

**FORM 4**

**STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON  
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE**

**CASE NO. 2012-CP-10-00580**

THOMAS H. MORGAN

JOHN L. GILBERT, STUART L. FRED, BELLA VISTA PARTNERSHIP, A TEXAS GENERAL PARTNERSHIP, BOMASADA GROUP, INC., A TEXAS CORPORATION, BOMASADA INVESTMENT GROUP II, LLC, A TEXAS LIMITED LIABILITY COMPANY, LAURALIS MANAGEMEMNT, INC., A TEXAS CORPORATION AND 150 BEE STREET, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY



PLAINTIFF(S)

DEFENDANT(S)

<b>Submitted by:</b> Robert A. Bernstein	<b>Attorney for :</b> <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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**DISPOSITION TYPE (CHECK ONE)**

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

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

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

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk : *This Form 4 is entered for docketing of the Court Order in this case dated February 6, 2024, confirming the Arbitration Award of June 19, 2023; therefore, the date of enrollment is February 6, 2024*

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below where the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A on one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment amount To be Enrolled

(List amount(s) below)

THOMAS H. MORGAN	JOHN L. GILBERT	\$3,672,743.00
THOMAS H. MORGAN	STUART L. FRED	\$3,672,743.00
THOMAS H. MORGAN	BELLA VISTA PARTNERSHIP, A TEXAS GENERAL PARTNERSHIP	
THOMAS H. MORGAN	BOMASADA GROUP, INC., A TEXAS CORPORATION	\$3,672,743.00
THOMAS H. MORGAN	BOMASADA INVESTMENT GROUP, II, LLC, A TEXAS LIMITED LIABILITY COMPANY	\$3,672,743.00
THOMAS H. MORGAN	LAURALIS MANAGEMENT, INC., A TEXAS CORPORATION	\$3,672,743.00
THOMAS H. MORGAN	150 BEE STREET, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY	\$3,672,743.00

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

**E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

Circuit Court Judge	Judge Code	Date
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**For Clerk of Court Office Use Only**

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

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<p>STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON</p> <p>THOMAS H. MORGAN</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>JOHN L. GILBERT, STUART L. FRED, BELLA VISTA PARTNERSHIP, A TEXAS GENERAL PARTNERSHIP, BOMASADA GROUP, INC., A TEXAS CORPORATION, BOMASADA INVESTMENT GROUP II, LLC, A TEXAS LIMITED LIABILITY COMPANY, LAURALIS MANAGEMENT, INC., A TEXAS CORPORATION AND 150 BEE STREET, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY,</p> <p style="text-align: center;">Defendants.</p>	<p>IN ARBITRATION</p> <p>IN THE COURT OF COMMON PLEAS C.A. NO. 2012-CP-10-00580</p> <p><b><u>ORDER</u></b></p> <p><b><u>DENYING DEFENDANTS’ MOTION TO VACATE OR MODIFY THE FINAL ARBITRATION AWARD</u></b></p> <p><b><u>AND</u></b></p> <p><b><u>CONFIRMING ARBITRATION AWARD</u></b></p>
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This matter comes before the court on Defendants’ Motion to Vacate or Modify the Final Arbitration Award (filed June 30, 2023), and Plaintiff’s Opposition to Defendants’ Motion and Motion to Confirm the Award (filed July 17, 2023).

The arbitration award (Arbitration Award, April 10, 2023, and Final Arbitration Award, June 19, 2023, together, the “Arbitration Award”) that the Defendants seek to vacate or modify is the result of a 10-year arbitration proceeding pursuant to a valid arbitration agreement and an order of this court referring the matter to arbitration with the consent of the Defendants (Consent Order Referring Matter to Arbitration, July 9, 2012). All of the issues raised by the Defendants in this motion were briefed and argued many times before the Panel and ultimately the Panel ruled against the Defendants' arguments on each occasion. Now, the Defendants seek to reargue those issues

before this Court, in this motion to vacate. This the Defendants cannot do under the law of this state.

