ELECTRONICALLY FILED - 2023 Dec 19 12:32 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1002829

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
Ralph Dawkins and Michelle Dawkins,	)	CASE NO. 2021-CP-10-2829
		CASE NO. 2021-CP-10-2831
		CASE NO. 2021-CP-10-2833
Marcel Franquelin and Patricia Franquelin,	)	CASE NO. 2021-CP-10-2837
		CASE NO. 2021-CP-10-2838
Michael A. Martin and Adriana S. Iaquinto-Martin, Louis Glavinos and Kimberly Glavinos, Daniel J. O'Grady and Kaitlyn E. Grigoleit, Christopher M. Raybon and LaShonda K. Jones Raybon, Morris K. White and Rebecca A. White, Paul A. Banker and April D. Banker, Patrick K. Daly and Brenda Daly,	)	CASE NO. 2021-CP-10-2840
	)	CASE NO. 2021-CP-10-2844
	)	CASE NO. 2021-CP-10-2902
	)	CASE NO. 2021-CP-10-3012
	)	
	)	
	)	
	)	ORDER
Plaintiffs,	)	
	)	
v.	)	
	)	
Eastwood Homes of Columbia, LLC d/b/a Eastwood Homes; Eastwood Construction Partners, LLC f/k/a Eastwood Construction, LLC d/b/a Eastwood Homes; Eastwood Construction, LLC,	)	
	)	
	)	
	)	
	)	
	)	
Defendants.	)	

RECEIVED
Mar 07 2024
SC Court of Appeals

Presiding Judge:	Mikell R. Scarborough
Court Reporter:	Josie Boehm
Counsel for Plaintiffs:	Ross Appel, Esq.
	Michael Thomas Cooper, Esq.
Counsel for Defendants:	James Edward Bradley, Esq.

ELECTRONICALLY FILED - 2023 Dec 19 12:32 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1002829

BACKGROUND AND PROCEDURAL HISTORY

This matter comes before the Court by way of a Consent Order of Reference issued by the Honorable Jennifer B. McCoy, Ninth Judicial Circuit Judge, dated October 9, 2022 ("Consent Order"). The Consent Order provides that "[t]he parties consent to refer Plaintiffs' declaratory judgment claims *only* to the Master-In-Equity for Charleston County for Trial." The Consent Order specified, however, "the other claims and counterclaims in the above actions shall not be referred to the Master-in-Equity, shall be stayed until the final disposition of the declaratory judgment claims, and shall remain under the jurisdiction of the Charleston County Court of Common Pleas."

The Consent Order follows the Order dated March 11, 2022, issued by the Honorable R. Markley Dennis, Jr., Ninth Judicial Circuit Judge. Judge Dennis's Order set Plaintiffs' "first cause of action for Declaratory Judgment ... for trial" (the "Declaratory Judgment Action"). It also deferred Eastwood Homes' motion for summary judgment to a non-jury evidentiary hearing at which the parties are to present evidence from which the Court can rule on the enforceability of the cancellation and limitation of damages clauses. The Order states, "If the contract language is enforceable as written, Eastwood is entitled to summary judgment on all claims." It goes on to specify that "[t]he matters to be considered by the judge at this hearing and upon which the parties may present evidence [are] whether the contract is unconscionable or in violation of public policy." Finally, the Order states, "Once the issue of enforceability of the contract language is resolved, the remaining issues will either be moot or can be tried accordingly."

The Court is authorized to construe the contract at issue and the language therein via the Declaratory Judgment Action. S.C. Code Ann. § 15-53-40 ("A contract may be construed either before or after there has been a breach thereof").

ELECTRONICALLY FILED - 2023 Dec 19 12:32 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1002829

The matter was set for a date certain trial on May 24 and 25, 2023. Ross Appel and Michael Thomas Cooper appeared for the Plaintiffs. James Edward Bradley appeared for the Defendants.

Having fully considered the filings of record, the parties' briefs, the evidence and testimony at trial, and the arguments of counsel, the Court issues its findings of fact and conclusions of law. For the reasons set forth below, the Court finds in favor of Plaintiffs and concludes that the final sentence of the first paragraph of Paragraph 25[1] and Paragraph 26 in its entirety are unconscionable and violative of public policy. Because these provisions are unconscionable and violate the public policy of the State, the Court orders these provisions stricken from the contract.

STIPULATIONS AND PRE-TRIAL MATTERS

Prior to the commencement of the trial, the Court received pre-trial briefs from Plaintiffs and Eastwood Homes which the Court accepted in lieu of opening and closing arguments at trial.

Plaintiffs and Eastwood Homes stipulated that Plaintiffs Kaitlyn E. Grigoleit and Patricia Franquelin would testify on behalf of themselves and the other Plaintiffs to the limited matters before the Court. Similarly, the parties stipulated that the Grigoleit and Franquelin purchase agreements and termination documents would be used for the purposes of themselves and all Plaintiffs. These stipulations were made to conserve judicial resources and time as the essential elements of both the purchase agreements and the termination documents at the heart of this dispute are essentially identical.

At trial, Plaintiffs introduced eight (8) documents into evidence with no objection from Eastwood Homes. These exhibits include the following:

1. Phase 4 Plat
2. Eastwood Homes New Home Purchase Agreement (Franquelin)

[1] "In the event of a breach of this Agreement by Seller, Buyer may recover the deposit, however, in no event will Seller be liable for consequential damages or for damages or delays and Buyer hereby releases and waives any claims for such damages."

ELECTRONICALLY FILED - 2023 Dec 19 12:32 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1002829

3. Eastwood Homes New Home Purchase Agreement (O'Grady)
4. Mutual Release and Revocation of Prior Agreement (Franquelin)
5. Mutual Release and Revocation of Prior Agreement (O'Grady)
6. Plaintiffs' Right to Cure Letter
7. Phase 4 Deeds
8. Spreadsheet Depicting Closings in Phase 4

Eastwood Homes did not offer any documents into evidence.

