

RECEIVED

Oct 09 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Jessica A. Salvini

APPELLATE CASE NO. 2024-002193

Walter Ruiz and Nidian Ruiz, individually and on behalf of all others similarly situated, Beth Ann Coultrap and Henry Keith Coultrap III, individually and on behalf of all others similarly situated, Marianne Clancy and Michael C. Stinson, individually and on behalf of all others similarly situated, Ahmad P. Moore and Susan M. Moore, individually and on behalf of all others similarly situated, Plaintiffs,

v.

Clayton Properties Group, Inc.d/b/a Mungo Homes Properties, LLC, Defendants,

of which Ahmad P. Moore and Susan M. Moore, individually and on behalf of all others similarly situated are the Appellants and Clayton Properties Group, Inc. d/b/a Mungo Homes Properties, LLC is the Respondent.

BRIEF OF RESPONDENT

Andrew A. Mathias (SC Bar No. 76220)
Konstantine P. Diamaduros (SC Bar No. 102231)
MAYNARD NEXSEN PC
104 South Main Street (29601)
Post Office Drawer 10648
Greenville, SC 29603-0648
Telephone: 864.370.2211
Facsimile: 864.477.2626
AMathias@maynardnexsen.com
KDiamaduros@maynardnexsen.com

TABLE OF CONTENTS

Table of Authorities..... ii

Statement of the Issues on Appeal..... 1

Statement of the Case 1

Standard of Review 2

Argument..... 2

 I. The Arbitration Provision is Valid and Enforceable as to Appellants..... 2

Conclusion..... 4

TABLE OF AUTHORITIES

CASES

Dixon v. Pattee, 442 S.C. 233, 898 S.E.2d 158 (Ct. App. 2023)..... 3

Est. of Solesbee by Bayne v. Fundamental Clinical & Operational Servs., LLC,
438 S.C. 638, 885 S.E.2d 144 (Ct. App. 2023) 3

Wilson v. Willis, 426 S.C. 326, 827 S.E.2d 167 (2019)..... 2

STATUTES AND COURT RULES

S.C. Code Ann. § 15-48-10 1

STATEMENT OF THE ISSUE ON APPEAL

1. WHETHER THE CIRCUIT COURT ERRED IN HOLDING THAT THE ARBITRATION PROVISION IS VALID AND ENFORCEABLE AS TO APPELLANTS.

STATEMENT OF THE CASE

On July 30, 2024, Appellants and other plaintiffs filed a purported class action Complaint and attempted to assert claims against Respondent for negligence/gross negligence, breach of implied warranties, and violation of the South Carolina Unfair Trade Practices Act. *See generally* Compl. These claims arose out of and related to purchase agreements (individually, “Purchase Agreement” and collectively, “Purchase Agreements”) between various plaintiffs (as “Purchasers”) and Respondent (as “Seller”) related to the purchase and construction of homes in the Indigo Pointe subdivision (“Indigo Pointe”), which is located in Greenville County. *See* Sept. 19, 2024 Mem. in Supp. at 2. Each Purchase Agreement set forth a finite and identical remedy for any claim or dispute arising out of or relating to the Purchase Agreement. *See* Oct. 21, 2024 Ord. at 2. Specifically, each Purchase Agreement contains the following provision titled “Arbitration and Claims” (hereinafter, “Arbitration Provision”):

Any claim, dispute or other matter in question between the parties hereto arising out of this Agreement, related to this Agreement or the breach thereof, including without limitation, disputes relating to the Property, improvements, or the condition, construction or sale thereof and the deed to be delivered pursuant hereto, shall be resolved by final and binding arbitration before three (3) arbitrators, one selected by each party, who shall mutually select the third, pursuant to the South Carolina Uniform Arbitration Act. Arbitration shall be commenced by a written demand for arbitration to the other party specifying the issues for arbitration and designating the demanding parties selected arbitrator.

Id. Each Purchase Agreement also contains the following bold, capitalized, underlined header on the top of page one: “**THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO S.C. CODE 15-48-10 ET SEQ.**” *Id.*

On July 30, 2024, Respondent filed a Motion to Dismiss and to Compel Arbitration (“Motion”). *See* Jul. 30, 2024 Mot. Relevant to this appeal, one ground for Respondent’s Motion was that the Arbitration Provision is valid and enforceable as to non-signatories such as Appellants. On September 23, 2024, a hearing on Respondent’s Motion was held before the Honorable Jessica A. Salvini (“Judge Salvini”). Based on her careful review and consideration of the Motion, the arguments of counsel, and the memoranda submitted by the parties, Judge Salvini issued a Form 4 Order granting Respondent’s Motion on October 7, 2024. *See* Oct. 7 Ord. Shortly thereafter, Judge Salvini issued a formal Order on October 21, 2024. *See* Oct. 21 Ord.

