent of the Unit Owners. Unless specifically prohibited herein, the Declaration may be amended by an instrument signed by Members holding not less than Seventy-five (75%) percent of the votes of the membership. Any amendment must by (sic) properly recorded to be effective. ROA.

Section 18.1 provides that an amendment to change the covenants and restrictions "**in whole or in part" will not** be effective until after the initial twenty-year term and not "unless made and recorded three (3) years in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken." CCRs, §18.1. ROA. The CCR contract by and among D.R. Horton and every homeowner at Mansfield at Park West, specifically allows amendments, but those amendments do not take effect until September 30, 2027 and three years after the amendment is recorded, whichever is later, and every Owner is provided the proposed agreement at least 90

days in advance. *See* CCRs, §18.1.[3] ROA This is simple and basic.

Respondent did not meet any of the requirements to amend the CCRs. The 20 years has not expired, the amendment was not recorded for at least 3 years, and there is no evidence every Owner received the proposed agreement at least 90 days before it was presented for a vote. Respondent's argument that the amendment process set forth in the §18.1, "Duration and Amendment" only speaks to the duration of the CCRs is a strained and illogical reading of the provision that ignores words in that provision. CCRs, §18.1. ROA. The words: "agreeing to change said covenants and restrictions in ***whole or in part"*** speaks to changes encompassing parts of the CCRs or the whole of the CCRs. CCRs, §18.1. ROA. The *duration* of the CCRs is never the "whole" of the CCRs. Respondent's attempt to limit §18.1 to duration is nonsensical.

Respondent asks the court to look only at the last two sentences of §18.1, isolate them, and ignore the detailed process set forth in §18.1 to allow its amendment. However, the last two sentences in §18.1, "Unless specifically prohibited herein, the Declaration may be amended by an instrument signed by Members holding not less than Seventy-five (75%) percent of the votes of the membership. Any amendment must by (sic) properly recorded to be effective" simply confirms that amendments must meet the 75% threshold and be recorded. It is in addition to the 20-year and 3-year restrictions. These last two sentences are general statements that impose additional conditions, and that confirm that amendments follow §18.1 unless a specific alternative threshold and waiting period after recording is set forth that alters the normal process. Declarant's rights during the initial 20-year period to amend the CCRs to perfect its right to annex additional property in Section 8.1 is an example of an amendment process

---

[3] The CCRs, in a separate provision, also allows D.R. Horton to amend the CCRs under certain conditions, not applicable here. CCRs, § 18.2. ROA.

that does not follow §18.1. ROA. Section 8.1 allows Declarant to amend the CCRs without a vote of the Owners. ROA.

Respondent's Second Amendment to the CCRs is not effective until September 30, 2027 or 3 years after the Second Amendment was recorded, whichever last occurs.

CCRs §18.2: D.R. Horton made an amendment years earlier (the First Amended CCRs) pursuant to its rights as Declarant under §18.2, which was allowed during the initial twenty-year term and did not require a waiting period for implementation. CCRs §18.2. ROA. Respondent misunderstands the law of estoppel when it asserts that D.R. Horton should be estopped from enforcing the CCRs simply because it correctly applied its rights in §18.2 many years ago. This seems to be an attempt to create confusion because it is well known and simple to see in the contract that §18.2 and §18.1 are different provisions with different ways of amending the CCRs. ROA. Respondent's attempt to conflate the two provisions seems disingenuous. Respondent's amendments were made pursuant to section, §18.1, which requires a three-year delay between recording an amendment and implementing the amendment and is only allowed after the initial twenty-year term that ends on September 30, 2027. There is no valid estoppel issue.

CONCLUSION

This case is a blatant end run around the United States Supreme Court prohibition on forced class action arbitration. If allowed to stand, it will fundamentally change construction defect law in South Carolina, among other applications. It will also discourage arbitration because arbitrators should faithfully apply such common contracts as CCRs.