Plaintiffs Kaitlyn E. Grigoleit and Patricia Franquelin testified at trial as did Eastwood Homes' division president Dion Matheny. Eastwood Homes' general counsel, Allen Nason, did not appear in person; however, the parties stipulated that his deposition transcript would be entered into the record, pursuant to Rule 32(a), SCRCP.

FINDINGS OF FACT

Based on the evidence presented, including the exhibits and testimony of the witnesses at trial, the Court makes the following findings of fact:

Eastwood Homes is a regional residential homebuilder. It has been in the business of developing and selling semi-custom homes since 1977. It has operations in Virginia, North Carolina, and South Carolina. Eastwood is the developer and builder of Phase 4 in Swygert's Landing located on Johns Island. The Phase 4 development is at the heart of this dispute.

Plaintiffs are residential homebuyers and consumers. Each Plaintiff signed a contract titled "Eastwood Homes New Home Purchase Agreement" (the "Agreement") in connection with the purchase of lots in Phase 4 and construction of semi-custom homes in Swygert's Landing. The Agreement is a boilerplate, form contract drafted and used by Eastwood Homes for all of the

ELECTRONICALLY FILED - 2023 Dec 19 12:32 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1002829

company's residential home sales, including those in Phase 4 and elsewhere throughout the Southeast.[2]

After entering the Agreement, Plaintiffs worked closely with Eastwood Homes on designing their homes and those custom specifications are incorporated into each Agreement. Plaintiffs intended to close on their respective homes and relied on the closing date specified in their respective Agreement. Each Plaintiff, in their own way, changed their position in reliance on the closing date set forth in the Agreement. Pursuant to the Agreement, Plaintiffs paid Eastwood Homes a $5,000.00 "nonrefundable binder/earnest money deposit." Plaintiffs also funded additional monies based on certain design selections and/or upgrades. After signing the Agreements, each Plaintiff took actions in reliance thereon including, but not limited to, selling their homes, changing jobs, and making other significant life decisions, all with the goal towards moving into their new home at Swygert's Landing.

The Court finds, for purposes of this Declaratory Judgment Action, that Plaintiffs fully performed their contractual obligations with Eastwood Homes and that the parties entered into a binding contract.

On Friday, June 4, 2021, Eastwood Homes contacted the Plaintiffs by telephone to inform them of the company's decision to unilaterally terminate each Agreement. Eastwood Homes informed Plaintiffs that they would receive a "Mutual Release" document via e-mail on Monday. Eastwood then emailed the "Mutual Release" document which, according to Eastwood's unilateral decision, cancelled the Agreement with Plaintiffs.

[2] For purposes of this case, the parties agreed to use a single version of the "Eastwood Homes New Home Purchase Agreement," used in Phase 4, for each Plaintiff and each of the above-captioned, consolidated cases.

ELECTRONICALLY FILED - 2023 Dec 19 12:32 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1002829

Eastwood Homes claims it has the authority, pursuant to Paragraphs 25 and 26 of the Agreement, to unilaterally terminate the contract for any reason in its "sole discretion" and restrict Plaintiffs' remedy to a refund of their deposit, plus liquidated damages in the amount of $100. Eastwood contends Plaintiffs are intelligent people that read and signed the Agreement. Plaintiffs maintain the cancellation and limitation on damages provisions in Paragraphs 25 and 26 significantly restrict the rights and remedies available to them as residential homebuyers with whom Eastwood Homes contracts.

Eastwood Homes' basis for unilaterally terminating these Agreements, that Phase 4 was omitted from the Restrictive Covenants, is disputed by the parties. However, the sole issue for this Court, based on Judge Dennis' March 11, 2022 Order of Reference, is to decide whether Paragraphs 25 and 26 are enforceable as written and applied by Eastwood Homes. Plaintiffs maintain Paragraphs 25 and 26, when read together, are unconscionable, violative of public policy, and severable from the Agreement.

Paragraphs 25 and 26 read, in full, as follows:

> **25. Buyer in Default; Seller Remedies**: Buyer(s) shall be in default if Buyer(s) fail to make full and timely settlement under the terms and conditions set out in this contract. In the event of default the binder money may be retained by the Seller as liquidated damages and not as a penalty, in which event Buyer and Seller shall be relieved from further liability under this contract. In the alternative, and in Seller's sole discretion, Seller may retain the binder as payment of damages and pursue such other and further legal and/or equitable remedies the Seller may have by reason of the Buyer's breach or default. In the event of a breach of this Agreement by Seller, Buyer may recover the deposit, however, in no event will Seller be liable for consequential damages or for damages or delays and Buyer hereby releases and waives any claims for such damages.
>
> Buyer acknowledges and agrees that Seller will utilize Seller's standard construction and contract administration processes and procedures in constructing the property and in otherwise performing this New Home Purchase Agreement, including Seller providing notices by email to Buyer. ***The Seller's process may include completion of a prequalification form with a Seller approved lender which Seller will evaluate to confirm Buyer's ability to close on the Property***

ELECTRONICALLY FILED - 2023 Dec 19 12:32 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1002829

> Buyer(s) agree that he/she/they shall be in default of this Agreement if Buyer engages in specific acts or a course of dealing which materially disrupts Seller's standard and customary construction and contract administration processes and procedures, which includes the Buyer, without limitation: failing to make choices or take other actions required of Buyer within indicated time frames; refusing to work with designated Seller representatives to accomplish certain aspects of the Agreement interfering with Seller and Seller's agents performance of the Agreement, engaging in an abusive, harassing, threatening or in an otherwise offensive manner towards Seller and/or Seller's agents, unreasonably withholding acceptance or approval of work which complies with plans and specifications, or any other acts which have the affect of delaying construction, increasing Seller's cost of performance or otherwise unreasonably impeding Seller's performance.
>
> **26. <u>Seller Option to Cancel Prior to Closing</u>**: If for any reason, a bona fide dispute should arise between the Buyer and Seller, in Seller's sole judgment, prior to Closing, and if such bona fide dispute cannot be resolved to their mutual satisfaction then Seller at its sole option may terminate this Agreement by written notice to the Buyer prior to Closing. If Seller terminates this Agreement, Seller shall return to Buyer all deposits, whether refundable or not, and pay the Buyer an additional amount of $100.00, as liquidated damages in the event the Seller cancellation constitutes a default under this agreement. Buyer agrees that such sum is a fair determination of Buyer's damages in the event such cancellation constitutes a default by the Seller hereunder, being that actual damages are difficult to assess. Buyer shall have no other rights or remedies should the Seller exercise such right of cancellation prior to closing.