The Panel was a 3-arbitrator panel made up of experienced lawyers chosen by consent of the parties that changed somewhat over the course of the ten years but the Panel that decided the dispositive motions and tried the case over more than a week's time consisted of two experienced and accomplished members of the Charleston County Bar<sup>1</sup> and a retired Chief Justice of the South Carolina Supreme Court<sup>2</sup> (the “Panel” or “Arbitration Panel”).

The Panel read and examined thousands of pages of briefs, memos, exhibits, statutes, and legal opinions, and heard days of testimony from live witnesses, as well as reading hundreds of pages of submitted deposition testimony. The Panel read memoranda on three separate dispositive motions (Plaintiff’s Memo, **Exhibits C and D**) filed by the Defendants and briefed by the parties and heard arguments on the motions at a hearing after which the Panel issued an order denying the motions (Plaintiff’s Memo, **Exhibit E**). Thereafter, the Panel heard testimony and argument at an arbitration hearing that began on October 31, 2022, and ended on Nov 8, 2022 (Plaintiff’s Memo, **Exhibit F**). Thereafter, the Plaintiff and Defendants prepared and submitted hundreds of pages of final written argument in the form of proposed orders which the Panel considered and issued a written award on April 10, 2023 (Plaintiff’s Memo **Exhibit G**). After considering the Defendants’ motions and supporting memoranda on a Motion for Reconsideration, the Panel issued a final award on June 19, 2023, which also resolved the award of attorney’s fees which had likewise been briefed and contested by the Defendants.

After reviewing the motions, memoranda, and exhibits submitted by the parties and after hearing arguments of counsel for both parties on November 13, 2023, this Court DENIES the

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<sup>1</sup> H. Brewton Hagood, Chair; Paul A. Dominick, Member

<sup>2</sup> Costa M. Pleicones, Member

motions of the Defendants to vacate or modify the arbitration award and CONFIRMS the award of the arbitrators.

### THE SCOPE OF REVIEW OF ARBITRATION AWARDS

**(A) A motion to modify may only be made on certain grounds provided by the statute, which do not exist in this case.**

S.C. Code Ann. Sec. 15-48-140 provides:

- (a) Upon application made within ninety days after delivery of a copy of the award to the applicant, the court shall modify or correct the award where: (1) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award; (2) The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or (3) The award is imperfect in a matter of form, not affecting the merits of the controversy.
- (b) If the application is granted, the court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the court shall confirm the award as made.

S.C. Code Ann. § 15-48-140 (LexisNexis, Lexis Advance through 2023 Regular Session Act No. 7, not including changes and corrections made by the Code Commissioner) (“SC Arbitration Act”)

There is no evident miscalculation, decision on a matter not submitted, or flaw in form not affecting the merits raised by the Defendants in their motion. There is, therefore, no basis in the law for modifying or correcting the Panel's award. The motion made under 15-48-140 is denied.

**(B) Review of an arbitration award is limited, and the decision of the arbitrator will be vacated only upon certain grounds as provided by statute, or upon the non-statutory ground of manifest disregard or perverse misconstruction of the law.**

Arbitration is not “litigation carried on by other means.” Lauro v. Visnapuu, 351 S.C. 507, 516, 570 S.E.2d 551, 555-56 (Ct. App. 2002), citing White v. Preferred Research, Inc., 315 S.C. 209, 212, 432 S.E.2d 506, 508 (Ct. App. 1993). Judicial review of an arbitration award is therefore limited in scope, and any attempt to convert arbitration into a trial-like judicial proceeding is looked upon with disfavor. Lauro, 570 S.E. 2d at 555-556.

