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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM  
South Carolina Court of Appeals  
Per Curiam, Court of Appeals

Appellate Case No. 2025-002024

Ralph Dawkins and Michelle Dawkins, Marcel Franquelin and Patricia Franquelin, Michael A. Martin and Adriana S. Iaquinto-Martin, Louis Galvinos and Kimberly Galvinos, Daniel J. O’Grady and Kaitlyn E. Grigoleit, Christopher M. Raybon and LaShonda K. Raybon, Morris K. White and Rebecca A. White, Paul A. Banker and April S. Banker, Patrick K. Daly and Brenda Daly, ..... Respondents,

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, and Eastwood Construction, LLC,..... Petitioners.

**PETITIONERS’ REPLY TO RESPONDENTS’ RETURN**

James Edward Bradley, SC Bar #66130  
Moore Bradley Myers Law Firm, PA  
1700 Sunset Blvd. (29169)  
PO Box 5709  
West Columbia, SC 29171  
803-796-9160  
[Ward@mbmlawsc.com](mailto:Ward@mbmlawsc.com)  
Attorney for Petitioners

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## ARGUMENTS

### **I. THE RESPONDENTS IMPROPERLY STATE THE STANDARD OF REVIEW IN THIS MATTER**

The Respondents have argued that “the Court’s scope of review extends merely to the correction of errors at law and factual findings which are unsupported by any evidence.” *See*, p. 14, Respondents’ Return to Appellants’ Petition for Writ of Certiorari. In fact, the appropriate standard of review is *de novo*.

The matter ruled upon below was a declaratory judgment. A declaratory judgment is neither legal nor equitable but takes its standard of review from the nature of the underlying issue. *See, Auto-Owners Ins. v Newman*, 385 S.C. 187, 686 S.E.2d 541 (2009). Thus, the court looks to the sort of action decided rather than the declaratory judgment procedure. The Respondents argue that because this lawsuit involves a contract, the Master’s findings of unconscionability limit this Court’s scope of review merely to corrections of errors of law and unsupported factual findings. In fact, the Respondents’ claims of unconscionability are an action in equity. A Master-in-Equity’s ruling of unconscionability is an equitable ruling creating an equitable remedy of striking a provision in a contract. *See, Wells Fargo v. Smith*, 398 S.C. 497, 496, 730 S.E.2d 828, 313 (Ct.App. 2012) (“Jurisdictions throughout the country agree that common law unconscionability is an equitable cause of action...”). In equity actions, “an appellate court can review the record and make findings based on its review of the preponderance of the evidence.” *J&W Corp. of Greenwood v. Broad Creek Marina of Hilton Head*, 441 S.C. 642, 669, 896 S.E.2d 328, 344 (Ct.App. 2023). As a result, the Master’s findings are equitable findings for an equitable cause of action, and the Court may review the entire record before the Master making its own findings as to its view of the evidence.

The Court of Appeals found that the issues raised in these appeals are questions of law which it reviews *de novo*. *Dawkins v. Eastwood Homes of Columbia, LLC*, Unpublished Op. No. 2025-UP-239 (Ct.App. 2025). In doing so, it relied upon Section 36-2-302 (1) of the South Carolina Commercial Code which labels issues of unconscionability as matters of law. Even under a standard finding the questions of unconscionability to be a question of law, the appropriate standard of review is *de novo*. *Id.* However, *Wells Fargo vs. Smith* establishes that common law unconscionability is an equitable cause of action. Thus, this Court should use the equitable standard of review.

## **II. THE COURT OF APPEALS ERRED IN REFUSING TO CONSIDER EASTWOOD'S BASIS FOR TERMINATING THE CONTRACTS**

The Court of Appeals rejected Eastwood's basis for terminating the contracts as finding it was not a relevant inquiry as to unconscionability. The Respondents also argue on Page 1 of their Brief that Eastwood has "consistently attempted to smuggle irrelevant matters into this appeal." In fact, as testified to by both Allen Nason and Dion Matheny, Eastwood terminated the contracts due to a problem with the recorded covenants governing the neighborhood. (R. p. 514, l. 5 – p. 515, l. 2). The reason for the termination of the contracts is relevant to the unconscionability analysis.

Unconscionability requires a review of the entire factual scenario regarding the transaction between the parties. The Respondents have consistently alleged with no proof that Eastwood terminated these particular contracts out of all its other homebuilding contracts with a malevolent intent to increase the prices paid by the Respondents. There is no evidence of this whatsoever. In fact, this neighborhood is one of many neighborhoods which Eastwood develops. Eastwood's legitimate basis for terminating the contracts with the Respondents shows that its conduct in this matter was not unconscionable and is relevant to the unconscionability inquiry as unconscionability requires a consideration of all factors surrounding the transaction between the parties. *See, Holler v. Holler*, 36 S.C. 256, 269, 612 S.E.2d 469, 476 (Ct.App.

2005) (“A determination whether a contract is unconscionable depends upon all the facts and circumstances of a particular case.” Quoting 17A Am. Jur. 2d § 279 (2004)).