(Bold, Underlined, and Italicized Text in Original).

Plaintiffs and Eastwood Homes offer conflicting interpretations regarding the meaning of Paragraph 26. Particularly, the parties dispute the meaning of the first sentence:

"If for any reason, a bona fide dispute should arise between the Buyer and Seller, in Seller's sole judgment, prior to closing, and if such bona fide dispute cannot be resolved to their mutual satisfaction the Seller at its sole option may terminate this Agreement by written notice to the Buyer prior to Closing."

Plaintiffs view this language as requiring, at a minimum, a genuine ("bona fide") disagreement ("dispute") between the parties ("between the Buyer and Seller") over a material term of the contract that cannot be resolved with the buyer, despite Eastwood Homes' efforts. Eastwood Homes, on the other hand, interprets this language – and Paragraph 26 generally – as a termination-at-will clause wherein Eastwood has the exclusive, unfettered power to define the

ELECTRONICALLY FILED - 2023 Dec 19 12:32 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1002829

"dispute" and the exclusive, unfettered power to "terminate this Agreement" for any reason it wants or for no reason at all.

Eastwood Homes' general counsel Allen Nason drafted the Agreement. As Eastwood's Rule 30(b)(6), SCRCP representative, Mr. Nason testified that a "bona fide dispute," which is not a defined term in the Agreement, does not mean its common and normal meaning as a "disagreement." Mr. Nason testified, "[t]here can be a dispute without a disagreement." (Nason Dep. 80:21-22). Mr. Nason informed Plaintiffs, through their counsel, "[y]our opinion is irrelevant because it's the seller's sole judgment, so I don't really care what your opinion is. It's only my opinion that matters, period." (Nason Dep. 114:21-24). Mr. Nason stated that Eastwood's position is that the company has the ability to define this terms however it likes, regardless of the reasonableness of such definition or interpretation.

At trial, Eastwood Homes division president Dion Matheney testified that, under Paragraph 26, Eastwood Homes could unilaterally terminate the Agreement for any reason it wants. Mr. Matheney testified that Eastwood Homes could unilaterally terminate the Agreement even if it simply wanted a higher sales price or if material costs increased after entering the Agreement. Mr. Matheney also confirmed that the Agreement was a take-it-or-leave-it proposition and that Eastwood Homes would not change or negotiate on any of the terms of the Agreement when contracting with a residential home buyer, including Plaintiffs.

Eastwood Homes ultimately sent Plaintiffs a virtually identical[3] document titled "Mutual Release and Revocation of a Prior Agreement to Purchase Real Estate and Right of First Offer" (the "Mutual Release"). The Mutual Release states, as follows:

[3] As with the Agreement, the parties have agreed to use a single version of the Mutual Release for each Plaintiff and each of the above-captioned, consolidated cases.

ELECTRONICALLY FILED - 2023 Dec 19 12:32 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1002829

> Phase 4 of Swygert's Landing was erroneously left out of the Swygert's Phases 1, 2 and 3 Declaration of Covenants, Conditions and Restrictions by preceding Owner's legal error. No further houses can be closed in Phase 4 until this cloud on title is resolved with the attorneys for the Phases 1, 2 and 3 Declaration, and the existing homeowners in Phase 4. Moreover, lenders require a lender certification at closing which requires disclosure of any homeowner's association issues, which lender requirement cannot be satisfied at this time. Seller has agreed to contact Buyer after the legal issues have been resolved, which will take 4 months or more to legally resolve. Seller cannot cure this issue within the time period of the Contract.

None of the Plaintiffs signed and returned Eastwood Homes' proposed Mutual Release.

Subsequently, Eastwood Homes sent each of the Plaintiffs a purported earnest money refund and a "liquidated damages" check in the amount of one hundred ($100.00) dollars. None of the Plaintiffs deposited these checks. Thereafter, Eastwood Homes cancelled all design meetings, walkthroughs, and otherwise completely frustrated Plaintiffs' ability to move forward with the purchase of their homes.

On June 10, 2021, the Plaintiffs' counsel sent a letter to Eastwood Homes objecting to the termination of the Agreements and providing Eastwood Homes a right to cure pursuant to Paragraph 18 of the Contract. Eastwood Homes never responded to Plaintiffs' letter. Eastwood Homes has repeatedly refused to commit to honoring the contractually agreed upon purchase price if Plaintiffs were to agree to the proposed "option" to re-contract at a later date. Plaintiffs have continually insisted that Eastwood Homes is bound to honor the original agreed-upon price and to close on their respective homes pursuant to their contractual Agreement.

While not before this Court at this time, Plaintiffs' Complaint disputes the alleged "legal error" prevented and/or prohibited Eastwood Homes from fulfilling its obligation to close under the Agreement. Prior to Eastwood Homes' unilateral termination, the company closed the sale of fourteen (14) separate lots and homes in Phase 4 of Swygert's Landing. Despite the existence of the same "legal error" as Plaintiffs, Eastwood Homes closed the following properties:

ELECTRONICALLY FILED - 2023 Dec 19 12:32 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1002829