Arbitration is a favored method of settling disputes in South Carolina. When a dispute is submitted to arbitration, the arbitrators determine questions of both law and fact. Id. Generally, an arbitration award is conclusive, and courts will refuse to review the merits of an award. Id., citing Pittman Mortgage Co. v. Edwards, 327 S.C. 72, 75-76, 488 S.E.2d 335, 337 (1997) (citations omitted). Review of an arbitration award is limited, and the decision of the arbitrator will be vacated only under certain grounds as provided by statute, or upon the non-statutory ground of manifest disregard or perverse misconstruction of the law. Id., citing Harris v. Bennett, 332 S.C. 238, 503 S.E.2d 782 (Ct. App. 1998).

"Generally, an arbitration award is conclusive, and courts will refuse to review the merits of an award." Crouch Constr. Co. v. Causey, 405 S.C. 155, 163, 747 S.E.2d 482, 486 (2013), citing C- Sculptures, LLC v. Brown, 403 S.C. 53, 56, 742 S.E.2d 359, 360 (2013) (quoting Gissel v. Hart, 382 S.C. 235, 241, 676 S.E.2d 320, 323 (2009)). "An award will be vacated only under narrow, limited circumstances." Id. "The judiciary should minimize its role in arbitration as judge of the arbitrator's impartiality." Id., quoting Commonwealth Coatings Corp. v. Cont'l Cas. Co., 393 U.S. 145, 151, 89 S. Ct. 337, 21 L. Ed. 2d 301 (1968) (White, J., concurring).

In reviewing arbitration awards, "the standards for judicial intervention are . . . narrowly drawn to assure the basic integrity of the arbitration process without meddling in it." Id., quoting Merit Ins. Co. v. Leatherby Ins. Co., 714 F.2d 673, 681 (7th Cir. 1983). "The reasons for this are not hard to identify." Id., citing In re Andros Compania Maritima, S.A., 579 F.2d 691, 700 (2d Cir. 1978).

A decision to vacate an arbitration award may only be made on the specific grounds found in S C Code Ann. Sec. 15-48-130 or on the non-statutory basis of "manifest disregard or perverse misconstruction" of the law.

The SC Arbitration Act provides:

(a) Upon application of a party, the court shall vacate an award where: (1) The award was procured by corruption, fraud or other undue means; (2) There was evident partiality by an

arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party; (3) The arbitrators exceeded their powers; (4) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of § 15-48-50, as to prejudice substantially the rights of a party; or (5) There was no arbitration agreement and the issue was not adversely determined in proceedings under § 15-48-20 and the party did not participate in the arbitration hearing without raising the objection. But the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

S.C. Code Ann. § 15-48-130(a).

Decisions of courts in this and other jurisdictions have vacated arbitration awards where there has been "a manifest disregard or perverse misconstruction of the law." Gissel v. Hart, 382 S.C. 235, 241, 676 S.E.2d 320, 323 (2009), citing Technical College v. Lucas and Stubbs, 286 S.C. 98, 333 S.E.2d 781 (1985); S.C. Code Ann. § 15-48-130(a); Batten v. Howell, 300 S.C. 545, 548-49, 389 S.E.2d 170, 172 (Ct. App. 1990) (citations omitted). However, decisions recognizing this non-statutory ground for vacating arbitration awards have required "something beyond and different from a mere error of law or failure on the part of arbitrators to understand or apply the law." Batten, 389 S.E.2d at 172. "[A]rbitrators need not specify their reasoning or the basis of the award so long as the factual inferences and legal conclusions supporting the award are 'barely colorable.'" Id. If a ground for the award can be inferred from the facts, the award should be confirmed. Id.

For a court to vacate an arbitration award based upon an arbitrator's manifest disregard of the law, the governing law ignored by the arbitrator must be well defined, explicit, and clearly applicable. Id. Case law presupposes something beyond a mere error in construing or applying the law. Even a "clearly erroneous interpretation of the contract" cannot be disturbed. Id. at 108, 333 S.E.2d 787. The focus is on the conduct of the arbitrator and presupposes something beyond a mere error in construing or applying the law. Id. at 108, 333 S.E.2d at 787. Accord, Harris v. Bennett, 332 S.C. 238, 503 S.E.2d 782 (Ct. App. 1998).

