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Dec 08 2025
S.C. SUPREME COURT

The State of South Carolina
In the Supreme Court

Appeal from Richland County
Court of Common Pleas
The Honorable Martina M. Rivers
Case No. 2024-CP-40-035210

Appellate Case No. 2024-001963

Sherman and Claudia Howell, Respondents,

v.

D.R. Horton, Inc., Appellant,

AND

D.R. Horton, Inc., Third-Party Plaintiff,

v.

Jenkins Plumbing Company, LLC, Caryl Mechanicals II, Inc., L&M Electric, Inc., Unique Stone Creations, M&L General Construction, Inc., Alpha Omega Construction Group, Inc., and ASC Services and Supply, Inc.,

Third-Party Defendants.

Appellant's Reply in Support of Motion to Dismiss Appeal

Appellant filed a motion to dismiss this appeal on November 13, 2025, before the South Carolina Supreme Court certified the case for its review. Respondents objected to the appeal being dismissed. Appellant files this Reply in Support of its Motion to Dismiss Appeal.

The appeal is solely about whether Appellant's Motion to Compel Arbitration should have been granted by the Circuit Court. Respondents *prevailed* on the motion. Appellant filed this appeal because it thinks the Circuit Court erred as a matter of law. Nonetheless, in the interest of moving the case forward, Appellant moved to dismiss the appeal, thereby leaving the case to be tried in the Circuit Court as the Circuit Court ordered and as Respondents stated they wanted.

Respondents won the motion and Appellant has acquiesced to Respondents' demand by dismissing the appeal.[1] Accordingly, there is no case or controversy to be decided in this case. The appeal is moot. As the Court has repeatedly decided,

> "Generally, this Court only considers cases presenting a justiciable controversy." *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 25, 630 S.E.2d 474, 477 (2006). "An appellate court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy." *Curtis v. State*, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001). "A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court. Sloan, 369 S.C. at 26, 630 S.E.2d at 477.

Croft v. Town of Summerville, 433 S.C. 473, 860 S.E.2d 352 (2021). Because Respondents desire to litigate this case in the Circuit Court and Appellant is willing to do that, there is no dispute and no relief that the Court can grant that would end a dispute.

[1] The Motion to Dismiss the Appeal is timely because there has thus far been no arbitration process started, no arbitration fees have been paid, and the case in the Circuit Court is in its very early stage. Accordingly, there is no prejudice to Respondents if the appeal is dismissed because Respondents will be in the same position they were in before an appeal was filed and will have their chosen forum for resolution of their case.

Recognizing that the appeal is moot because there is no longer any disagreement between the parties regarding arbitration, Respondents ask the Court to deny Appellant's Motion to Dismiss because they say it "'involves an issue of significant public interest' and 'a legal principle of major importance.'" Respondents misapprehend that the posture of this case is that it is between two private parties and concerns only a narrow procedural matter in their private contract. By dismissal of the appeal, Respondents retain their win in the Circuit Court on the issue of whether Appellant's Motion to Compel Arbitration should have been granted, and their private right in that regard is respected. There is nothing more for the Court to decide in this case.

This appeal also does not warrant a public importance exception to mootness because there is no imperative and manifest urgency to decide this appeal for future conduct in matters of public importance. The Court clarified the public importance mootness exception in *Sloan v. Greenville County*, 361 S.C. 568, 570-71, 606 S.E.2d 464, 465-66 (2004), as follows:

> This Court has recognized a "public importance" exception to mootness holding that "an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest." *Curtis v. State*, 345 S.C. 557, 549 S.E.2d 591 (2001)(internal citations omitted). The determination whether a particular suit raises "questions of imperative and manifest urgency" must be decided on an individual basis. In this case, the Court of Appeals focused not on the standard for invoking this exception ("questions of imperative and manifest urgency"), but instead on the label applied to it ("matter of important public interest"). In seeking to define important public interest for purposes of applying this exception, the Court of Appeals relied upon one of its decisions which held that, for purposes of determining taxpayer standing, "the expenditure of public funds pursuant to a competitive bidding statute is of immense public importance." *Sloan v. School Dist. Of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000) . Relying upon this ruling, the court concluded "the competitive sealed bidding process is a question of public importance, both in the context of standing and in the context of [County's compliance with the procurement ordinance's requirement] of the written determination." *Sloan v. Greenville County*, supra.