OWNER	STREET ADDRESS	DEED	SALE $	RECORDED
SUPPIN MATTHEW T	2879 Claybrook Street	0982-783	$537,415.00	20-Apr-21
AYERS MATTHEW D	2885 Claybrook Street	0987-440	$593,225.00	5-May-21
NELSON GRANT MYRON	1144 Tebalt Drive	0925-739	$520,755.00	15-Oct-20
ALLIO JOSEPH C	1138 Tebalt Drive	0922-203	$595,000.00	5-Oct-20
STEWART WILLIAM	1101 Tebalt Drive	0950-914	$565,525.00	14-Jan-21
WOLPERT DEREK A	2932 Sarnoff Street	0952-340	$569,200.00	20-Jan-21
ELLER MICHAEL B	2908 Sarnoff Street	0901-690	$544,300.00	31-Jul-20
SOSA-OLIVER WILLIAM R	2892 Claybrook Street	0921-400	$599,180.00	2-Oct-20
BRINKER KRISTYN WALKER	2937 Sarnoff Street	0990-813	$590,280.00	14-May-21
AULTMAN JASON P	2923 Sarnoff Street	0928-223	$509,610.00	23-Apr-21
STEVENS SAMMY CECIL	2919 Sarnoff Street	0921-787	$548,860.00	23-Apr-21
KREAMER KARRIE L	1105 Glasson Street	0901-439	$566,720.00	31-Jul-20
KING EUGENE	2905 Sarnoff Street	0911-159	$559,175.00	31-Aug-20
MOODY MILLARD G	2880 Claybrook Street	0888-446	$637,970.00	9-Jun-20

ELECTRONICALLY FILED - 2023 Dec 19 12:32 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1002829

Two (2) of these lots subsequently re-sold for a substantial profit. Specifically, 1105 Glasson Street sold on June 29, 2022 for $975,000.00 and 2892 Claybrook Street sold on September 15, 2022 for $960,000.00. The deeds evidencing these Phase 4 conveyances were introduced into evidence at trial without objection from Eastwood Homes. Plaintiff Exhibit 7.

ISSUES BEFORE THE COURT

Determining the Plaintiffs' declaratory judgment against Eastwood Homes requires the Court to first determine the following issues:

1. Whether the language in Paragraph 26 allowing Eastwood Homes to unilaterally terminate upon a "bona fide dispute ... between the Buyer and Seller, in Seller's sole judgment" is unconscionable and violates public policy.

2. Whether the language limiting Plaintiffs' remedies in Paragraph 25 is unconscionable and violative of public policy.

3. Whether the Court may sever the language deemed unconscionable and violative of public policy from the Agreement.

ANALYSIS AND CONCLUSIONS OF LAW

1. Paragraph 26 contains a latent ambiguity and this Court may consider extrinsic evidence to ascertain its meaning.

As a threshold issue, the Court must review the contract to determine whether the plain language of the agreement is clear and unambiguous. Where an agreement is clear on its face and unambiguous, "the court's only function is to interpret its lawful meaning and the intent of the parties as found within the agreement." *Miles v. Miles*, 711 S.E.2d 880, 883 (2011). On the other hand, an agreement is ambiguous if "it is susceptible to more than one interpretation or its meaning is unclear." *Smith–Cooper v. Cooper*, 543 S.E.2d 271, 274 (Ct. App. 2001). Whether a contract is ambiguous is a question of law. *S.C. Dep't of Natural Res. v. Town of McClellanville*, 550 S.E.2d 299, 303 (2001).

ELECTRONICALLY FILED - 2023 Dec 19 12:32 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1002829

The Court may consider extrinsic evidence to determine whether a latent ambiguity exists and to construe a contract with such latent ambiguity. *Smith v. Coxe*, 191 S.E. 422, 425-26 (1937) (finding parol testimony may be received in construing instrument with latent ambiguity); *Polson v. Craig*, 570 S.E.2d 190, 192 n. 2 (Ct. App. 2002) (noting extrinsic evidence is admissible when there is a latent ambiguity); *Bob Jones Univ. v. Strandell*, 543 S.E.2d 251, 254 (Ct. App. 2001) ("A court may admit extrinsic evidence to determine whether a latent ambiguity exists."). A latent ambiguity exists when "there is no defect arising on the face of the instrument but arising when attempting to apply the words of the instrument to the object or subject described." *Smith v. Coxe*, 191 S.E. at 425-26. Interpretation of a policy with a latent ambiguity is for the finder of fact. *Wheeler v. Globe & Rutgers Fire Ins. Co.*, 118 S.E. 609, 612 (1923). Where a contract is ambiguous, the Court must determine the true intentions of the parties in light of the "subject matter, the relations of the parties to each other, and the circumstances surrounding the parties when they entered into the agreement." *Langston v. Niles*, 219 S.E.2d 829, 833 (1975); *Garrett v. Pilot Life Ins. Co.*, 128 S.E.2d 171 (1962). "A court will construe any doubts and ambiguities in an agreement against the drafter of the agreement." *Duncan v. Little*, 384 S.C. 420, 426, 682 S.E.2d 788, 790 (2009).

Paragraph 26's cancellation language relied upon by Eastwood to terminate the Agreement states, "If for any reason, a bona fide dispute should arise between the Buyer and Seller, in Seller's sole judgment, prior to Closing, and if such bona fide dispute cannot be resolved to their mutual satisfaction then Seller at its sole option may terminate this Agreement by written notice to the Buyer prior to Closing." Accordingly, the Court must review how "in Seller's sole judgment" modifies the cancellation provision because it is set off in commas and "bona fide dispute" is not a defined term in the Agreement. Does "sole judgment" modify whether a dispute exists? Does

ELECTRONICALLY FILED - 2023 Dec 19 12:32 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1002829

"sole judgment" modify how a "bona fide dispute" should be defined? Does "sole judgment" modify some aspect of the following section regarding "mutual satisfaction?"

The Court finds this provision contains latent ambiguities. In one part it appears there must be a "bona fide dispute," but in another it appears that Eastwood Homes has the sole ability to determine if there is a "bona fide dispute" and how "dispute" should be defined. Applying this contract language, the "bona fide dispute" may not be bona fide at all. The ambiguity is highlighted by the "sole option" to terminate the Agreement. On the one hand, the provision appears to provide mutuality to the dispute resolution process by using the term "mutual satisfaction." However, only Eastwood Homes as the Seller has authority to terminate the Agreement. The Buyer has no authority to terminate if Buyer is not satisfied. I find the terms of the Agreement, in reality, lack **any** mutuality. (Emphasis added).