There is no clear legal principle that compels a decision for Defendants that the Panel knowingly failed to follow. The Panel disagreed with Defendants' argument and adopted Plaintiff's argument on this issue. The motion to vacate on this issue is denied.

- 2. The issue of the statute of limitations was exhaustively briefed and argued before the Panel at both the dispositive motion stage, the trial and at the post-trial stage, and the Panel ultimately decided against Defendants' arguments.**

The same analysis applies to the Defendants' statute of limitations argument. The issue was briefed and argued at the dispositive motions, at trial, post-trial, and post-award. At each stage, the Plaintiff made arguments against applying the statute of limitations defense as a bar to recovery. In each instance, the Panel rejected the Defendants' arguments and decided that the statute of limitations defense did not bar recovery in this case.

As with the subject matter jurisdiction issue, the Defendants must prove not only that the Panel erred as a matter of law but did so knowing a clear and unassailable principle of law that controlled the outcome of the issue and knowingly disregarded it to render its decision. There is absolutely no support for this argument in the record or the award, and this Court denies the Defendants' motion to vacate on this issue.

- 3. The Panel invited and considered the arguments of the Defendants regarding the attorney's fees award and ultimately made an award to the Plaintiff that was less than Plaintiff requested.**

Even more so, regarding the attorneys' fee issue, the Defendants do not even argue that the Panel knowingly disregarded the law. The Defendants simply disagree with the Panel's conclusion not to bar the Plaintiff's recovery for attorney's fees based on an unfounded theory of "unclean hands." The Defendants challenged this measured award by the Panel, set out in detail in its June 19, 2023, written ruling, which was less than the Plaintiff requested, and based on a reasoning detailed in the text.

The Defendants argue that the Panel was wrong in making the award and ask the Court to apply an equitable doctrine, unclean hands, to vacate or modify the Panel's award. The Defendants provide

no authority provided in 15-48-130 or -140 that would supply a basis for such an action. Nor have the Defendants shown any "manifest disregard of the law" with regard to this award of attorney's fees. The motion on this issue, too, must fail for want of any support in the law.

**4. The Panel's award was detailed and specific, and complies with the SC Arbitration Act.**

The Defendants raised this issue explicitly in the Motion to Reconsider filed with the Panel after the arbitration award of April 10, 2023. In their final award ruling of July 19, 2023, at pages 3-4, the Panel rejected this argument as follows:

The Panel notes that this dispute was referred to Arbitration by a Consent Order agreed to by counsel for the parties and signed by Judge Thomas L. Hughston dated July 9, 2012. Paragraph 8 of the Consent order stated that "This arbitration shall follow the South Carolina Rules of Civil Procedure where practical and to the extent not inconsistent herewith". The only provision in the Consent Order addressing the form of the Award is the requirement in paragraph 13 that "The determination shall be issued in the form of an award on all claims and counterclaims." The Panel issued a 25-page unanimous Arbitration Award addressing each of the claims asserted by the Plaintiff in his Second Amended Complaint, except those which the Plaintiff withdrew following the hearing. The Panel did not award any relief to the Defendants under the Counterclaims set forth in the Defendants' Answer to Second Amended Complaint and Counterclaims dated April 26, 2022.

The Panel has considered the grounds and Motion for Reconsideration of Arbitration Award dated April 18, 2023, and the arguments presented in Memorandum In Opposition To Defendants Motion For Reconsideration Of Arbitration Award dated May 3, 2023. The Panel finds that it is not required to issue separate findings of fact or conclusions of law when ruling on motions presented and ruled upon prior to the hearing which are renewed during the hearing. In ruling on Defendants Motions the Panel noted that the Defendants had submitted proposed Orders of Dismissal on the Statute of Limitations Issue and the Derivative Action Issue and that it had considered the testimony presented at the hearing, excerpts from the depositions of Jo Ved and Stuart Fred submitted by counsel, and all exhibits entered into evidence by the parties and the proposed Orders submitted by counsel. The Defendants presented no new arguments in the Motion for Reconsideration which had not previously been submitted to the Panel at the hearing held on June 16, 2022, after which the panel issued its July 11, 2022, Order Denying Defendants' Motions to Dismiss and for Summary Judgment.