> The Court of Appeals applied an incorrect standard, substituting "public importance" for "imperative and manifest urgency." Further, the court erred in adopting a categorical exception to the mootness doctrine for cases questioning the competitive sealed bidding process. Such an approach is inconsistent with the limited nature of the exception for questions of "imperative and manifest urgency."

There is no imperative and manifest urgency regarding a matter of public importance as to whether this appeal should be dismissed or as to whether Appellant's motion to compel arbitration should have been granted. This is a contract dispute between two private parties and dismissal of the appeal by Appellant favors Respondents.

Moreover, the Court has already assigned all motions to compel arbitration to a single Circuit Court judge, which fully addresses the concerns Respondents raise in their objection to the dismissal of this appeal. *In re Assignment of Motions to Compel Arbitration in Related D.R. Horton Litigation*, S.C. Sup. Ct. Order dated Dec. 2, 2025. That having been done, Respondents' cases on standing and arbitration are not applicable.

One of the cases cited by the Respondents is *Toler's Cove Homeowners Ass'n, Inc. v. Trident Const. Co.*, 355 S.C. 605, 611, 586 S.E.2d 581, 585 (2003). It is distinguishable for three additional reasons. First, in *Toler* this Court affirmed the decision to compel arbitration and explained its reasoning why a grant of arbitration is not immediately appealable. The Court's decision clarifying that an order granting a motion to compel arbitration is not immediately appealable benefited the public because it applied to all arbitration cases; it did not involve interpretation of specific language in an individual contract. Second, in *Toler* there was disagreement between the parties about whether the case should be arbitrated. Here the parties are in agreement about that. Third, there is no "public importance" in deciding an issue about a contract between two private parties concerning a specific issue in their private contract. Nor is it of public importance if the same or similar clause is in contracts between one of the parties and

other potential or actual litigants in other cases. It is still a private matter between those parties. As in any other case, precedent will govern. There is no urgency.

ATC South, Inc. v. Charleston County, 380 S.C. 191, 199, 699 S.E.2d 337, 341 (2008), cited by Respondents, is not relevant because it did not apply the "imperative and manifest urgency" standard, which is required here in addition to the "public importance" standard. *ATC* dealt only with standing of a party—not justiciability, which involves the power and role of the courts. The concepts are different. Moreover, even under the more lenient standard for standing, the Supreme Court in *ATC* failed to find "public importance" in the matter, which involved two private parties in a dispute over money, just as we have here.

"For examples where this Court has conferred standing under the public importance exception, see *Sloan v. Sanford*, 357 S.C. 431, 434, 593 S.E.2d 470, 472 (2004), which held standing existed to challenge the sitting Governor's holding of a commission in the Air Force Reserve; *Evins v. Richland County Historic Pres. Comm'n*, 341 S.C. 15, 21, 532 S.E.2d 876, 879 (2000), which conferred standing to allege a preservation society exceeded its authority by conveying property; *Baird v. Charleston County*, 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999), which provided standing to argue a county exceeded its authority by issuing hospital bonds." *ATC*, 380 S.C. at 199 n.2, 669 S.E.2d at 341 n.2. This case resembles none of these cases.

Instead of accepting their win, Respondents now assert that the Court should decide this appeal, which places Respondents in the unfathomable position of putting at risk a win for Mr. and Mrs. Howell, their clients in this case. One might ask why. The logical conclusion is that

Respondents' refusal to accede to dismissal is to further their aims for other clients in other litigation. That, of course, would be improper. The Court should not allow itself to be so used.

December 8, 2025

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