There is an internal inconsistency created by the use of "bona fide dispute" on the one hand and the ability of Seller to exercise its "sole judgment" as to whether a dispute exists or how the term should be defined. In *Isle of Palms Pest Control v. Monticello Ins. Co.*, construing an insurance contract, the Court of Appeals stated, "The internal inconsistency created by an exclusion which purports to bar coverage for claims arising out of the very operation sought to be insured renders the policy ambiguous . . . ." *Isle of Palms Pest Control v. Monticello Ins. Co.*, 319 S.C. 12, 18-19, 459 S.E.2d 318 (Ct. App. 1994). Like the insurance contract in *Isle of Palms*, the internal inconsistency within the cancellation provision in the Agreement renders it ambiguous.

At trial, there was conflicting testimony about the interpretation of Paragraph 26. Plaintiffs testified the language "bona fide dispute ... between the Buyer and Seller, in Seller's sole judgment" to require, at a minimum, a genuine disagreement between buyer and seller over a material term of the contract that cannot be resolved despite Eastwood Homes' efforts. Conversely,

ELECTRONICALLY FILED - 2023 Dec 19 12:32 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1002829

Eastwood Homes' general counsel and the division president testified that Paragraph 26 is, essentially, a termination-at-will clause providing exclusive unfettered authority for Defendant to terminate the contract and leave Plaintiffs with no right to challenge Eastwood Homes' decision under any circumstance.

Allen Nason, Eastwood Homes' general counsel, drafted the Agreement. His view is that "in Seller's sole judgment" modifies "a bona fide dispute" and thereby gives Eastwood the authority to define "dispute" and state whether a dispute exists.

Eastwood Homes division president Dion Matheney testified that under Paragraph 26, Eastwood Homes could unilaterally terminate the Agreement for any reason it wants, including if Defendant wanted a higher price from Plaintiffs or if costs increased during performance of the contract. Mr. Matheney also testified that Eastwood Homes could cancel the contract at any time before closing, including the moment the parties are walking into the closing attorney's office. However, he testified that Plaintiffs could not walk away from the contract without suffering consequences.

Plaintiffs aver they had no reason to believe Paragraph 26 would be read and applied by Eastwood Homes as a termination-at-will provision at the time the contracts were executed. Plaintiffs read the use of "bona fide dispute" and "mutual satisfaction" to place limits on Eastwood's authority to unilaterally terminate the contract and impose mutuality to the dispute resolution process. Plaintiffs contend the ability of Eastwood Homes to unilaterally terminate the agreement in its sole discretion was disguised in the wording of the Agreement. It is easy to see how Plaintiffs' reading of this language induced their acquiescence. In reality, it was cold comfort. Eastwood did not interpret its contract to impose any limitation on its ability to terminate and, in fact, did not apply <u>any mutuality</u> to the cancellation process in this case. (Emphasis added).

ELECTRONICALLY FILED - 2023 Dec 19 12:32 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1002829

Given the wording of Paragraph 26 and the different reasonable interpretations by the parties, the Court concludes it may consider extrinsic evidence to interpret the parties' true meaning. Accordingly, the Court may look to the testimony of Defendant's general counsel that drafted the Agreement and the division president that administered the Phase 4 contracts. In light of Eastwood Homes' own interpretation and application of the cancellation provision, the Court finds this provision to be unconscionable and violative of public policy because such interpretation would allow the residential home builder and developer to unilaterally cancel the New Home Purchase Agreement at any time before closing and without consequence and without any ability for Buyers to do the same. Eastwood's interpretation and application of the cancellation provision is one-sided and lacks any mutuality in its application. It essentially means that the Seller is not bound by any contractual terms, while the Buyer must comply with all contractual terms.

2. Paragraph 26, as written, interpreted, and applied by Eastwood Homes, is unconscionable and violates public policy.

Generally applicable contract defenses, such as fraud, duress, or unconscionability, may be applied to invalidate contracts or portions of contracts. *See Dr.'s Assocs., Inc. v. Casarotto,* 517 U.S. 681, 687, 116 S. Ct. 1652, 134 L. Ed. 2d 902 (1996). In this instance, Plaintiffs allege the cancellation provision and the damages limitation provision are both unconscionable. "At its core, unconscionability is defined 'as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms which are so oppressive that no reasonable person would make them and no fair and honest person would accept them.'" *Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 879 S.E.2d 746 (S.C. 2022) (quoting *Fanning v. Fritz's Pontiac-Cadillac-Buick, Inc.*, 472 S.E.2d 242, 245 (1996)); 17A Am. Jur. 2d *Contracts* § 272 (2016) (characterizing these two prongs as procedural and substantive unconscionability, respectively); *see also id.* § 271 ("Generally, the doctrine of unconscionability protects against

ELECTRONICALLY FILED - 2023 Dec 19 12:32 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1002829

unfair bargains and unfair bargaining practices ...."). "This general description of unconscionability applies to all contract terms, not merely arbitration provisions." *Id.* "A determination of whether a contract is unconscionable depends upon all the facts and circumstances of the case." *Id.* When determining whether a purchase agreement between a builder and a residential home purchaser was unconscionable, the Supreme Court "emphasize[d] the importance of a case-by-case analysis in order to address the unique circumstances inherent in the various types of consumer transactions." *Id.* "While we analyze both prongs [of unconscionability], they invite similar proof and often overlap, and if more of one is present, then less of the other is required." *Doe v. TCSC, LLC*, 430 S.C. 602, 846 S.E.2d 874 (Ct. App. 2020) (internal quotations omitted).

The Supreme Court of South Carolina recently decided a landmark case expounding upon the doctrine of unconscionability in the residential home purchase agreement context. *Damico v. Lennar Carolinas, LLC*, 437 S.C. 597, 879 S.E.2d 746 (2022). This case clarifies and proclaims South Carolina's unconscionability analysis applied to this special type of "consumer transaction." *Id.* at 621, 879 S.E.2d at 760. The Court observed, "South Carolina has a deeply-rooted and long-standing policy of protecting new home buyers.". *Id.* As set forth below, *Damico* represents and recognizes "South Carolina['s] ... extensive history of expanding its common law on contracts so as to protect new homebuyers... ." *Id.* at 624, 879 S.E.2d at 761. Since *Damico*, our appellate courts have expressed severe skepticism regarding oppressive, boilerplate terms in consumer residential home purchase agreements. See *Huskins v. Mungo Homes, LLC*, 439 S.C. 356, 887 S.E.2d 534 (Ct. App. 2023) (severing the "limitation of claims" provision within the arbitration clause because it was "one-sided and oppressive").