S.C. Code Ann. Sec. 15-48-90 states that

(a) The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally or by registered mail, or as provided in the agreement.

There is no other requirement for the form of the award, which is consistent with the law of arbitration in SC that it is not "litigation by other means." Beyond the Arbitration Act provisions, the only other law governing the mode of trial and award for this arbitration was the Consent Order of Reference, July 9, 2012. As cited by the Panel, that Order required that the Panel "address each of the claims," which the Panel did. In addition, the Panel addressed each affirmative defense argued by the Defendants, in writing, numerous times.

There is no support for this argument in S.C. Code Ann.15-28-130 or -140, and the Court denies the Defendants' motion on this argument, as well.

### **MOTION TO CONFIRM**

Having heard and resolved the Motions to Vacate and Modify the arbitration award, the Court confirms the arbitration award under SC Code Ann. Sec. 15-48-130(d).

**IT IS SO ORDERED.**

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Bentley D. Price, Presiding Judge,  
Ninth Judicial Circuit



Charleston Common Pleas

**Case Caption:** Thomas H Morgan VS John L Gilbert , defendant, et al

**Case Number:** 2012CP1000580

**Type:** Order/Vacate Judgment

IT IS SO ORDERED!

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

Electronically signed on 2024-02-06 10:58:50 page 11 of 11



Charleston Common Pleas

**Case Caption:** Thomas H Morgan VS John L Gilbert , defendant, et al

**Case Number:** 2012CP1000580

**Type:** Order/Form 4

So Ordered

s/Jennifer B. McCoy #2764

IN ARBITRATION

STATE OF SOUTH CAROLINA ) COURT OF COMMON PLEAS  
COUNTY OF CHARLESTON ) C.A. NO. 2012-CP-10-00580

THOMAS H. MORGAN )

Plaintiff, )

v. )

**FINAL ARBITRATION AWARD**

JOHN L. GILBERT, STUART L. FRED, BELLA )  
VISTA PARTNERSHIP, A TEXAS GENERAL )  
PARTNERSHIP, BOMASADA GROUP, INC., A )  
TEXAS CORPORATION, BOMASADA )  
INVESTMENT GROUP II, LLC, A TEXAS )  
LIMITED LIABILITY COMPANY, LAURALIS )  
MANAGEMENT, INC., A TEXAS )  
CORPORATION AND 150 BEE STREET, LLC, )  
A SOUTH CAROLINA LIMITED LIABILITY )  
COMPANY, )

Defendants. )

**Dates of Hearing:** October 31, 2022 – November 8, 2022  
**Arbitration Panel:** H. Brewton Hagood, Chair  
Hon. Costa M. Pleicones  
Paul A. Dominick  
**Attorneys for Plaintiff:** W. Andrew Gowder, Jr.  
Michael T. Rose  
**Attorneys for Defendants:** Henry E. Grimball  
Morris A. Ellison  
**Court Reporter:** Judy W. Galuppo, Veritext Legal Solutions

The Panel issued its Arbitration Award on April 10, 2023, awarding judgment against the Defendants, except for 150 Bee Street, LLC, in the total amount of \$2,976,234.00, excluding attorneys’ fees and costs. The Plaintiff was directed to provide a detailed summary of expenses,

including legal fees, within 15 days from the date of the Award. The Defendants were given 15 days to respond to Plaintiff's submission.

On April 17, 2023, the Plaintiff sent an e-mail to the Panel requesting an award of attorneys' fees and costs in the amount of \$2,002,805.18 and attached: Plaintiff's Exhibit 202; Schedule 1 Exhibit 220 Breakout; and Addendum 1 Thomas H. Morgan Transaction Report. On May 1, 2023, Defendants submitted a Memorandum In Opposition to Plaintiff's Demand for Attorneys' Fees.