### **III. THE COURT OF APPEALS FAILED TO ADEQUATELY CONSIDER THE FACTS OF THE TRANSACTION INFLUENCING UNCONSCIONABILITY**

The Court of Appeals acknowledged that “unconscionability is a fact-specific inquiry that must be decided on a case-by-case basis.” *Dawkins v. Eastwood*. It then read *Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 607, 879 S.E.2d 746, 754 (2022) to require that Eastwood’s contract terms be held unconscionable. While this Court’s *Damico* opinion did find a large homebuilder’s arbitration contract unconscionable, it does not require that Eastwood’s contract be found unconscionable. In *Damico*, the homebuyers had already purchased homes and were left without a remedy for defects in these homes due to the limitations of the arbitration clause. Thus, this Court took notice that the unconscionable clause deprived the homebuyers of a remedy for a home in which they had invested considerable sums of money. Thus, this Court considered the damages the homebuyers alleged as proof in the unconscionability analysis. Similarly, in *Simpson v. MSA of Myrtle Beach*, 373 SC 14, 21, 644 S.E.2d 663, 666 (2007), this Court found that relevant factors in accessing unconscionability include “[t]he nature of the injuries suffered by the plaintiff... .”

In *Simpson*, the Plaintiff was left with an impaired remedy for a substandard vehicle. In *Damico*, the Plaintiffs were left with allegedly defective homes and an impaired remedy. The Respondents in the present case have not suffered injury similar to the Plaintiffs in *Simpson* or *Damico*.

In fact, the Respondents have suffered and allege no out-of-pocket losses arising from their inability to purchase homes. Instead, they allege the expectation that the houses they wanted to buy would have appreciated. They have had no out-of-pocket loss and do not allege an out-of-pocket loss. Eastwood returned their deposits. Thus, they have been returned to the *status quo*

before the agreements were signed which is an appropriate legal remedy. They are not left with a defective car or home. They were and are free to purchase another home from another builder or owner, or wait until the current issue is resolved and purchase the homes they originally contracted for. And their entire investment in the transaction has been returned to them.

Thus, the Court of Appeals erred by applying *Damico* and *Simpson* to find the contracts unconscionable. It did not even consider the differences in the nature of the damages or the Respondents' investment in the transaction.

#### **IV. THE COURT OF APPEALS IMPROPERLY CONSTRUED THE CONTRACT IN FAVOR OF THE DRAFTER TO RENDER THE CONTRACT UNCONSCIONABLE**

The Master found the contract ambiguous and considered the parties' testimony in determining the contracts application. The Master then relied upon the cross examination of Eastwood's witnesses as to hypothetical or imaginary scenarios that did not occur to determine the contract provisions unconscionable. In particular, the Master relied upon the testimony of Dion Matheny, Eastwood's Charleston Division President, when asked if Eastwood could cancel the contracts because it sought to sell the homes for a higher price. (R. p. 481). *See also*, Respondents' Return to Appellants' Petition for Writ of Certiorari, p. 2. Relying on this testimony from Eastwood, the Master and the Court of Appeals interpreted the contract language to be a cancelable-at-will contract. In fact, this imaginary scenario of Eastwood cancelling contracts to sell houses at a higher price did not occur. It was imaginings by Respondents' counsel. Eastwood provided an explanation in this matter that it cancelled the contracts because of a defect in the neighborhood covenants. Nevertheless, the Master and the Court of Appeals construed the contract to allow cancellation for any reason or no reason in order to find the contract provisions unconscionable.

Ambiguous contract provisions are to be construed in such a way to make them enforceable – not unenforceable. In addition, ambiguous contract provisions are interpreted in favor of the non drafting party. *McGill v. Moore*, 381 SC 179, 186, 672 S.E.2d 571, 575 (2009) (ambiguous language in a contract should be interpreted strongly in favor of the non drafting party). As a result, the Master and the Court of Appeals should have construed any ambiguity in the contract in favor of the purchasers and in favor of enforceability. This interpretation would find the contested clause to allow termination only with a *bona fide* reason or disparity such as a problem with the restrictive covenants. Instead, the Master and the Court of Appeals construed the provision in favor of the drafter to allow termination for any reason or no reason. As a result, the Master’s and the Court of Appeals’ reverse interpretation of the contract then wrongfully rendered it unconscionable.

If the Master and the Court of Appeals had construed ambiguity in the contract in favor of the purchasers and enforceability, the clause would require a *bone fide* dispute as written. And, since the lack of required restrictive covenants was a *bone fide* dispute, the provision would not be unconscionable. In fact, this is the interpretation the Respondents advocated in trial and testified they believed existed. *See*, p. 8, Respondents’ Return to Appellants’ Petition for Writ of Certiorari (“Homebuyers read the agreement to require a dispute resolution *process*. Homebuyers understood this to mean there had to be an element of mutuality in the process and that Eastwood could not just terminate for any reason it wants...”).

### **CONCLUSION**

Eastwood asks that this Court review this matter and overturn the Court of Appeals for the reasons set forth in its petition for certiorari and in this reply. In particular, the Court of Appeals applied the incorrect standard of review, the Court of Appeals failed to consider Eastwood’s basis

for terminating the contracts, the Court of Appeals failed to consider the complete facts relating to the transaction, and the Court of Appeals improperly interpreted the contracts.

Respectfully submitted,

By: s/James Edward Bradley  
James Edward Bradley, SC Bar #66130  
Moore Bradley Myers Law Firm, PA  
1700 Sunset Blvd. (29169)  
PO Box 5709  
West Columbia, SC 29171  
803-796-9160  
[Ward@mbmlawsc.com](mailto:Ward@mbmlawsc.com)  
Attorney for Petitioners

West Columbia, South Carolina  
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