The arbitration award should be vacated, the trial court's Order reversed, and the case dismissed because the law of standing, real party in interest, and the contract law at issue are clear, well defined, and should not have been manifestly disregarded by the arbitrator. The CCRs

could not be amended at the time that they were by the terms of the CCRs, and no amendment could be effective for at least three years after recordation. The lawsuit was filed, and the amendments used within one week. Simple contract law forbade this. Additionally, the individual townhome owners should have filed individual claims in arbitration rather than attempt an end-run around the United States Supreme Court's prohibition of forced class action arbitration through what appears to have been collusion with their attorney and HOA via the CCRs' amendments. Even under those amendments, the HOA had no stake in the litigation because it had no obligation to pursue any claims and *no obligation to make any repairs to any townhome or provide any litigation proceeds to any townhome owner*. The HOA does not have standing and is not a real party in interest. If the court agrees, it need not consider the other issues.

The parties and arbitrator agreed that a reasoned award would be issued. The trial court erred when it concluded that parties are not entitled to anything more than a standard written award. Such a conclusion would upend essentially every set of arbitration rules available to litigants and requires litigants to forfeit the very choices arbitration is supposed to afford them. Under the trial court's model, arbitration will be disfavored by sophisticated litigants. The trial court's Order relegates a "reasoned award" that explains the who, what, and why versus a standard award that merely announces or attests to the decision as merely procedural. However, the difference is substantive. And the parties and the arbitrator agreed to a reasoned award, and no one has disputed that. And the Federal Arbitration Act also applies to this case in interstate commerce, and reasoned awards are not prohibited under the FAA. Accordingly, the arbitrator exceeded his authority, manifestly disregarded the law, and violated the South Carolina Supreme Court's Code of Ethics for Arbitrators when he *failed to issue the agreed upon reasoned award*

as to standing, real party in interest and basic contract law. The trial court's attempt to distill a basis for the arbitrator's award on this issue misses the mark because the *arbitrator* was required to provide the reasons. In an attempt to preserve the award, the trial court looked at a portion of only one provision of the CCRs thereby misunderstanding the issue and leading it to an erroneous analysis – and it was not the arbitrator's analysis. The arbitration award should be vacated, and the trial court's Order reversed, and a new arbitration ordered with a new arbitrator.

The arbitrator also failed to issue a reasoned award as to the amount and allocation of damages, thereby exceeding his authority, manifestly disregarding the law and violating the South Carolina Supreme Court's Code of Ethics for Arbitrators when he failed to issue the agreed upon reasoned award. The parties agreed to a reasoned award and were not provided one. A reasoned award for the amount and allocation of damages was needed by Appellant and the arbitrator was aware of the need and the reasons for the needed clarity as to damages but failed to provide the reasoned award to which the parties agreed. This amounted to a putative-type award against Appellant, which was not allowed under the scope of the arbitration. The arbitrator was not entitled to eliminate the rights of the Appellant against the contractors and subcontractors at Mansfield, but that is precisely what he did by refusing to allocate his award, especially when a reasoned award was required. The arbitration award should be vacated, and the trial court's Order reversed because the arbitrator exceeded his authority, manifestly disregarded the law, and violated the South Carolina Supreme Court's Code of Ethics for Arbitrators when he failed to provide a reasoned award on damages.

If the case is not dismissed entirely due to the reasons stated above, then a new arbitration should be ordered to be conducted before a new and unbiased arbitrator who will issue a reasoned award based on the law and facts.

Dated August 11, 2025

s/ Carl F. Muller

Carl F. Muller, SC Bar #4131
Carl F. Muller, Attorney-at-Law, P.A.
PO Box 1717
Greenville, SC 29602-1717
864-991-8904 Phone
864-751-2831 FAX
carl@carlmullerlaw.com

Thomas E Dudley, III (S.C. Bar No.: 66154)
John T. Crawford, Jr. (S.C.Bar No.: 69682)
Kenison, Dudley, & Crawford, LLC
704 East McBee Avenue
Greenville, SC 29601
(864)- 242-4899

Attorneys for D.R. Horton, Inc.