ELECTRONICALLY FILED - 2023 Dec 19 12:32 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1002829

a. Procedural Unconscionability

"The touchstone of the analysis begins with the presence or absence of meaningful choice." *Damico v. Lennar Carolinas, LLC*, Id. at 612, 879 S.E.2d 746, 755 (2022). "Whether one party lacks a meaningful choice . . . typically speaks to the fundamental fairness of the bargaining process." *Id.* (citation omitted). "Thus, in determining whether an absence of meaningful choice taints a contract term . . . 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." *Id.* at 613, 879 S.E.2d at 755-56 (citations omitted).

An adhesion contract is "a take-it-or-leave-it contract and is not necessarily unconscionable, even though it may indicate one party lacked a meaningful choice." 17A Am. Jur. 2d Contracts § 274; 17 C.J.S. Contracts § 9 & n.9 (2020). However, given that one party to an adhesion contract "has virtually no voice in the formulation of the terms and language" used in the contract, *Lackey*, 498 S.E.2d at 901, courts tend to view adhesive arbitration agreements with "considerable skepticism," as it remains doubtful "any true agreement ever existed." *Simpson*, 373 S.C. at 27, 644 S.E.2d at 669.

Applying the procedural unconscionability test, our Supreme Court held:

> [T]he sophistication of Petitioners, as individual homebuyers, pales in comparison to Lennar. Given that Lennar has sold thousands of homes in the Carolinas, whereas Petitioners will likely only purchase, at best, a handful of homes in their entire lifetime, we find it fair to characterize Lennar as significantly more sophisticated than Petitioners in home buying transactions. These factors combine to highlight the significant disparity in the parties' bargaining power, with Lennar enjoying a much stronger bargaining position than Petitioners. We therefore find Petitioners lacked a meaningful choice in their ability to negotiate the arbitration agreement. *See Kennedy v. Columbia Lumber & Mfg. Co.*, 299 S.C. 335, 343, 384 S.E.2d 730, 735-36 (1989) ("We have [] taken judicial cognizance of the fact that a modern buyer of new residential housing is normally in an unequal bargaining position as against the seller.").

ELECTRONICALLY FILED - 2023 Dec 19 12:32 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1002829

Damico v. Lennar Carolinas, LLC, 879 S.E.2d 746, 756-57 (2022).

The touchstone of procedural unconscionability is the absence of meaningful choice and this Court finds it to be entirely lacking here from Plaintiffs' perspective. Eastwood Homes, like Lennar, is a sophisticated regional homebuilder with far more sophistication, experience, resources, and bargaining power when compared to Plaintiffs who are consumers and residential homebuyers. While Plaintiffs are educated, can read and write, and are successful in their personal and professional endeavors – at the end of the day, they are consumers in this transaction with a significant bargaining disadvantage. These residential home buyers are "not a substantial business concern to [Eastwood Homes] such that they possessed more bargaining power than any other average homebuyer would." *Huskins v. Mungo Homes,* supra.

The facts that existed at the time the parties entered into the contract, the Court's focus here, establishes that the Agreement is a standardized form contract with uniform terms presented on a "take it or leave it" basis. The Agreement is an adhesion contract. The only features differentiating each of the Plaintiffs' contracts are the "blanks" contained therein where each buyers' names, property address, price, *etc.* were included. Plaintiffs had no opportunity whatsoever to negotiate the terms of the Agreement, including Paragraphs 25 and 26. Eastwood Homes' division president Dion Maheney testified that if Plaintiffs didn't execute the Agreement they could not do business with Eastwood Homes. He further testified that Plaintiffs could not utilize a purchase agreement of their own choosing and proposed redline alterations would not be considered by Eastwood. The Plaintiffs testified that, when they tried to request changes be made to the contract, they were informed that Eastwood would not consider any proposed changes to the Form Contract.

ELECTRONICALLY FILED - 2023 Dec 19 12:32 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1002829

In light of the testimony of all witnesses and consideration of the evidence presented, the Court concludes procedural unconscionability has been established by Plaintiffs.

b. Substantive Unconscionability

The Court's analysis does not end at the finding of procedural unconscionability. At its core, unconscionability is defined 'as the absence of meaningful choice on the part of one party due to one-sided contract provisions, **together with terms which are so oppressive that no reasonable person would make them and no fair and honest person would accept them.**'" *Damico v. Lennar Carolinas*, LLC, 879 S.E.2d 746, 754 (2022) (emphasis added).

In *Damico*, the following clause was ruled unconscionable by the Supreme Court: "[Lennar] may, **at its sole election**, include [Lennar] contractors, subcontractors and insurer as parties in the mediation and arbitration" and "that mediation and arbitration will be limited to the parties specified herein." *Id.* at 615, 879 S.E.2d at 757 (emphasis in original). The Court observed that "[g]iving Lennar the 'sole election' to include or exclude subcontractors in the arbitration proceeding strips Petitioners of that right and overturns a firmly entrenched legal principle." *Id.* (citing 17A Am. Jur. 2d Contracts § 272 ("Mutuality is a paramount consideration when assessing the substantive unconscionability of a contract term.")). The Court concluded that "[t]his creation of a procedural defense to liability for Lennar is wholly unreasonable and oppressive to Petitioners." *Id.* at 616-17, 879 S.E.2d at 757-58.

Paragraph 26 as drafted, interpreted, and applied by Eastwood Homes allows the company to unilaterally terminate the Agreement for any reason it wants at its sole election. Eastwood has drafted and applied Paragraph 26 to ensure a procedural victory in their favor by contracting their authority to decide, in their "sole judgment," whether a dispute with the Plaintiffs exists at all.