On April 18, 2023, the Defendants submitted a Motion for Reconsideration of Arbitration Award, and Plaintiff submitted a Memorandum in Opposition to Defendants' Motion for Reconsideration of Arbitration Award on May 3, 2023. The Panel will address the Motion for Reconsideration of Arbitration Award first.

#### **Defendants' Motion for Reconsideration of Arbitration Award**

Defendants' Motion for Reconsideration presents three issues for the panel to rule upon:

- 1) Derivative Action/Subject Matter Jurisdiction issue;
- 2) Statute of Limitations Issue; and
- 3) Insurance Issue/Claims Arising Out of the Construction Litigation.

The first two issues were raised by previously by Defendants in Motions to Dismiss under Rule 12 and a Motion for Summary Judgment under Rule 56, all of which were treated as having been made under Rule 56 since matters outside the pleadings were submitted when oral arguments were heard by the Panel on June 16, 2022. These motions were denied by Order of the Panel dated July 11, 2022. Defendants renewed these motions following the presentation of the Plaintiff's case during the arbitration hearing and again at the conclusion of the hearing. Defendants assert that the Panel's Order violates SCRCP 52 stating that there were no specific finding of facts and

conclusions of law issued by the panel when the Panel again denied Defendants' motions as part of its Arbitration Award dated April 10, 2023.

The Panel notes that this dispute was referred to Arbitration by a Consent Order agreed to by counsel for the parties and signed by Judge Thomas L. Hughston dated July 9, 2012. Paragraph 8 of the Consent Order stated that "This arbitration shall follow the South Carolina Rules of Civil Procedure where practical and to the extent not inconsistent herewith". The only provision in the Consent Order addressing the form of the Award is the requirement in paragraph 13 that "The determination shall be issued in the form of an award on all claims and counter-claims". The Panel issued a 25-page unanimous Arbitration Award addressing each of the claims asserted by the Plaintiff in his Second Amended Complaint, except those which the Plaintiff withdrew following the hearing. The Panel did not award any relief to the Defendants under the Counterclaims set forth in the Defendants' Answer to Second Amended Complaint and Counterclaims dated April 26, 2022.

The Panel has considered the grounds and law cited in Defendants' Motion for Reconsideration of Arbitration Award dated April 18, 2023, and the arguments presented in Plaintiff's Memorandum In Opposition To Defendants Motion For Reconsideration Of Arbitration Award dated May 3, 2023. The Panel finds that it is not required to issue separate findings of fact or conclusions of law when ruling on motions presented and ruled upon prior to the hearing which are renewed during the hearing. In ruling on Defendants' Motions, the Panel noted that Defendants had submitted proposed Orders of Dismissal on the Statute of Limitations Issue and the Derivative Action Issue and that it had considered the testimony presented at the hearing, excerpts from the depositions of Jo Ved and Stuart Fred submitted by counsel, all exhibits entered into evidence by the parties and the proposed Orders submitted by counsel. The Defendants presented no new

arguments in the Motion for Reconsideration which had not previously been presented to the Panel at the hearing held on June 16, 2022, after which the Panel issued its July 11, 2022, Order Denying Defendants' Motions to Dismiss and For Summary Judgment. Defendants' Motion is hereby denied as to issues 1 and 2 set forth in the Motion for Reconsideration.