On October 31, 2024, Appellants requested that Judge Salvini reconsider her holding that Appellants are bound by the Arbitration Provision even though they are non-signatories to the Purchase Agreement related to their home. *See* Oct. 31, 2024 Mot. Judge Salvini denied Appellants’ Motion for Reconsideration on November 27, 2024. *See* Nov. 27, 2024 Ord. Appellants filed their Notice of Appeal on December 27, 2024. *See* NOA.

STANDARD OF REVIEW

“Whether an arbitration agreement may be enforced against a nonsignatory to the agreement is a matter subject to de novo review by an appellate court.” *Wilson v. Willis*, 426 S.C. 326, 335, 827 S.E.2d 167, 172 (2019) (citations omitted). “Under de novo review, a circuit court’s factual findings will not be reversed on appeal if any evidence reasonably supports those findings.” *Id.*

ARGUMENT

I. The Arbitration Provision is Valid and Enforceable as to Appellants.

Appellants first argue that the circuit court erred in compelling arbitration against them because they were not parties to the Purchase Agreement that contained the Arbitration Provision.

Appellants' Br. at 2-3. Specifically, Appellants argue they are not bound by the Arbitration Provision because they purchased their property from "a third-party individual . . . and did not receive a deed with contained an arbitration clause." *Id.* at 3. Therefore, Appellants argue, they cannot be bound by the Arbitration Provision because there is no contractual relationship between Appellants and Respondent. *Id.* Appellants are incorrect.

As the circuit court correctly recognized, "[i]t is well established that in an appropriate case, a nonsignatory can be bound by an arbitration provision within a contract executed by other parties." *See Est. of Solesbee by Bayne v. Fundamental Clinical & Operational Servs., LLC*, 438 S.C. 638, 647, 885 S.E.2d 144, 148 (Ct. App. 2023), *reh'g denied* (Apr. 14, 2023), *cert. denied* (Apr. 16, 2024); *Dixon v. Pattee*, 442 S.C. 233, 256, 898 S.E.2d 158, 170 (Ct. App. 2023). Indeed, "South Carolina has recognized several theories that could bind nonsignatories to arbitration agreements under general principles of contract and agency law, including (1) incorporation by reference, (2) assumption, (3) agency, (4) veil piercing/alter ego, and (5) estoppel." *Id.* Thus, Appellants argument that "[t]he absence of a contractual relationship precludes enforcement of an arbitration clause against them" is clearly meritless. *See* Appellants' Br. at 3.

Next, Appellants argue that the doctrine of equitable estoppel does not apply to them. Appellants' Br. at 3. Again, Appellants are incorrect. As the circuit court correctly recognized, under the doctrine of equitable estoppel a party is precluded from "refusing to comply with an arbitration clause when it receives a direct benefit from a contract containing an arbitration clause." Oct. 21, 2024 Ord. at 3 (citing *Est. of Solesbee*, 438 S.C. at 647, 885 S.E.2d at 148). Here, Appellants (and any other nonsignatory residents of Indigo Pointe) have received a plethora of direct benefits from the Purchase Agreements at issue, the most obvious of which is a fully constructed home in which to live. To allow Appellants (or any other nonsignatory residents of

Indigo Pointe) to reap the benefits of living in Indigo Pointe while simultaneously avoiding the Arbitration Provision would not only contravene *Solesbee*; it would run afoul of public policy.¹ See Oct. 21, 2024 Ord. at 3.

CONCLUSION

Based on the foregoing, the circuit court correctly held that Appellants are bound by the Arbitration Provision. This Court should affirm.

Respectfully submitted,

s/ Konstantine P. Diamaduros
Andrew A. Mathias (SC Bar No. 76220)
Konstantine P. Diamaduros (SC Bar No. 102231)
MAYNARD NEXSEN PC
104 South Main Street (29601)
Post Office Drawer 10648
Greenville, SC 29603-0648
Telephone: 864.370.2211
Facsimile: 864.477.2626
AMathias@maynardnexsen.com
KDiamaduros@maynardnexsen.com

Attorneys for Respondent

Dated: October 9, 2025
Greenville, South Carolina

¹ As Judge Salvini correctly recognized, “to hold otherwise would discourage not only homebuilders, but businesses in general, from coming to do business in South Carolina. All businesses, both large and small, must be able to contract with other parties with full confidence that their contracts will be enforced in accordance with their clear terms.” Oct. 21, 2024 Ord. at 3; *see also id.* (noting that the Purchase Agreements specifically state that they “will be binding and inure to the benefit of . . . heirs, personal representatives, successors and assigns . . .”).