The Court finds Paragraph 26 is substantively unconscionable for the same reason the Court struck down Lennar's "sole election" language in *Damico*. Paragraph 26 lacks any mutuality

ELECTRONICALLY FILED - 2023 Dec 19 12:32 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1002829

between the parties. Given "South Carolina['s] ... deeply-rooted and long-standing policy of protecting new home buyers," *id.* at 621, 879 S.E.2d at 760, granting the seller such unchecked, powerful, and unilateral authority to disregard the Contract is one-sided, oppressive, unreasonable, and unconscionable. Plaintiffs have no corresponding ability to terminate the Contract for any reason they want. The Agreement says, "if such bona fide dispute cannot be resolved to their mutual satisfaction then Seller at its sole option may terminate this Agreement by written notice to the Buyer prior to Closing." The residential home buyer has no authority to cancel the Agreement. In reality, there is no mutual satisfaction requirement. It is only the satisfaction of the Seller Eastwood that matters. If Eastwood is not satisfied for whatever reason, regardless of how petty or unreasonable, Eastwood has the sole power to walk away from the Agreement.

The Court acknowledges Eastwood Homes' testimony that they did not terminate the Agreements for any improper purpose or motivation. However, Eastwood Homes' basis for termination is not before the Court. Since the Court's review is limited to whether Paragraph 26 is enforceable as written, the Court may only look to the facts that existed at the time of contract formation. This includes how the Agreement is drafted and how it is interpreted by Eastwood Homes.

Paragraph 26 is so one-sided and oppressive that it makes the Agreement unilateral and not mutual. According to Eastwood Homes, the company has the authority to decide, up to the time of closing, whether or not it wants to fulfill its end of the bargain with its residential home buyers. Eastwood Homes' ability to back out at any time and for any reason whatsoever, including the desire for a higher price, makes the Agreement uniquely one-sided, oppressive, unreasonable, and unconscionable. No reasonable homebuyer would agree to, and no fair and honest person would

ELECTRONICALLY FILED - 2023 Dec 19 12:32 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1002829

accept, such a unilateral and unfettered termination-at-will provision in the context of residential home sales.

The Court also considers "whether there is an element of surprise in the inclusion of the challenged clause and the conspicuousness of the clause." *Doe v. TCSC, LLC*, 846 S.E.2d 874, 430 S.C. 602, 612 (Ct. App. 2020). It is clear Plaintiffs did not realize or believe they were agreeing to a termination at-will provision on Eastwood's behalf. They argue they were lulled into a false sense of security by the "bona fide dispute" language. Plaintiffs could not have reasonably known that Eastwood Homes would disregard the "bona fide dispute" language in favor of the expansive and unreasonable interpretation of "in Seller's sole discretion" as applied in this case. Plaintiffs testified that they did not realize they were agreeing to Eastwood Homes' cloaked termination-at-will clause, because it is neither clear nor conspicuous based on the language of the Agreement. But that is precisely how Eastwood Homes drafted, interpreted, and applied Paragraph 26 in this case. No reasonable, honest, or fair person would accept such terms that allow the party with superior bargaining power to terminate the agreement at-will and without meaningful consequence.

c. Paragraph 26 violates public policy.

South Carolina courts "will not enforce contracts that violate public policy." *Damico v. Lennar Carolinas, LLC*, 879 S.E.2d 746, 760 (2022) (citing *Carolina Care Plan, Inc.*, 606 S.E.2d at 758). A refusal to enforce a contract on the grounds of public policy is distinguished from a finding of unconscionability; rather than focusing on the relationship between the parties and the effect of the agreement upon them, public policy analysis requires the court to consider the impact of such arrangements upon society as a whole. 17A Am. Jur. 2d Contracts § 238 (Supp. 2021) (citation omitted).

ELECTRONICALLY FILED - 2023 Dec 19 12:32 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1002829

Public policy may be expressed in constitutional or statutory authority or in judicial decisions. *White v. J.M. Brown Amusement Co.*, 601 S.E.2d 342, 345 (2004); see also 17A Am. Jur. 2d Contracts § 238 (2016) (explaining courts may consider, inter alia, the subject matter of the contract, the strength of the public policy, and the likelihood that refusal to enforce the challenged term in the contract will further public policy).

As previously discussed, "South Carolina has a deeply-rooted and long-standing policy of protecting new home buyers." *Damico v. Lennar Carolinas, LLC* Id. at 621, 879 S.E.2d at 760. If the Court interprets and enforces Paragraph 26 as Eastwood Homes contends, this will enable sophisticated homebuilders like Eastwood Homes to contract away, through adhesion contracts, all consumer protections. Essentially, if Eastwood Homes can terminate its Contract any time prior to closing for any reason in its "sole judgment" with the only consequence being a refund of Plaintiffs' deposit and liquidated damages of $100.00, this renders the Agreement illusory and provides no consequence to Eastwood Homes for acting in a manner extremely prejudicial to Plaintiffs and other homebuyers. This illustrates the purpose for the Court's authority to enable it to determine unconscionability as a matter of public policy.

South Carolina recognizes the illusory coverage doctrine in both the employment and insurance contexts – both areas of the economy populated by boilerplate contracts and massively unequal bargaining power. *Small v. Springs Indus., Inc.*, 357 S.E.2d 452 (1987); *Isle of Palms Pest Control Co. v. Monticello Ins. Co.*, 459 S.E.2d 318, 321 (Ct. App. 1994) (recognizing the illusory coverage doctrine to protect insureds where the terms of the policy exclude from coverage "the very risk contemplated by the parties," rendering a policy provision "virtually meaningless.").

The Court finds Paragraph 26 violative of public policy: 1) due to South Carolina's strong policy of protecting home buyers and 2) the fact that Paragraph 26, as interpreted and applied by

ELECTRONICALLY FILED - 2023 Dec 19 12:32 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1002829

Eastwood Homes, renders the Agreement fundamentally illusory, one-sided, and oppressive beyond basic notions of good faith and fair dealing.

3. The one-sided limitations on Plaintiffs' remedies, contained in Paragraphs 25 and 26, are unconscionable and violate public policy.

Plaintiffs also challenge the limitation on damages provisions set forth within the Agreement. The relevant damages limitation language in Paragraph 26 states:

"[i]f Seller terminates this Agreement, Seller shall return buyer all deposits, whether refundable or not, and pay the Buyer an additional amount of $100.00 as a liquidated damages in the event the Seller cancellation constitutes a default under this agreement . . . . Buyer shall have no other rights or remedies should the Seller exercise such right of cancellation prior to closing."