Issue 3 in the Motion for Reconsideration of the Arbitration Award is identified as "Insurance Issue/Claims Arising Out Of The Construction Litigation". The Panel noted that Defendants had not entered a copy of the Westchester Insurance Policy into evidence at the hearing and had only entered a Certificate of Insurance into evidence purporting to list Bee Street Lofts, LLC as an additional insured. Defendants state in their Motion for Reconsideration dated April 18, 2023, that they are attempting to obtain a copy of the insurance policy. Morris Ellison informed the Panel in an e-mail dated May 12, 2023, that they had not yet obtained a copy of the insurance policy. Andy Gowder replied to Mr. Ellison's e-mail later on May 12, 2023, stated that the Panel should not receive or consider the insurance policy if it is located since it is not newly discovered evidence that could not have been produced over the years that the case has been pending. As of the date of this Final Arbitration Award no policy of insurance issued by Westchester has been submitted to the Panel.

The Panel finds that the record was kept open after the issuance of the Award for the sole purpose of allowing the Plaintiff to submit any documents relevant to recoverability of attorneys' fees and costs and Plaintiff's position as to the amounts of attorneys' fees and expenses being sought.

While not separately set forth as one of the 3 issues to be ruled upon in Defendants' Motion for Reconsideration of Arbitration Award, Defendants again argue that Judge Harrington's Order approving the settlement of the Construction Litigation, in effect, precludes Mr. Morgan from

pursuing a claim that the failure of the Defendants to procure a policy of insurance covering 150 Bee Street, LLC caused damages to 150 Bee Street for the amount of legal fees paid to defend itself and the amount paid by 150 Bee Street to settle the Construction Litigation. The Panel has already ruled on this issue and no new evidence has been presented which would cause the Panel to reconsider this ruling.

For the above reasons, the Panel denies relief on all grounds set forth in Defendants' Motion For Reconsideration Of Arbitration Award submitted on April 18, 2023.

### **Plaintiff's Request for Attorneys' Fees**

As directed by the Panel in the April 10, 2023, Arbitration Award, Plaintiff's counsel sent an e-mail on April 17, 2023, summarizing the amounts of legal fees and expenses requested by the Plaintiff and forwarded copies of the following documents to the Panel:

1. Exhibit 202, which was introduced and admitted into evidence during Mr. Morgan's testimony listing attorneys' fees and costs up to the time of trial;
2. Schedule 1, Exhibit 202 Breakout separating attorneys' fees from legal costs; and
3. Addendum 1, which lists legal fees and expenses incurred during and after the arbitration trial which are not included in Exhibit 202.

On May 1, 2023, counsel submitted Defendants' Memorandum In Opposition To Plaintiff's Demand For Attorneys Fees. Defendants agree that SC Code Ann. Section 33-44-1104 of the South Carolina Uniform Limited Liability Act permits, but does not require, an award of Plaintiff's "reasonable expenses, including reasonable attorney's fees" if the derivative action is successful. Defendants argue that the Plaintiff's derivative claims sought damages of approximately \$12,000,000 and the Panel awarded \$2,900,000 in actual damages, which is less than 25% of the amount sought. Defendants argue that Morgan had requested an additional

\$17,800,000 in individual damages and the Panel awarded no individual damages to Mr. Morgan. When viewing the total damages sought by Mr. Morgan, in both his derivative capacity and as an individual, Defendants argue that Mr. Moran was only awarded approximately 10% of the total damages sought.

Defendants then question the proof presented by the Plaintiff since no distinction is made between the attorneys' fees and expenses incurred by Morgan in his individual capacity and those incurred to prosecute the derivative claims.

The Panel has reviewed the evidence and considered the arguments submitted by counsel for the Plaintiff and the Defendants. The law is clear that the Panel, has the discretion to determine the reasonableness of a claim for the recovery of attorneys' fees under the South Carolina Uniform Limited Liability Act. The Panel finds that Mr. Morgan successfully prosecuted the derivative claims and the evidence presented indicates that Mr. Morgan personally funded all of the legal fees and expenses to prosecute these claims. Had Mr. Morgan not done so, there would be no recovery in favor of 150 Bee Street, LLC in the amount of \$2,976,234. The Panel is mindful of the fact that Mr. Morgan did not obtain a recovery of any individual damages but, as counsel for the Defendants note, there is no statutory authority for the recovery of attorneys' fees by Mr. Morgan as an individual.

The Panel finds that since Mr. Morgan advanced the legal fees and costs necessary for 150 Bee Street to receive an affirmative award of \$2,976,234, Mr. Morgan is entitled to a charging lien on the amounts of attorneys' fees awarded by the Panel to 150 Bee Street. This amount should be paid to Mr. Morgan to reimburse him for these advances, prior to the distribution of any funds received from the judgment to the members of the LLC. The Panel has already ruled that no portion

of the recovery from the judgment is awarded to Bella Vista, the Bomasada Defendants, Stuart Fred or John Gilbert.

As to the amount to be awarded, the South Carolina Supreme Court has identified six factors which should be considered in determining whether a request for attorneys' fees is reasonable:

1. The nature, extent and difficulty of the case;
2. The time necessarily devoted to the case;
3. The professional standing of counsel;
4. Contingency of compensation;
5. Beneficial results obtained and
6. Customary legal fees for similar services.

In considering the above factors, the Panel finds that the case prosecuted by Mr. Morgan was a very difficult case which filed on January 26, 2012, and was referred to arbitration by Consent Order issued on July 9, 2012. The case was hotly contested by the Defendants and was originally scheduled for arbitration in May of 2020. The schedule for the arbitration was suspended due to the Covid 19 pandemic and travel for depositions was adversely affected. The case was not heard by the present Panel until late October of 2022. The online file at the Charleston County Clerk of Court's office indicates that Mediation was held on September 21, 2022, with Rebecca Laffitte as the Mediator, and an impasse was declared. Additionally, both sides retained expert witnesses who had to review and opine on both the amount and entitlement to damages.

Although the Panel was not furnished with detailed time and billing records, the summary provided showed that Mr. Morgan initially started with the firm of Clawson and Staubes, and later moved to Pratt-Thomas Epting and Walker. Mr. Gowder, who had been a member of Pratt-Thomas Epting and Walker, took over the representation after he formed his new firm. Michael T. Rose

worked with Mr. Gowder on the case and participated in all pretrial proceedings and the Arbitration Hearing. The Panel finds that the summary provided of legal fees and expenses paid is representative of a case of this difficulty and magnitude and the time devoted to pre-hearing discovery, motions and a contested hearing. The Panel finds that Mr. Gowder and Mr. Rose are well respected members of the local bar who have been practicing law for many years.

As to the contingency of compensation, the submissions indicate that Mr. Morgan paid his attorneys on an hourly basis. Thus, the contingency in this case was not whether the attorneys would be paid but whether there would be an affirmative recovery in a contested case which was unable to be resolved short of a full hearing.

While Defendants argue that there only a recovery of 10 to 20% of the total damages sought, the recovery obtained through Mr. Mogan's efforts and advancement of attorneys' fees costs on behalf of Bee Street Lofts was \$2,976,234, which is actually 48.9% of the claimed actual damages of \$6,080,881.<sup>1</sup> It would be inequitable for Bee Street Lofts to receive the benefits of the award without awarding attorneys fees and costs as a charging lien to the benefit of Mr. Morgan before any amounts are distributed to the members of Bee Street Lofts, other than Bella Vista.

The Panel is required to exercise their collective discretion to arrive at a reasonable amount. After substantial discussion among the members of the Panel following the submissions by counsel, the Panel finds that the below approach achieves a result which is a customary award of legal fees and costs for similar services after consideration of the six factors:

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<sup>1</sup> See Plaintiff's post-hearing proposed order in which he claims this amount. See also page 6 of the Arbitration Award of April 10, 2023.



**FOR THE PANEL**

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**NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC**

**Order/Awarding Arbitration Form 4**

**CASE NO: 2012CP1000580**

**Thomas H Morgan VS John L Gilbert , defendant, et al**

This judgment was entered on the 14th day of October, 2025, and notice mailed first class on Wednesday, October 15, 2025, to all counsel of record and/or all parties entitled to receive notice.

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