Even though titled "Buyer in Default; Seller Remedies," Paragraph 25 also limits Plaintiff's damages: "[i]n the event of a breach of this Agreement by Seller, Buyer may recover the deposit, however, in no event will Seller be liable for consequential damages or for damages or delays and Buyer hereby releases and waives any claims for such damages." The limitation on damages requires Plaintiffs to waive common law rights as well as statutory rights to damages and remedies, including treble damages awardable under the South Carolina Unfair Trade Practices Act. The Court finds these terms unreasonable and oppressive because they eliminate any meaningful consequence for Eastwood Homes' unilateral decision to breach or terminate the Agreement at any time before closing and for any reason it wants.

The limitation on damages is one-sided, however, and only applies to Eastwood Homes' default or breach of the Agreement. Eastwood Homes did not correspondingly limit its remedies against Plaintiffs. The operative portion of Paragraph 25 provides:

> Buyer(s) shall be in default if Buyer(s) fail to make full and timely settlement under the terms and conditions set out in this contract. In the event of default the binder money may be retained by the Seller as liquidated damages and not as a penalty, in which event Buyer and Seller shall be relieved from further liability under this contract. In the alternative, and in Seller's sole discretion, Seller may retain the

ELECTRONICALLY FILED - 2023 Dec 19 12:32 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1002829

> binder as payment of damages and pursue such other and further legal and/or equitable remedies the Seller may have by reason of the Buyer's breach or default.

Each Plaintiff paid a $5,000.00 "nonrefundable binder/earnest money deposit" plus additional deposits for certain selections. Allowing Eastwood Homes to keep these funds in the event of Plaintiffs' default while providing Plaintiffs with a mere $100.00 in the event of Eastwood Homes' default is both one-sided and oppressive. Eliminating Plaintiffs' legal remedies in the event of Eastwood's default, while providing Eastwood with the full array of "legal and/or equitable remedies," in addition to the surrender of all earnest money is one-side and oppressive.

The Court finds the limitations on damages provisions found in Paragraphs 25 and 26 unconscionable and unenforceable.

4. The Court may sever the language deemed unconscionable or violative of public policy.

The next issue before the Court, having found these provisions of the Agreement to be unconscionable, is whether they can be severed from the contract. "If a court finds a contract clause unconscionable, the court may refuse to enforce the contract clause, or it may limit the application of the unconscionable clause so as to avoid any possible unconscionable result." *Damico v. Lennar Carolinas, LLC*, 879 S.E.2d 746, 758 (2022)

S.C. Code Ann. 36-2-302(1) of the UCC applies in the home purchase agreement context. *Id.* at 758; *Smith v. D.R. Horton, Inc.*, 417 S.C. 42, 790 S.E.2d 1 (2016); *Huskins v. Mungo Homes, LLC*, supra. Section 36-2-302(1) provides:

> If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

S.C. Code Ann. 36-2-302(1).

ELECTRONICALLY FILED - 2023 Dec 19 12:32 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1002829

Unlike Lennar's contract at issue in *Damico*, the Agreement in this matter lacks a severability clause. Therefore, this Court relies on the aforementioned authorities mentioned in *Damico*, including Section 36-2-302(1), to limit the unconscionable application of Paragraphs 25 and 26 while preserving the fundamental meeting of the minds between the parties encompassed in the Contract. Specifically, the agreement to sell a semi-custom home and lot for a set price is otherwise preserved as the mutual intent of the contracting parties.

The Court finds it reasonable and appropriate to sever the unconscionable and violative public policy language of Paragraphs 25 and 26. Severing the offending provisions is fundamentally fair under these circumstances as it is necessary to ensure Plaintiffs' benefit of the bargain does not become a casualty of Eastwood Homes' oppressive and one-sided business practices. Severing these provisions works to put the parties on an equal footing.

CONCLUSION

Accordingly, the Court concludes as a matter of law that Paragraph 26 in its entirety, is unconscionable, violative of public policy, unenforceable, and shall be severed from the Agreement. In addition, the Court concludes the final sentence of the first paragraph of Paragraph 25, which states, "In the event of a breach of this Agreement by Seller, Buyer may recover the deposit, however, in no event will Seller be liable for consequential damages or for damages or delays and Buyer hereby releases and waives any claims for such damages" shall be severed from the Agreement as this provision limiting Plaintiffs' available remedies, is unconscionable, violative of public policy, and unenforceable. This severed language does not render the entire Agreement unenforceable. The other terms of the Agreement not specifically mentioned herein shall remain in full force and effect.

This concludes the matter before this Court, pursuant to the terms of the Consent Order of Reference, and the remaining action shall return to the Court of Common Pleas for further adjudication.

IT IS THEREFORE ORDERED that this matter is hereby remanded to the Circuit Court.

IT IS SO ORDERED!

Mikell R. Scarborough
Master-In-Equity for Charleston County

ELECTRONICALLY FILED - 2023 Dec 19 12:32 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1002829

ELECTRONICALLY FILED - 2023 Dec 19 12:32 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1002829

Charleston Common Pleas

Case Caption:	Ralph Dawkins , plaintiff, et al VS Eastwood Homes Of Columbia Llc , defendant, et al
Case Number:	2021CP1002829
Type:	Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062

****** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2021CP1002829

Official File Stamp:	12-19-2023 12:32:21 AM
Court:	CIRCUIT COURT Common Pleas Charleston
Case Caption:	Ralph Dawkins , plaintiff, et al VS Eastwood Homes Of Columbia Llc , defendant, et al
Document(s) Submitted:	Master Order/Remand to Circuit Court Master/Order/Other
Filed by or on behalf of:	Mikell Scarborough

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

Jamie A. Khan for Ralph Dawkins et al
Ross A. Appel for Ralph Dawkins et al
Michael Thomas Cooper for Ralph Dawkins et al
James Edward Bradley for Eastwood Homes Of Columbia Llc et al

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means: