STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS

Appeal from the Court of Common Pleas
For Charleston County
Honorable Jennifer B. McCoy, Circuit Judge
Civil Action No.: 2012-CP-10-00580
Appellate Case No. 2025-002323

THOMAS H. MORGAN,

Respondent,

v.

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,

Of which 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, are the

Appellants.

APPELLANTS' JOINT RESPONSE TO RESPONDENT'S MOTION TO DISMISS APPEAL

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Attorneys for the Appellants,
Stuart L. Fred, Bella Vista Partnership, a Texas General Partnership; Bomasada Group, Inc., a Texas Corporation; Bomasada Investment Group II, a Texas Limited Liability Company; Lauralis Management, Inc., a Texas Corporation; and 150 Bee Street, LLC, a South Carolina Limited Liability Company

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TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS:

COMES NOW the Appellants, Stuart L. Fred, Bella Vista Partnership, a Texas General Partnership; Bomasada Group, Inc., a Texas Corporation; Bomasada Investment Group II, a Texas Limited Liability Company; Lauralis Management, Inc., a Texas Corporation; and 150 Bee Street, LLC, a South Carolina Limited Liability Company (the "Appellants"),[1] pursuant to Rule 240(e). *SCACR*, and respectfully submits this response to the *Motion to Dismiss Appeal for Lack of Subject Matter Jurisdiction* (the "*Motion to Dismiss*") filed by the Respondent, Thomas H. Morgan ("Mr. Morgan"). The Appellants respectfully request this Court of Appeals to deny Mr. Morgan's motion and, in turn, permit this matter to proceed on its merits through the normal appellate process.

I. STATEMENT OF THE FACTS

On 26 January 2012, Mr. Morgen filed a civil action against the Appellants asserting various causes of action relating to the development and construction of a building located at 150 Bee Street, Charleston, South Carolina and commonly referred to as the Bee Street Lofts condominium complex. This dispute was subsequently referred to binding arbitration, which was eventually conducted from 31 October 2022, until 8 November 2022.[2] On or about 10 April 2023, the arbitration panel awarded judgment to Bee Street Lofts, LLC ("Bee Street Lofts") based on derivative claims asserted by Mr.

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[1] *Id.* The Defendant, John L. Gilbert ("Mr. Gilbert"), is not involved herein and is not represented by appellate counsel. His appearance, if made, would be pro se or by other appellate counsel.

[2] Arbitration Award, p.1. *See* Final Arbitration Award dated 19 June 2023 (the "Arbitration Award"). A copy of the Arbitration Award is attached hereto as **Exhibit "A"** and incorporated herein by reference as are all other included exhibits.

Morgan on behalf of Bee Street Lofts against the Appellants, "in the total amount of $2,976,234.00, excluding attorneys' fees and costs. On 19 June 2023, in response to various "post-trial" motions from both sides, the arbitration panel issued its final award to Bee Street Lofts in the amount of $3,672,743.00, which included the monetary damages award, awarded legal fees and awarded costs and expenses.[3] By order dated 6 February 2023, the Circuit Court confirmed the arbitration award and denied the Appellants' collective request to either vacate or modify the award.[4] The matter was appealed and affirmed by this Court of Appeals.[5]

On 14 October 2025, the Circuit Court issued an *SCRCP* Form 4 Order (Judgment In A Civil Case)[6] allegedly for the purpose of "docketing of the Court Order in this case dated February 6, 2024, confirming the Arbitration Award of June 19, 2023; [and] therefore the date of enrollment is February 6, 2024".[7] Three days later, on 17 October 2025, again without notice to the Appellants' counsel, the Clerk of Court for the Charleston County Court of Common Pleas issued a *Transcript of Judgment* in the sum of $3,672,743.00[8]

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[3] *Id.*, at p.9.

[4] Confirmation Order, p.1. *See* Order Denying Defendants' Motion to Vacate or Modify the Final Arbitration Award and Confirming Arbitration Award dated 6 February 2023 (the "Confirmation Order"). A copy of the Confirmation Order is attached hereto as **Exhibit "B"**.

[5] *See* Morgan v. Gilbert, 2025 WL 928676 (S.C.App., 26 March 2025). A copy of the opinion is attached as **Exhibit "C"**. This Court of Appeals issued its remittitur on 21 August 2025.

[6] SCRCP Form 4 Order, p.1. *See* SCRCP Form 4 Order dated and filed 14 October 2025 (the "SCRCP Form 4 Order"). A copy of the SCRCP Form 4 Order is attached as **Exhibit "D"**.

[7] *Id.* Notwithstanding the SCRCP Form 4 Order's statement that the disposition type of the order was "**DECISION BY THE COURT**. The action came to trial or hearing before the court. The issues have been tried and a decision rendered" the Circuit Court issued the SCRCP Form 4 Order either *sua sponte* or *ex parte*, but certainly without any pending motion or formal request filed with the Circuit and/or provided to the Appellants' counsel handling the matter in the Trial Court.

[8] Transcript of Judgment, p.2. *See* Transcript of Judgment dated 17 October 2025 (the "Transcript of Judgment") A copy of the Transcript of Judgment is attached as **Exhibit "E"**.

which stated that "NOTICE IS GIVEN that [post-judgment] interest will accrue from the date of docketing of judgment, October 14, 2025".[9] Almost a month later, on 13 November 2025, again without notice, the same Clerk of Court issued an *Amended Transcript of Judgment* also in the sum of $3,672,743.00,[10] but which now stated that "NOTICE IS GIVEN that [post-judgment] interest will accrue from the date of docketing of judgment, ***February 6, 2024***".[11]

The Appellants subsequently filed their collective *Notice of Appeal* on 17 November 2025.[12] Mr. Morgan, in turn, moved to dismiss the appeal.

II. ARGUMENT AND CITATION OF AUTHORITY

The Notice Of Appeal Was Timely Filed

In South Carolina.an "[a]ppeal may be taken, as provided by law, from any final judgment, appealable order or decision."[13] Consequently, '[a] party intending to appeal must serve and file a notice of appeal and otherwise comply with these [*South Carolina Appellate Court] Rules*."[14] Importantly, "[a] notice of appeal [from the Court of

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9 *Id.*

10 Amended Transcript of Judgment, p.2. *See* Amended Transcript of Judgment dated 17 October 2025 (the "Amended Transcript of Judgment") A copy of the Amended Transcript of Judgment is attached as **Exhibit "F"**.

11 *Id.* (Emphasis added). This change enlarged the time period for the accrual of post-judgment interest from a month or so to over 21 months, a substantial increase in the total amount. Post-judgment interest rate for 2024 set at 12.50% (Sup.Ct. Order 2024-01-04-01, p.1) and for 2025 at 11.50% (Sup.Ct. Order 2025-01-06-01), both compounded annually.

12 Notice of Appeal, pp.1-5. *See* Notice of Appeal filed on 17 November 2025 (the "Notice of Appeal"). A copy of the Notice of Appeal is attached as **Exhibit "G"**.

13 Rule 201(a), SCACR. Brunson v. Amer. Koyo Bearings, 367 S.C. 161, 165, 623 S.E.2d 870, 872 (Ct.App. 2005), *abrogated in part on other grounds by* Bone v. U.S. Food Service, 404 S.C. 67, 744 S.E.2d 552 (2013)) (*citing* Hagood v. Sommerville, 362 S.C. 191, 194–195, 607 S.E.2d 707, 708 (2005); S.C. Code Ann. § 14–3–330(1) (1976 and Supp.2004); Rule 72, SCRCivP; Rule 201(a), SCACR).

14 Rule 203(a), SCACR. (Emphasis added).

Common Pleas] shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment."[15] "Whenever . . service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney [by] [d]elivering a copy to him [or by] [d]epositing it in the U.S. Mail properly addressed to the person . . with sufficient first class postage attached [or] [s]erving a copy on the person by [an approved] electronic means . . ."[16] Additionally, the "[N]otice [of Appeal] filed with the appellate court shall be accompanied by . . Proof of [S]ervice showing that the [N]otice [of Appeal] has been served on all respondents . . . ."[17]

An appellant must provide timely notice of an appeal to the respondent(s) within the applicable appellate time period and an appellant's " 'failure to do so divests th[e] [appellate] court of subject matter jurisdiction and results in dismissal of the appeal.' "[18] Moreover, " '[t]he requirement of service of the notice of appeal is jurisdictional, *i.e.,* if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice.' "[19]

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15 *See* Rule 203(b)(1), SCACR. *See generally* Wells Fargo Bank, N.A. v. Fallon Properties South Carolina, LLC, 422 S.C. 211, 810 S.E.2d 856 (2018), *affirmed on remand*, 2019 WL 581217 (S.C.App., filed 13 Feb. 2019) (*per curiam*).

16 Rule 262(c)(1)-(3), SCACR. "The [N]otice of [A]ppeal shall be filed with the clerk of the lower court and the clerk of the appellate court within ten (10) days after the [N]otice of [A]ppeal is served." Rule 203(d)(1)(B), SCACR.

17 Rule 203(d)(1)(B)(i), SCACR.

18 USAA Prop. & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008) (*quoting* Canal Ins. Co. v. Caldwell, 338 S.C. 1, 4, 524 S.E.2d 416, 418 (Ct.App. 1999)).

19 *Id.*, (*quoting* Elam v. South Carolina Department of Transportation, 361 S.C. 9, 14–15, 602 S.E.2d 772, 775 (2004)). *See also* Mason v., Mason, 412 S.C. 28, 59, 770 S.E.2d 405, 421 (2015) (*citing* Conner v. City of Forest Acres, 348 S.C. 454, 461, 560 S.E.2d 606, 609 (2002)).

A. Unnecessary Conflict Between South Carolina Case Law And The *South Carolina Electronic Filing Policies and Guidelines*

As noted, Mr. Morgan has moved to dismiss the Appellants' appeal asserting this Court of Appeals does not have subject matter jurisdiction on the grounds the Appellants' *Notice of Appeal* was ostensibly filed late since the alleged entry date of the *SCRCP* Form 4 Order was 14 November 2025 and any appeal should have been filed no later than 13 November 2025, *a mere difference of four days*. Notwithstanding the language in the Section 4(e)(3) of the *South Carolina Electronic Filing Policies and Guidelines* (the "*SCEF*") which appears to make the date of filing the date the document was electronically filed with the Circuit Court, our electronic filing system, unlike the one used by the Federal Court, does not automatically accept and publish the filed document since the clerk of court for the county in which the filing has been made is mandatorily required to approve acceptance of the particular document.[20] The *SCEF* specifically provides as follows:

> **(d) Clerk Review.** The Clerk of Court shall promptly review an Electronic Filing to determine whether it conforms to applicable filing requirements.
>
> (1) *Acceptance.* If the Clerk of Court accepts the document, the document shall be considered filed with the court at the time the original submission to the Electronic Filing System was complete in accordance with paragraph (c) of this Section, and the Electronic Filing System will affix the date and time of receipt to the document. Upon acceptance, the Electronic Filing System will issue a confirmation with the date and time of the original submission. If the filing initiates a case, the Clerk shall assign a case number.

[20] *See* SC Rules Common Pleas E-Filing Guideline 4, at Section (d).

> (2) *Rejection.* If the Clerk of Court rejects the document, the document shall not become part of the court record. The Clerk of Court will notify the E-Filer of the rejection and the reason for rejection, which the E-Filer may access in the E-Filing System under the "My Filings" Tab. In the event an NEF was transmitted at the time of submission, a new NEF will be sent to all E-Filers in the case informing them that the document was rejected by the Clerk of Court, and the previous NEF shall not be effective as proof of service.
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> If a document is rejected by the clerk of court and is therefore untimely, the party may seek appropriate relief from the court upon good cause shown, such as when the clerk of court erroneously rejected a filing or where a rejection was based on improper formatting.**21**

Importantly, as noted, the ***SCEF*** specifically provides "[i]f the Clerk of Court accepts the document, the ***document shall be considered filed with the court at the time the original submission to the Electronic Filing System [EFS} was complete*** . . . ."**22** Moreover, the ***SCEF*** states "[a] document transmitted and received by the E-Filing System on or before 11:59:59 p.m., [EST], shall be considered filed with the Clerk of Court on that date, provided it is subsequently accepted by the Clerk of Court."**23** Even though this electronic filing system is laudable and is eminently more efficient than traditional filing methods it has created a conflict with case law.

This secondary review process by someone in the Office of the Clerk of Court sometimes ends up having the filed document either rejected and/or rescinded by the clerk of court. More importantly, this mandated review process results in a time delay

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21 *Id.*

22 *Id.*, at Section (d)(1) (Emphasis added).

23 *Id.*, at Section (c).

between the actual time of the filing of the document and the time when the document is posted on the court's electronic docket and thereby available for review, consideration, and analysis by attorneys involved in the case. This time delay, often of up to 24 hours, or 48 hours, or even 72 hours or more, depending on the day when the document was filed, as well as intervening weekends and holidays, effectively diminishes a prospective appellant's appeal time period from one to even three or more days. This creates an unwarranted and, assumingly, unintended benefit to a parties or parties potentially responding to the appeal.

In this case, the Clerk of Court issued an NEF on 14 November 2025, at 2:20:46 pm showing notice was sent to the Appellants' trial counsel regarding entry of the *SCRCP* Form 4 Order. Under the "clerk of court review process", the *SCRCP* Form 4 Order was required to be reviewed and, apparently, ultimately accepted for filing in the EFS. What we do not know and what is never made clear by the current electronic docket filing system is ***when a filed document***, which the clerk of court has accepted, such as the *SCRCP Form 4 Order* herein, ***was actually uploaded into the ECF and available for public review***. It is only after the filed and accepted document is available for public review, consideration, and analysis is a prospective appellant's counsel able to then contemplate whether some motion practice in the trial court or an appeal may be in the offing or even advisable under the facts and circumstances of the case.

Unfortunately, this *SCEF* review process clearly conflicts with established case law addressing when the 30-day appellate clock begins to run. For example, in *Portee*, this Court of Appeals acknowledged the appellate "rules provide[d] that [a] notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice

of *entry* of the order or judgment. . . . [T]he effective date of an order is not when it is signed by the judge, but when it is entered by the clerk of court."**24**. While this is reasonable and the *SCEF* affirms this by stating the filing date is the date of the submission to the EFS if accepted by the clerk of court,**25** the upload date appears never to be the actual date of filing.**26** There is always a not-insignificant time lag between the filing of the document and the availability of the document for review and analysis.

The *SCEF* also conflicts with *Wells Fargo Bank, N.A. v. Fallon Properties South Carolina, LLC*, which requires the written notice of an order for appellate purposes must also attach a copy of the relevant ***signed and filed order*** at issue.**27** While "[r]eceipt of written notice is the critical event under Rule 203(b)(1)", *SCACR*,**28** without being provided with a copy of the order at issue a party's legal counsel is unable to determine what issues, if any, may be subject to an appeal. Consequently, the appellate time clock cannot legitimately commence on mere notice, but must begin only when the potentially appealable order or judgment or document is physically available for counsel's and/or the client's actual review.

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24 Portee v. Always Precise Protection Agency & Investigations, Inc., 2012 WL 10864536 (S.C.App., 5 Dec. 2012) (*citing* Upchurch v. Upchurch, 367 S.C. 16, 22–23, 624 S.E.2d 643, 646 (2006), *disapproved of on other grounds by* Miles v. Miles, 393 S.C. 111, 711 S.E.2d 880 (2011)) (*per curiam*) (First alteration added, second and third alterations in original, emphasis in original).

25 CP E-Filing Guideline 4, at Section (c).

26 In the electronic filing system for court documents used by United States Federal Courts, the submission is made by counsel and then almost instantaneously appears in the court's electronic docket available for review, printing, and/or downloading. There is no secondary clerk review process for acceptance or rejection.

27 Fallon Properties South Carolina, 413 S.C. 642, 645, 776 S.E.2d 575, 576-577 (Emphasis supplied).

28 *Id.*, 413 S.C. 642, 646, 776 S.E.2d 575, 577.

In this case, the NEF signifying that the *SCRCP* Form 4 Order had been filed into the ECF system was admittedly filed on 14 October 2025, but there is no reasonable means to determine when the actual *SCRCP* Form 4 Order was, as has been referenced, available to be viewed in full so the Appellants' counsel could sensibly and judiciously determine its contents and its possible and, indeed, practical implications for the Appellants.

In *Swing v. Swing*, the South Carolina Supreme Court stated " 'civil procedure and appellate rules should not be . . .interpreted to create a trap for the unwary lawyer.' "[29] Unfortunately, the *SCEF*'s mandatory requirement the Clerk of Court (or most likely his or her designee), review and approve documents filed in the ECF system has unnecessarily created a situation resulting in is a serious flaw in the coordination between the trial court ECF system and the appellate rules. The time-lag between the "filing" of an order or final judgment or other appealable document and counsel's ability to view and analyze the same document is not instantaneous and could be some 24 hours to 48 hours, to longer depending on when the particular document was electronically filed.

For example, a litigant or a court official files a document of whatever nature on a Friday afternoon at, say, 4:55 p.m. or 5:05 p.m. That filed document would not normally undergo the mandatory review by the Clerk of Court until, at the earliest, sometime on Monday morning of the following week – easily some 60+ hours after it was filed. This does not even consider if the Monday at issue was a holiday. This situation could shave several days off of the normal 30-day appellate timetable at no fault of the potential

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[29] Swing v. Swing, 445 S.C. 340, 351, 914 S.E.2d 158, 164 (2025) (*quoting* Elam v. South Carolina Department of Transportation, 361 S.C. 9, 25, 602 S.E.2d 772, 780 (2004)). *See also* James v. South Carolina Department of Transportation, 393 S.C.440, 711 S.E.2d 919 (2011).

appellant. Taken to the extreme, this is particularly true if and when a filing was made on the Wednesday afternoon before the Thanksgiving holiday. The clerk's review would not, in all probability, occur until the following Monday morning, at the earliest – a 96+ hour delay – unreasonable under any circumstances.

In this case the ECF with the *SCRCP* Form 4 Order was issued on 14 October 2025, at approximately 2:20 p.m. and there is no reasonable way in which to determine if the actual *SCRCP* Form 4 Order was received and viewed on that same date. Even though the docket indicates receipt on 14 October 2025, and the blue side margin stamping also indicates the same, that does not mean the *SCRCP* Form 4 Order was accessible to the Appellants' trial counsel on 14 October 2025. More importantly, the Clerk of Court then mailed a **NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77[,] SCRCP** (the "*Judgment Entry Notice*") to all counsel which specifically provided as follows:

> This judgment was entered on thew 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.
>
> You may view and download this document at http://clerkofcourt.charlestoncounty.org or obtain a copy in person at the Clerk of Court's Office during regular Charleston County business hours.[30]

Given the 15 October 2025, mailing date, Appellants' counsel would not reasonably have received the *Judgment Entry Notice* until, under the very best of circumstances, Thursday, 16 October, 2025. As is often the case with the United States Postal Service, actual delivery of the *Judgment Entry Notice* was not accomplished as rapidly was would

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[30] *See* Notice of Appeal, at Judgment Entry Notice. (Emphasis supplied).

have been expected and, as ***indicated on the envelope containing the Clerk of Court's letter/notice, Appellants' counsel did not receive the Judgment Entry Notice until Monday, 20 October 2025***.[31] It was only at that point when Appellants' counsel reasonably knew to then obtain a copy of the *SCRCP Form 4 Order* to determine what had been ordered by the Circuit Court.

The Appellants' counsel received the *Judgment Entry Notice* on ***20 October 2025***, and knew then to go review the *SCRCP Form 4 Order*.[32] As a practical matter, that is the time the appellate clock began to run, not from receipt of the filed bland and deceptively uninformative NEF. The Appellants then timely filed their *Notice of Appeal* on 17 November 2025, well within the 30-day window. Notwithstanding the timely appeal, the mandatory clerk review requirements of the *SCEF*, as shown herein, create misunderstandings and confusion by creating unnecessarily and needlessly conflicts with well-established case law mandating an appellant's counsel and/or an appellants are entitled to review and analyze the actual order at issue to determine if an appeal of the same is warranted. Conversely, an NEF fails to provide any substance, as it is merely states a document has been filed with no indication when that same document may ultimately be available for review.

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[31] *Id.*, at Judgment Entry Notice envelope. Using the 20 October 2025, date of receipt, the Appellants had until Wednesday, 19 November 2025 to file the Notice of Appeal which had been, of course, done two days earlier.

[32] Even if Appellants' counsel's office had Saturday delivery and the Judgment Entry Notice arrived there on Saturday, 18 October 2025, the Appellants' appeal was still timely as the 30-day appellate period would have ended on Monday, 17 November 2025, the very day the Appellants' Notice of Appeal was filed with this Court of Appeals.

As the South Carolina Supreme Court stated over 116 years ago, in ***J.L. Mott Iron Works v. Clark***, this Court of Appeals should determine the Appellants' "appeal was taken in good faith[as our appellate] court[s] [are] inclined to be liberal in its construction of the statutes and of the rules of court, to the end that appeals, [which have been] taken in good faith, ***shall be heard on the merits*** . . . ."[33]

B. The Appellants Undeniably Timely Appealed The *Transcript Of Judgment* And The *Amended Transcript Of Judgment* Within Thirty Days After Document Receipt.

The Appellants filed their collective *Notice of Appeal* on 17 November 2025 – encompassing (a) the *SCRCP Form 4 Order*, (b) the *Transcript of Judgment*, and (c) the *Amended Transcript of Judgment*. Notwithstanding Mr. Morgan's meritless and unfounded arguments asserting the Appellants failed to timely appeal the *SCRCP Form 4 Order*,[34] there are, however, absolutely no credible arguments to sustain dismissal of this appeal as to the Appellants' appeal involving the *Transcript of Judgment* filed 17 October 2025, and the *Amended Transcript of Judgment* filed 13 November 2025. The appeal of the those two transcripts, by their very nature, emanate and arise from the *SCRCP* Form 4 Order and, as a practical matter, could not and do not exist without and/or independent of the *SCRCP* Form 4 Order.[35] They are all intertwined and completely dependent upon each other.

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[33] J.L. Mott Iron Works v. Clark, 84 S.C. 493, 495, 66 S.E. 680, 681 (1910) (*per curiam*) (denying Motion to Dismiss appeal due to late filing) (Emphasis supplied).

[34] Arguments which have been thoroughly debunked in the previous section on multiple grounds.

[35] *See* S.C. Code Ann. § 14-3-330(1) (Thomson Reuters West 2020). South Carolina law provides, in pertinent part, that our appellate courts have appellate jurisdiction to correct errors of law involving:

While a Clerk of Court's issuance of a transcript of judgment is ostensibly and arguably a ministerial act, the issuance carries a profound effect. The fundamental legal effect of a transcript of judgment appears to be its ability to unilaterally create a lien on the judgment debtor's real property.**36** Under similar "recording language" as used in South Carolina,**37** the Colorado Court of Appeals noted "[t]he priority date of the lien, for *Recording Act* purposes, is the date of recordation of the transcript of judgment; ***the date of the judgment itself has no bearing on the priority date***."**38** Furthermore, a transcript of judgment serves as the essential instrument for converting a money judgment into an enforceable lien against real property, with its legal effect governed by the particular state recording statutes which, in turn, dictate filing requirements, priority rules, and duration of the resulting lien.**39** In addition, it is clear that recording the transcript of judgment is indispensable for perfecting the lien and securing priority over

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> Any intermediate judgment, order[,] or decree in a law case involving the merits in actions commenced in the court of common pleas . . and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from. . . . .

Id. See generally Ex parte Capital U-Drive-It, Inc., 369 S.C. 1 fn. 1, 630 S.E.2d 464 fn.1 (2006).

36 *See generally* Security Credit Services, LLC v. Hulterstrom, 436 P.3d 593, 595 (Colo.App. 2019) ("Once recorded, the transcript of judgment constitutes a lien on all real property owned, or later owned, in that county by the judgment debtor.") (Internal citation omitted).

37 *See generally* S.C. Code Ann. § 30-7-10 (Thomson Reuters West 2020).

38 Hulterstrom, 436 P.3d 593, 595 (*citing* Colo. Rev. Stat. § 38-35-109(1) (2018)) (Emphasis added).

39 *See generally* Fajardo v. Mead, 180 Misc.2d 456, 457, 689 N.Y.S.2d 852, 853 (Queens Cnty. Ct. 1999) (*citing In re* Sterling Die Casting Company, Inc., 132 B.R. 99 (E.D.N.Y. 1991); *In re* Sterling Die Casting Company, Inc. v. Local 365 UAW Welfare and Pension Fund, 126 B.R. 673 (E.D.N.Y. 1991); *In the* Matter of Pierce, 122 Misc.2d 908, 472 N.Y.S.2d 275 (Onondaga Cnty, 1984); Bank of New York v. Frank Magri, 226 A.D.2d 412, 641 N.Y.S.2d 68 (1996)).

subsequent liens or purchasers without notice, since issues of priority are generally established by the order and timing of docketing or recording (*i.e.*, "first in time, first in right"). While a filed transcript of judgment lien itself does not create title or ownership interest in the real property at issue, it does grant the judgment creditor a right to levy upon the property to satisfy the judgment. Therefore, the *Transcript of Judgment* and the *Amended Transcript of Judgment* are documents essential to Mr. Morgan's pursuit of his claims against the Appellants for pre-judgment and post-judgment interest since the principal amount of the debt has already been paid. Any assertion the *Transcript of Judgment* and the *Amended Transcript of Judgment* are documents which cannot be the subject of an appeal evaporates in light of the fact those documents are critical to Mr. Morgan's claims. Importantly, both the *Transcript of Judgment* and the *Amended Transcript of Judgment* were issued without any prior notice to the Appellants' trial counsel and, therefore, the Appellants were not afforded any opportunity to challenge the validity, content, and/or scope of the submissions. Consequently, with the Appellants' unquestioned timely appeal of the both the *Transcript of Judgment* and the *Amended Transcript of Judgment* the *SCRCP Form 4 Order* has also been timely appealed as it is and was necessarily the genesis for both the *Transcript of Judgment* and the *Amended Transcript of Judgment* without which neither could exist.

C. The Circuit Court Did Not Have Jurisdiction To Issue The *Ex Parte SCRCP Form 4 Order*.

On 6 February 2024, the Circuit Court issued the *Confirmation Order*, but, for reason not yet determined, did not issue a corresponding ***SCRCP*** **Form 4 Order (Judgment In A Civil Case)**. It was not until ***some 20 months after*** this matter was appealed to this Court of Appeals, affirmed, rehearing denied, *certiorari* denied, remitter issued, and Mr. Morgan's various legal counsel commenced collection efforts in multiple states did Mr. Morgan's attorneys discover the Circuit Court never issued an ***SCRCP*** **Form 4 Order (Judgment In A Civil Case)**. This form would have docketed the judgment originating from the arbitration panel's 19 June 2023 issuance of the *Arbitration Award* and, according to Mr. Morgan's assertions, would have started the clock on post-judgment interest.[40]

1. *Issuance Violated S.C. Code Ann. § 15-48-140(a)*

Mr. Morgan's request for the *SCRCP Form 4 Order* violated the statutory 90-day time limit contained in *S.C. Code Ann.* § 15-48-140(a) and rendered the Circuit Court without any subject matter jurisdiction to issue the *SCRCP Form 4 Order*. Prior to sometime in October 2025 Mr. Morgan had never sought to alter, modify, and/or correct the *Arbitration Award* to obtain either an award of pre-judgment interest and/or post-judgment interest. This Circuit Court did not have jurisdiction to address Mr. Morgan's request since his attempt to modify the *Arbitration Award* by seeking to move the

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[40] Mr. Morgan has also sought pre-judgment interest. As an aside, on 12 December 2025, Mr. Morgan moved in the Circuit Court for an order assessing/awarding pre-judgment interest and confirming the application of post-judgment interest (the "Interest Motion") on the Arbitration Award (the principal amount which has already been paid). The Appellants opposed the motion and, by the ubiquitous SCRCP Form 4 Order, issued on 9 January 2026, denied the motion without prejudice due to jurisdiction of the case being lodged in this Court of Appeals.

enrollment date of the judgment arising from the Confirmation Order from 14 October 2025, back, nunc pro tunc, to 6 February 2024 was made much more than 90-days after he or his attorneys received a copy of the *Arbitration Award*.

Issuance of the *SCRCP From 4 Order* was barred by well-established South Carolina law, which provides, in pertinent part, that "an application to vacate an arbitration award must be made within [90] days of receiving a copy of the award"[41] and a "court may modify or correct the arbitration award [only] if the party moving to vacate the award has applied to do so within the ninety-day period."[42] Any attempt to vacate, modify, alter, or otherwise to amend the *Arbitration Award* after the 90-day period ends is illegal, improper, and of no force and effect. The Circuit Court could not have legally issued the *SCRCP Form 4 Order*.

In *MBNA Bank America, N.A. v. Christianson*, this Court of Appeals acknowledged that "[a]n application to [either] vacate, modify, or correct an arbitration award ***must be made*** within [90] days" after receipt of the arbitration award.[43] Furthermore, "the case law clearly prohibits attempts to vacate, modify, or correct an arbitration award once the statutory ninety-day limit has expired."[44] In fact, in *Sheet Metal Workers' International Association, Local 399, AFL-CIO v. Maximum Air Flow Co.*, the United States District

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41 Regions Bank v. CDIC Development Company, LLC, 2024 WL 1916646, at 1 (S.C.App., 1 May 2024) (*quoting* S. C. Code Ann. § 15-48-130(b) (Thomson Reuters West 2005)).

42 *Id.,* (*quoting* S. C. Code Ann. § 15-48-140(a) (Thomson Reuters West 2005)).

43 MBNA Bank America, N.A. v. Christianson, 377 S.C. 210, 214, 659 S.E.2d 209, 211 (Ct.App. 2008) (Citations omitted and emphasis supplied).

44 Eatman's, Inc. v. Martin Engineering, Inc., 311 S.C. 282, 284, 428 S.E.2d 736, 737 (Ct.App. 1993) (*citing* Taylor v. Nelson, 788 F.2d 220, 225 (4th Cir.1986) ("once the three-month period has expired, an attempt to vacate an arbitration award could not be made even in opposition to a later motion to confirm."); Florasynth, Inc. v. Pickholz, 750 F.2d 171 (2d Cir. 1984) (three-month limit is absolute)). *See also* White v. Preferred Research, Inc., 315 S.C. 209, 432 S.E.2d 506 (Ct.App. 1993);

Court for the District of South Carolina characterized the ninety-day dispute time frame contained in *S.C. Code Ann.* § 15-48-130(B) in which a party may move to alter, modify, change, and/or vacate an arbitration award as a "statute of limitations".[45] Furthermore, as noted by the South Carolina Supreme Court, in *Sentry Engineering and Construction, Inc. v Mariner's Cay Development Corp.*, since the challenger "filed no motion to vacate or modify within 90 days of delivery of a copy of the [arbitration] award[, therefore], the ***award became the law of the case***."[46]

"The issuance of a judgment, based upon the *[Arbitration] Award*, d[id] not provide [Mr. Morgan] with a new appeal time but rather[,] *S.C. Code Ann.* § 15-48-140(a) set[ ] forth the applicable [statute of] limitations period as beginning on the date that [Mr. Morgan] received [a copy of the *[Arbitration] Award]*."[47] Consequently, the *[Arbitration] Award* became the law of th[e] case 90 days after [Mr. Morgan] received a copy of the *[Arbitration] Award*, even if the arbitrator[s] exceeded [their] powers or decided a matter not submitted to [t]h[e]m."[48] ***At no time before October 2025 when he was seeking*** issuance of the *SCRCP For 4 Order* did Mr. Morgan move to modify or correct or alter the

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45 Sheet Metal Workers' International Association, Local 399, AFL-CIO v. Maximum Air Flow Co., 877 f.Supp.2d 392, 398 (D.S.C. 2012) (Challenger's failure to move to vacate the arbitration awards not made "within ninety days of the issuance of [the awards], but were not[and, are] not timely.").

46 Sentry Engineering and Construction, Inc. v. Mariner's Cay Development Corp., 287 S.C. 346, 350-351, 338 S.E.2d 631, 634 (1985);

47 *In re* Patel, 2006 WL 4955603, at *4 (Bktcy. DSC, 30 Aug. 2006) (*citing* Eatman's, 311 S.C. 282, 284, 428 S.E.2d 736, 737 (interpreting the South Carolina Uniform Arbitration Act and finding "[t]he case law clearly prohibits attempts to vacate, modify, or correct an arbitration award once the statutory ninety-day limit has expired.").

48 *Id.*, (*citing* Sentry Engineering and Construction, 287 S.C. 346, 354, 338 S.E.2d 631, 634; S.C. Code Ann. § 15–48–120 (mandating that the court confirm an award if the deadline to modify or vacate the award has passed)).

Arbitration Award. Mr. Morgan's statutorily mandated 90-day period to seek a change in the *Arbitration Award* ended on or about 17 September 2023. His attempt to do so via the Circuit Court's issuance of the *SCRCP Form 4 Order* now do so, ***some 20+ months later***, was improper. The Circuit Court did not have any jurisdiction to issue the *SCRCP Form 4 Award* in the first instance.[49]

It is axiomatic that an order issued by a court lacking jurisdiction is and, indeed, must be considered *void ab initio*, meaning it is null from the outset and has no legal effect. Such an order, like the *SCRCP Form 4 Order* herein, can be attacked or set aside at any time and confers no rights and proceedings based upon it are invalid. " 'A judgment of a court without subject matter jurisdiction is void . . [and a] 'void judgment is one that, from its inception, is a complete nullity and is without [any] legal effect . . . .' "[50] The SCRCP Form 4 Order was a nullity from the outset as the Circuit Court did not have any jurisdiction to issue it in the first instance.

2. Issuance Was Improperly Obtained *Ex Parte*

Even in the face of the 20+ months' time lag and without any notice whatsoever to the Appellants or their counsel, Mr. Morgan went to the Circuit Court and obtained the *SCRCP Form 4 Order* which docketed the *Confirmation Award*, not as of 14 October 2025 date of the *SCRCP Form 4 Order*, but back-dated as on 6 February 2024 when the

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[49] *See* Eatman's, 311 S.C. 282, 284, 428 S.E.2d 736, 737. See also White v. Preferred Research, Inc., 315 S.C. 209, 212, 432 S.E.2d 506, 508 (Ct.App. 1993).("[W]e emphasize that arbitration is not litigation carried on by other means. It is intended to be, and it is, an alternative means for resolving disputes without the cost and delay of a lawsuit. Judicial review of an arbitration award is limited in scope. Attempts to convert arbitration into a trial-like judicial proceeding are looked upon with disfavor.")

[50] Katzburg v. Katzburg, 410 S.C. 184, 187, 764 S.E.2d 3, 5 (Ct.App. 2014) (*quoting* Gainey v. Gainey, 382 S.C. 414, 424, 675 S.E.2d 792, 797 (Ct.App. 2009)) (Quotation marks and citation omitted in original).

Confirmation Order was issued confirming the *Arbitration Award*. This *ex parte* decree is significant to the extent that, *arguendo*, post-judgment interest is applicable to the Confirmation Award,[51] then the time frame for calculating post-judgment interest is unquestionably significantly multiplied when and if the 6 February 2024 date is used as opposed to the 14 October 2025 date.

Given the very substantial difference in the allegedly-applicable post-judgment interest calculation, Mr. Morgan should have provided notice to the Appellants and their legal counsel he was asking the Circuit Court to issue an *ex parte* order establishing the enrollment date of the judgment emanating from the *Arbitration Award* (as confirmed by the *Confirmation Award*) some 20+ months earlier than the date on which the Circuit Court issued the *SCRCP Form 4 Order*. This time difference represents hundreds of thousands of dollars.

In *Herring v. Retail Credit Co.*, the South Carolina Supreme Court set forth its position regarding the appropriateness of courts in this State issuing *ex parte* orders, stating

> We take this opportunity to advise the Bench and Bar of the disfavor with which we regard *ex parte* orders and the stringent standards of necessity we demand of their issuance on review. Not only do such orders deprive this Court of adequate records on appeal but they ***deny to those deprived an opportunity to be heard in matters which affect them***. In an adversary system, *ex parte* orders are ***reserved for***

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51 The Appellants argued below in their opposition response to the Interest Motion that Mr. Morgan was not entitled to either pre-judgment or post-judgment interest on the grounds, *inter alia*, (a) the motion constituted an improper alteration and/or modification of the Arbitration Award in violation of S.C. Code Ann. § 15-48-140(a) (Thomson Reuters West 2022), (b) neither the Arbitration Award nor the Confirmation Order even referenced, and/or mentioned, much less assessed pre-judgment or post-judgment interest, and (c) once the Confirmation Order confirmed the Arbitration Award then the Arbitration Award was sacrosanct and could not be modified, changed, and/or altered in any way, especially at this late date in the proceedings.

> ***those rare instances where there is no adverse interest or where exigent circumstances clearly require that action be taken before there is time for a full hearing***.[52]

As in *Herring*, the Appellants herein "had an adverse interest in contesting [Mr. Morgan]'s [*ex parte*] request [for the *SCRCP Form 4 Order* and, moreover, Mr. Morgan made] no showing of exigent circumstances upon the record [which] require[ed] the issuance of an *ex parte [SCRCP Form 4] [O]order*.[53]

The Circuit Court should have never issued the *SCRCP Form 4 Order* *ex parte* as there is absolutely no evidence demonstrating any exigent circumstances which legitimately would have denied the Appellants prior notice and/or the opportunity to challenge or otherwise to contest the request.

III. CONCLUSION

Based upon the forgoing argument and legal authorities the Appellants, *Stuart L. Fred, Bella Vista Partnership, a Texas General Partnership; Bomasada Group, Inc., a Texas Corporation; Bomasada Investment Group II, a Texas Limited Liability Company; Lauralis Management, Inc., a Texas Corporation; and 150 Bee Street, LLC, a South Carolina Limited Liability Company*, respectfully request this Court of Appeals to deny the Motion to Dismiss Appeal submitted by the Respondent, Thomas H. Morgan, and permit this appeal to proceed in the normal course on its merits.

ATTORNEY SIGNATURE BLOCK WILL

APPEAR ON THE FOLLOWING PAGE

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[52] Herring v. Retail Credit Co., 266 S.C. 455, 461, 224 S.E.2d 663, 666 (1976) (Emphasis supplied).

[53] *Id. See also* McSwain v. Holmes, 269 S.C. 293, 300, 237 S.E.2d 363, 366 (1977).

Respectfully submitted:

BUTLER SNOW LLP

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Attorneys for the Appellants,
Stuart L. Fred, Bella Vista Partnership, a Texas General Partnership; Bomasada Group, Inc., a Texas Corporation; Bomasada Investment Group II, a Texas Limited Liability Company; Lauralis Management, Inc., a Texas Corporation; and 150 Bee Street, LLC, a South Carolina Limited Liability Company.

Charleston, South Carolina

12 January 2026

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EXHIBIT A

IN ARBITRATION

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	COURT OF COMMON PLEAS 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,

Exhibit A

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

Exhibit A

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.[1] 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:

[1] 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.

Exhibit A

Total Award **$2,976,234.00**

Legal Fees

One-third of Gross Recovery = $992,078.00

Per cent recovered versus amount claimed = 48.9%

Fee Award After Applying Percentage versus amount claimed = $485,126.00

COSTS

Approved Costs = $266,746

Approved Cost After Applying Percentage of 48.9% = **$130,439.00**

Costs of Arbitration Requested (100%) = **$80,944**

TOTAL FEES AND COSTS AWARDED = $696,509.00

TOTAL ARBITRATION AWARD INCLUDING FEES AND COSTS = $3,672,743

This Final Arbitration Award, if confirmed by the Court, is intended be entered as a judgment against the Defendants, except for Bee Street Lofts, LLC, in favor of Bee Street Lofts, LLC, except for member Bella Vista Partnership, and John L. Gilbert and Stuart L. Fred, but no proceeds from any recovery on this judgment are to be distributed to the members of Bee Street Lofts, LLC until the charging lien in favor of Thomas H. Morgan has been fully satisfied.

Exhibit A

FOR THE PANEL

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H Brewton Hagood
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H. Brewton Hagood, Chair
Arbitration Panel
bhagood@rosenhagood.com

DocuSigned by:
B8CED65C05F6482...

Paul A. Dominick, Member
Arbitration Panel
pdominick@nexsenpruet.com

DocuSigned by:
Costa M. Pleicones
F12C01735F0414...

Costa M. Pleicones. Member
Arbitration Panel
CPleicones@hsblawfirm.com

6/19/2023 | 2:13 PM EDT
June ___, 2023

Exhibit A

EXHIBIT B

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON THOMAS H. MORGAN Plaintiff, v. 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.	IN ARBITRATION IN THE COURT OF COMMON PLEAS C.A. NO. 2012-CP-10-00580 **ORDER** **DENYING DEFENDANTS' MOTION TO VACATE OR MODIFY THE FINAL ARBITRATON AWARD** **AND** **CONFIRMING ARBITRATION AWARD**

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[1] and a retired Chief Justice of the South Carolina Supreme Court[2] (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

[1] H. Brewton Hagood, Chair; Paul A. Dominick, Member
[2] 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).

An arbitrator's "manifest disregard of the law" as a basis for vacating an arbitration award occurs when the arbitrator knew of a governing legal principle yet refused to apply it. Gissel, 676 S.E. 2d at 324, citing Weimer v. Jones, 364 S.C. 78, 610 S.E.2d 850 (Ct. App. 2005). Factual and legal errors by arbitrators do not constitute an abuse of power, and a court is not required to review the merits of a decision so long as the arbitrators do not exceed their powers. Id., Pittman, supra (emphasis added).

Here, the Defendants argue that the Arbitration Award should be vacated under the statute because "The arbitrators exceeded their powers" "and/or manifestly disregarded the law governing their jurisdiction in this matter in that the Panel lacked subject matter jurisdiction to hear the case and should have dismissed the case as a matter of law." Defendants' Motion to Vacate, at 1.

The Defendants' burden, therefore, in this motion to vacate, is to prove that as a matter of law the arbitrators (1) knew that they had no authority to decide this case, (2) ignored the law, and (3) decided the arbitration proceeding in knowing and manifest disregard of that law.

DENIAL OF THE DEFENDANTS' MOTION TO VACATE OR MODIFY THE ARBITRATION AWARD

1. **The issue of subject matter jurisdiction was thoroughly briefed and argued before the Panel at both the dispositive motion stage, at the trial and at the post-trial stage, and the Panel ultimately decided in favor of the arguments recognizing the court's and Panel's subject matter jurisdiction.**

The consent order initiating the arbitration dated July 9, 2012, established exclusive and binding subject matter jurisdiction in the panel for all matters raised by the pleadings in this matter. The consent order, to which the Defendants explicitly agreed, referred:

> All claims, both compulsory and non-compulsory, specifically including all claims, counter-claims, and/or third-party claims, related to the underlying facts, transactions, and/or occurrences that are the subject matter of the pleadings and claims asserted in this case, shall be decided by binding arbitration that shall be conducted in accordance with the terms of this Order and otherwise pursuant to the Federal Arbitration Act and all of the parties submit themselves to the jurisdiction of this court and arbitration panel.

This is not a matter of a party raising subject matter jurisdiction later in the case. Rather, subject matter jurisdiction in this case was decided by court order and by consent submission of the

parties, including these Defendants pursuing this argument. This Court, and the arbitration Panel to which it referred this matter, have subject matter jurisdiction of this matter.

This matter was extensively argued throughout the course of the arbitration proceedings by the Defendants and, specifically, in the motions for summary judgment, at trial, post-trial, and in a motion for reconsideration. Likewise, at every stage, the Plaintiffs presented arguments establishing the Panel's subject matter jurisdiction and arguing against the Defendant's position. (Plaintiff's Memo, Exhibits C, D, E, F, and G).

The Panel ruled against the Defendants' motion at the summary judgment stage (Plaintiff's Memo Exhibit E), and after hearing the evidence and legal arguments of counsel at trial and considering their extensive arguments submitted post-trial, the Panel decided in favor of the Plaintiff's position and found that the Panel did have subject matter jurisdiction (see Exhibit A). The Defendants raised the argument yet again in the Motion for Reconsideration and the Panel once again, in its ruling on that motion, rejected Defendants arguments and found that the Defendants had raised no new issues or arguments, and the Panel did have subject matter jurisdiction to issue an award in the arbitration proceeding (see Defendants' Motion, Exhibit A).

Now, the Defendants make the same arguments here, again.

The Defendants cannot vacate the Arbitration Award, however, by arguing that the Panel did not fully consider their argument or even that the Panel wrongly decided the issue. Rather, they must show that there is a clear law supporting their position that the Panel recognized to be controlling and simply refused to follow it. There is no such clear controlling law, and there is no evidence that the Panel disregarded the law of South Carolina in any respect. Rather, the Panel disagreed with the Defendants' interpretation of the law and facts and instead adopted the argument made by the Plaintiff.

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.

_____

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

EXHIBIT C

2025 WL 928676
Only the Westlaw citation is currently available.

Court of Appeals of South Carolina.

Thomas H. MORGAN, Respondent,

v.

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,

Of which 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, and Lauralis Management, Inc., a Texas Corporation are the Appellants.

Appellate Case No. 2024-000322
|
Unpublished Opinion No. 2025-UP-098
|
Submitted March 1, 2025
|
Filed March 26, 2025

Appeal From Charleston County, Bentley Price, Circuit Court Judge

Attorneys and Law Firms

Henry E. Grimball, Matthew Tillman, Morris Arthur Ellison, and Michael Rhett DeHart, all of Womble Bond Dickinson (US) LLP, of Charleston, for Appellants.

Michael T. Rose, of Mike Rose Law Firm, PC, of Summerville; W. Andrew Gowder, Jr., of Austen & Gowder LLC, of Charleston; and Christopher Blohme Staubes, III, of Staubes Law Firm, LLC, of Charleston, all for Respondent.

Opinion

PER CURIAM:

***1** 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, and Lauralis Management, Inc., A Texas Corporation (collectively, Appellants) appeal the circuit court's order denying their motion to vacate or modify an arbitration panel's final arbitration award and confirming the arbitration award. On appeal, Appellants argue the circuit court erred in (1) failing to find that neither the arbitration panel nor the circuit court had subject matter jurisdiction and (2) failing to find the action was barred by the applicable statute of limitations. We affirm pursuant to Rule 220(b), SCACR.

1. We hold both the circuit court and arbitration panel had subject matter jurisdiction over this matter. *See Pierce v. State*, 338 S.C. 139, 150, 526 S.E.2d 222, 227 (2000) ("Subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong."). First, the circuit court had subject matter jurisdiction because this is a derivative action and the circuit court has the power to hear such cases. *See Dema v. Tenet Physician Servs.-Hilton Head, Inc.*, 383 S.C. 115, 120, 678 S.E.2d 430, 433 (2009) ("South Carolina trial courts are vested with general original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts."); *see generally* Rule 23(b)(1), SCRCP (providing a shareholder may bring a derivative action to enforce the right of a corporation when the corporation has failed to enforce its own right). Further, the failure to include a party does not automatically deprive the court of subject matter jurisdiction; rather, when there has been a failure to join an indispensable party, the result is to join the party, not to dismiss for a lack of subject matter jurisdiction, and here, the arbitration panel permitted the addition of the party. *See Charleston Cnty. Parents for Pub. Sch., Inc. v. Moseley*, 343 S.C. 509, 514, 541 S.E.2d 533, 535 (2001) ("[T]he remedy under Rule 19, SCRCP is for the Court to make the Charleston Delegation a party, not to dismiss the action."). Second, the arbitration panel had subject matter jurisdiction because the consent order provided the parties agreed to arbitrate "[a]ll claims, both compulsory and non-compulsory, specifically including all

claims, counter-claims, and/or third-party claims" relating to the subject matter of this case, and agreed that "all of the parties submit themselves to the jurisdiction of this court and the arbitration panel." *See e.g. Trident Tech. Coll. v. Lucas & Stubbs, Ltd.*, 286 S.C. 98, 106, 333 S.E.2d 781, 786 (1985) ("An arbitrator exceeds his powers and authority when he attempts to resolve an issue that is not arbitrable because it is outside the scope of the arbitration agreement.").

2. We hold the circuit court did not err in denying Appellants' motion to vacate the arbitration award on the basis of the statute of limitations barring Morgan's claim and confirming the final arbitration award. *See Gissel v. Hart*, 382 S.C. 235, 241, 676 S.E.2d 320, 323 (2009) ("Generally, an arbitration award is conclusive and courts will refuse to review the merits of an award. An award will be vacated only under narrow, limited circumstances."); *id.* ("An arbitrator's award may only be vacated when the arbitrator exceeds his or her powers and/or manifestly disregards or perversely misconstrues the law."). The determination of when the statute of limitations began to run as well as whether the doctrine of equitable estoppel applied was a question of fact for the arbitration panel to decide. *See Moore v. Benson*, 390 S.C. 153, 161, 700 S.E.2d 273, 277 (Ct. App. 2010) ("According to the discovery rule, the statute of limitations begins to run when a person could or should have known, through the exercise of reasonable diligence that a cause of action might exist."); *Allwin v. Russ Cooper Assocs., Inc.*, 426 S.C. 1, 13, 825 S.E.2d 707, 713 (Ct. App. 2019) ("[W]hen the parties present conflicting evidence, application of the discovery rule and the determination of the date the statute began to run in a particular case are questions of fact ...."); *Regions Bank v. Schmauch*, 354 S.C. 648, 675, 582 S.E.2d 432, 446 (Ct. App. 2003) (holding that as to the application of the doctrine of equitable estoppel, "[w]hether the actions lulled the plaintiff into 'a false sense of security' is usually a question of fact" (quoting *Dillon Cnty. Sch. Dist. No. Two v. Lewis Sheet Metal Works, Inc.*, 286 S.C. 207, 218, 332 S.E.2d 555, 561 (Ct. App. 1985), *overruled on other grounds by Atlas Food Sys. v. Crane Nat'l Vendors*, 319 S.C. 556, 462 S.E.2d 858 (1995))). Although Appellants argued to the panel that the date Morgan threatened to sue was the date the statute of limitations began to run, Morgan contended he did not know he had grounds for a suit until he visited Bomasada's headquarters in 2011 due to Appellants' deception and obfuscation of financial records. Appellants failed to show the arbitration panel, in deciding this question of fact, knowingly ignored well-defined, and clearly applicable law; likewise, the final award can be reconciled with at least barely colorable factual inferences from the record. *See Gissel*, 382 S.C. at 241, 676 S.E.2d at 323 ("[F]or 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."); *Waldo v. Cousins*, 442 S.C. 662, 665, 901 S.E.2d 276, 278 (2024) ("This standard is met only when the award is the product of an intentional or reckless flouting of the law, not a mere error in interpreting it."); *id.* ("This complements the well-known rule that the form of the award need not be accompanied by any reasoning, so long as the award can be reconciled with factual inferences and legal conclusions that are at least 'barely colorable.' " (quoting *Trident Tech. Coll.*, 286 S.C. at 111, 333 S.E.2d at 789)).

***2 AFFIRMED.**[1]

THOMAS, HEWITT, and CURTIS, JJ., concur.

All Citations

Not Reported in S.E. Rptr., 2025 WL 928676

Footnotes

1 We decide this case without oral argument pursuant to Rule 215, SCACR.

End of Document

EXHIBIT D

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 LMITED LIABILITY COMPANY
PLAINTIFF(S)	DEFENDANT(S)

Submitted by: Robert A. Bernstein	**Attorney for :** ■ Plaintiff □ Defendant or □ Self-Represented Litigant

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	**Judgment Against**	**Judgment amount To be**
(List name(s) below)	**(List name(s) below)**	**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**

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:

ATTORNEY(S) FOR THE PLAINTIFF(S) **ATTORNEY(S) FOR THE DEFENDANT(S)**

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON THOMAS H. MORGAN Plaintiff, v. 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.	IN ARBITRATION IN THE COURT OF COMMON PLEAS C.A. NO. 2012-CP-10-00580 **ORDER** **DENYING DEFENDANTS' MOTION TO VACATE OR MODIFY THE FINAL ARBITRATON AWARD** **AND** **CONFIRMING ARBITRATION AWARD**

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[1] and a retired Chief Justice of the South Carolina Supreme Court[2] (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

[1] H. Brewton Hagood, Chair; Paul A. Dominick, Member
[2] 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).

An arbitrator's "manifest disregard of the law" as a basis for vacating an arbitration award occurs when the arbitrator knew of a governing legal principle yet refused to apply it. Gissel, 676 S.E. 2d at 324, citing Weimer v. Jones, 364 S.C. 78, 610 S.E.2d 850 (Ct. App. 2005). Factual and legal errors by arbitrators do not constitute an abuse of power, and a court is not required to review the merits of a decision so long as the arbitrators do not exceed their powers. Id., Pittman, supra (emphasis added).

Here, the Defendants argue that the Arbitration Award should be vacated under the statute because "The arbitrators exceeded their powers" "and/or manifestly disregarded the law governing their jurisdiction in this matter in that the Panel lacked subject matter jurisdiction to hear the case and should have dismissed the case as a matter of law." Defendants' Motion to Vacate, at 1.

The Defendants' burden, therefore, in this motion to vacate, is to prove that as a matter of law the arbitrators (1) knew that they had no authority to decide this case, (2) ignored the law, and (3) decided the arbitration proceeding in knowing and manifest disregard of that law.

DENIAL OF THE DEFENDANTS' MOTION TO VACATE OR MODIFY THE ARBITRATION AWARD

1. **The issue of subject matter jurisdiction was thoroughly briefed and argued before the Panel at both the dispositive motion stage, at the trial and at the post-trial stage, and the Panel ultimately decided in favor of the arguments recognizing the court's and Panel's subject matter jurisdiction.**

The consent order initiating the arbitration dated July 9, 2012, established exclusive and binding subject matter jurisdiction in the panel for all matters raised by the pleadings in this matter. The consent order, to which the Defendants explicitly agreed, referred:

> All claims, both compulsory and non-compulsory, specifically including all claims, counter-claims, and/or third-party claims, related to the underlying facts, transactions, and/or occurrences that are the subject matter of the pleadings and claims asserted in this case, shall be decided by binding arbitration that shall be conducted in accordance with the terms of this Order and otherwise pursuant to the Federal Arbitration Act and all of the parties submit themselves to the jurisdiction of this court and arbitration panel.

This is not a matter of a party raising subject matter jurisdiction later in the case. Rather, subject matter jurisdiction in this case was decided by court order and by consent submission of the

parties, including these Defendants pursuing this argument. This Court, and the arbitration Panel to which it referred this matter, have subject matter jurisdiction of this matter.

This matter was extensively argued throughout the course of the arbitration proceedings by the Defendants and, specifically, in the motions for summary judgment, at trial, post-trial, and in a motion for reconsideration. Likewise, at every stage, the Plaintiffs presented arguments establishing the Panel's subject matter jurisdiction and arguing against the Defendant's position. (Plaintiff's Memo, Exhibits C, D, E, F, and G).

The Panel ruled against the Defendants' motion at the summary judgment stage (Plaintiff's Memo Exhibit E), and after hearing the evidence and legal arguments of counsel at trial and considering their extensive arguments submitted post-trial, the Panel decided in favor of the Plaintiff's position and found that the Panel did have subject matter jurisdiction (see Exhibit A). The Defendants raised the argument yet again in the Motion for Reconsideration and the Panel once again, in its ruling on that motion, rejected Defendants arguments and found that the Defendants had raised no new issues or arguments, and the Panel did have subject matter jurisdiction to issue an award in the arbitration proceeding (see Defendants' Motion, Exhibit A).

Now, the Defendants make the same arguments here, again.

The Defendants cannot vacate the Arbitration Award, however, by arguing that the Panel did not fully consider their argument or even that the Panel wrongly decided the issue. Rather, they must show that there is a clear law supporting their position that the Panel recognized to be controlling and simply refused to follow it. There is no such clear controlling law, and there is no evidence that the Panel disregarded the law of South Carolina in any respect. Rather, the Panel disagreed with the Defendants' interpretation of the law and facts and instead adopted the argument made by the Plaintiff.

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.

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

IN ARBITRATION

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	COURT OF COMMON PLEAS 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,

Exhibit A

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

Exhibit A

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

Exhibit A

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.[1] 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:

[1] 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.

Exhibit A

Total Award **$2,976,234.00**

Legal Fees

One-third of Gross Recovery = $992,078.00

Per cent recovered versus amount claimed = 48.9%

Fee Award After Applying Percentage versus amount claimed = $485,126.00

COSTS

Approved Costs = $266,746

Approved Cost After Applying Percentage of 48.9% = **$130,439.00**

Costs of Arbitration Requested (100%) = **$80,944**

TOTAL FEES AND COSTS AWARDED = $696,509.00

TOTAL ARBITRATION AWARD INCLUDING FEES AND COSTS = $3,672,743

This Final Arbitration Award, if confirmed by the Court, is intended be entered as a judgment against the Defendants, except for Bee Street Lofts, LLC, in favor of Bee Street Lofts, LLC, except for member Bella Vista Partnership, and John L. Gilbert and Stuart L. Fred, but no proceeds from any recovery on this judgment are to be distributed to the members of Bee Street Lofts, LLC until the charging lien in favor of Thomas H. Morgan has been fully satisfied.

FOR THE PANEL

DocuSigned by:
H Brewton Hagood
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H. Brewton Hagood, Chair
Arbitration Panel
bhagood@rosenhagood.com

DocuSigned by:
B8CED65C05F6482...

Paul A. Dominick, Member
Arbitration Panel
pdominick@nexsenpruet.com

DocuSigned by:
Costa M. Pleicones
F12C081735F0414...

Costa M. Pleicones. Member
Arbitration Panel
CPleicones@hsblawfirm.com

6/19/2023 | 2:13 PM EDT
June ___, 2023

Exhibit A

EXHIBIT E

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	IN THE NINTH JUDICIAL CIRCUIT
THOMAS H. MORGAN,	)	
	)	CASE NUMBER 2012-CP-10-00580
Plaintiff,	)	
	)	
v.	)	TRANSCRIPT OF JUDGMENT
	)	
JOHN L. GILBERT, STUART L. FRED, BELLA VISTA 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,	)	
Defendant.	)	

NOTICE IS HEREBY GIVEN that in the above-captioned proceeding, filed in the Court of Common Pleas of the State and County aforesaid, judgment was entered in favor of Thomas H. Morgan and against John L. Gilbert, Stuart L. Fred, Bella Vista 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, the Defendants in the action, on the 6th day of February, 2024, plus costs and fees as applicable. Attorneys of record are Robert A. Bernstein, Andrew W. Gowder, Jr., Laura Simons Greaver, and Christopher B. Staubes representing the Plaintiff, and Michael Rhett DeHart, Morris A. Ellison, Henry E. Grimball, and Matthew Tillman representing the Defendants.

FURTHER, NOTICE IS GIVEN that interest will accrue from the date of docketing of judgment, October 14, 2025.

TOTAL AMOUNT OF JUDGMENT: $3,672,743.00

I CERTIFY that the foregoing is a correct transcript from the Docket of Judgments kept in my office.

_____

Julie Armstrong
CHARLESTON COUNTY CLERK OF COURT

October ___, 2025580

SCCA/250 (06/2015)

Common Pleas

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

Case Number: 2012CP1000580

Type: Transcript/Signed Transcript of Judgment

So Ordered

s/Julie J. Armstrong, Charleston County Clerk of Court, by ALB

EXHIBIT F

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	IN THE NINTH JUDICIAL CIRCUIT
THOMAS H. MORGAN,)	
)	CASE NUMBER 2012-CP-10-00580
Plaintiff,)	
)	AMENDED
v.)	TRANSCRIPT OF JUDGMENT
)	
JOHN L. GILBERT, STUART L. FRED,)	
BELLA VISTA 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,)	
)	
Defendant.)	
)	

NOTICE IS HEREBY GIVEN that in the above-captioned proceeding, filed in the Court of Common Pleas of the State and County aforesaid, judgment was entered in favor of Thomas H. Morgan and against John L. Gilbert, Stuart L. Fred, Bella Vista 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, the Defendants in the action, on the 6th day of February, 2024, plus costs and fees as applicable. Attorneys of record are Robert A. Bernstein, Andrew W. Gowder, Jr., Laura Simons Greaver, and Christopher B. Staubes representing the Plaintiff, and Michael Rhett DeHart, Morris A. Ellison, Henry E. Grimball, and Matthew Tillman representing the Defendants.

FURTHER, NOTICE IS GIVEN that interest will accrue from the date of docketing of judgment, February 6, 2024.

TOTAL AMOUNT OF JUDGMENT: $3,672,743.00

I CERTIFY that the foregoing is a correct transcript from the Docket of Judgments kept in my office.

_____

Julie Armstrong
CHARLESTON COUNTY CLERK OF COURT

November ___, 2025

SCCA/250 (06/2015)

Common Pleas

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

Case Number: 2012CP1000580

Type: Transcript/Signed Transcript of Judgment

So Ordered

s/Julie J. Armstrong, Charleston County Clerk of Court, by ALB

EXHIBIT G

RECEIVED
Nov 17 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS

Appeal from the Court of Common Pleas
For Charleston County
Honorable Jennifer B. McCoy, Circuit Judge
Civil Action No.: 2012-CP-10-00580

THOMAS H. MORGAN,

Respondent,

v.

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,

Of whom 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, are the

Appellants.

NOTICE OF APPEAL

Stephen P. Groves, Sr., Esquire
S.C. Bar No. 7854
BUTLER SNOW LLP
25 Calhoun Street, Suite 250
Charleston, South Carolina 29401
Telephone: 843.277.3704
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Attorneys for the Appellants,
Stuart L. Fred, Bella Vista Partnership, a Texas General Partnership; Bomasada Group, Inc., a Texas Corporation; Bomasada Investment Group II, a Texas Limited Liability Company; Lauralis Management, Inc., a Texas Corporation; and 150 Bee Street, LLC, a South Carolina Limited Liability Company

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS:

COMES NOW the Appellants, Stuart L. Fred, Bella Vista Partnership, a Texas General Partnership; Bomasada Group, Inc., a Texas Corporation; Bomasada Investment Group II, a Texas Limited Liability Company; Lauralis Management, Inc., a Texas Corporation; and 150 Bee Street, LLC, a South Carolina Limited Liability Company, pursuant to Rule 203 of the *South Carolina Appellate Court Rules*, and respectfully serves notice they are collectively appealing the following orders and/or judgments issued by the Honorable Jennifer B. McCoy, Circuit Judge, as well as certain judgment transcripts issued by the Honorable Julie J. Armstrong, Clerk of Court for the Charleston County Court of Common Pleas, in the above-captioned matter:

a. *AMENDED TRANSCRIPT OF JUDGMENT* issued by the Honorable Julie J. Armstrong, Clerk of Court for the Charleston County Court of Common Pleas, dated and filed on 13 November 2025, and received by the Appellants' counsel on 13 November 2025;

b. *TRANSCRIPT OF JUDGMENT* issued by the Honorable Julie J. Armstrong, Clerk of Court for the Charleston County Court of Common Pleas, dated and filed on 17 October 2025, and received by the Appellants' counsel on 17 October 2025; and

b. *SCRCP Form 4CE Order* entered for docketing of the 6 February 2024 Court Order herein confirming the 19 June 2023 Arbitration Award and determining the date of judgment enrollment was 6 February 2024, issued by the Honorable Jennifer B. McCoy, Circuit Judge on 14 October 2025, and filed with the Clerk of Court for the Charleston County Court of Common Pleas on 14 October 2025, and received by the Appellants' counsel on 20 October 2025.

Copies of the referenced order from the Honorable Jennifer B. McCoy, Circuit Judge, as well as the judgment transcripts from the Honorable Julie J. Armstrong, Clerk of Court for the Charleston County Court of Common Pleas are collectively attached hereto as **Exhibit "A"** and incorporated herein by reference.

Respectfully submitted:

BUTLER SNOW LLP

By: *Stephen P. Groves, Sr.*

Stephen P. Groves, Sr., Esquire
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Charleston, South Carolina 29401
Telephone: 843.277.3704
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Attorneys for the Appellants,
Stuart L. Fred, Bella Vista Partnership, a Texas General Partnership; Bomasada Group, Inc., a Texas Corporation; Bomasada Investment Group II, a Texas Limited Liability Company; Lauralis Management, Inc., a Texas Corporation; and 150 Bee Street, LLC, a South Carolina Limited Liability Company.

Charleston, South Carolina

17 November 2025

OTHER COUNSEL OF RECORD

WILL BE SHOWN ON

THE FOLLOWING PAGE

OTHER COUNSEL OF RECORD

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E-Mail: chris@chrisstaubes.com

Attorneys for the Respondent,
Thomas H. Morgan

98376122.v1

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

PLAINTIFF(S)

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 LMITED LIABILITY COMPANY

DEFENDANT(S)

Submitted by: Robert A. Bernstein	**Attorney for :** ■ Plaintiff □ Defendant or □ Self-Represented Litigant

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**

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:

ATTORNEY(S) FOR THE PLAINTIFF(S) **ATTORNEY(S) FOR THE DEFENDANT(S)**

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON THOMAS H. MORGAN Plaintiff, v. 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.	IN ARBITRATION IN THE COURT OF COMMON PLEAS C.A. NO. 2012-CP-10-00580 **ORDER** **DENYING DEFENDANTS' MOTION TO VACATE OR MODIFY THE FINAL ARBITRATON AWARD** **AND** **CONFIRMING ARBITRATION AWARD**

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[1] and a retired Chief Justice of the South Carolina Supreme Court[2] (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

[1] H. Brewton Hagood, Chair; Paul A. Dominick, Member
[2] 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.

_____

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

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 COUNTY OF CHARLESTON	)	COURT OF COMMON PLEAS C.A. NO. 2012-CP-10-00580
THOMAS H. MORGAN Plaintiff, v. 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.	)	**FINAL ARBITRATION AWARD**

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,

Exhibit A

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

Exhibit A

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.[1] 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:

[1] 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.

Exhibit A

Total Award **$2,976,234.00**

Legal Fees

One-third of Gross Recovery = $992,078.00

Per cent recovered versus amount claimed = 48.9%

Fee Award After Applying Percentage versus amount claimed = $485,126.00

COSTS

Approved Costs = $266,746

Approved Cost After Applying Percentage of 48.9% = **$130,439.00**

Costs of Arbitration Requested (100%) = **$80,944**

TOTAL FEES AND COSTS AWARDED = $696,509.00

TOTAL ARBITRATION AWARD INCLUDING FEES AND COSTS = $3,672,743

This Final Arbitration Award, if confirmed by the Court, is intended be entered as a judgment against the Defendants, except for Bee Street Lofts, LLC, in favor of Bee Street Lofts, LLC, except for member Bella Vista Partnership, and John L. Gilbert and Stuart L. Fred, but no proceeds from any recovery on this judgment are to be distributed to the members of Bee Street Lofts, LLC until the charging lien in favor of Thomas H. Morgan has been fully satisfied.

Exhibit A

FOR THE PANEL

DocuSigned by:
H Brewton Hagood
EEC875A5A77B476...

H. Brewton Hagood, Chair
Arbitration Panel
bhagood@rosenhagood.com

DocuSigned by:
B8CED65C05F6482...

Paul A. Dominick, Member
Arbitration Panel
pdominick@nexsenpruet.com

DocuSigned by:
Costa M. Pleicones
F12CC81735F0414...

Costa M. Pleicones. Member
Arbitration Panel
CPleicones@hsblawfirm.com

6/19/2023 | 2:13 PM EDT
June ___, 2023

Exhibit A

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258
RETURN SERVICE REQUESTED

CHARLESTON COUNTY
SOUTH CAROLINA

clerkofcourt.charlestoncounty.org

2386

HENRY E. GRIMBALL
PO BOX 999
CHARLESTON SC 29402-0999

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRCP

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.

You may view and download this document at http://clerkofcourt.charlestoncounty.org or obtain a copy in person at the Clerk of Court's Office during regular Charleston County business hours.

FIRST-CLASS MAIL
U.S. POSTAGE PAID
ATLANTA, GA
PERMIT NO. 2880

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 103
CHARLESTON, SC 29401-2268
RETURN SERVICE REQUESTED

2380

OCT 20 2025

HENRY L. GRIMBALL
PO BOX 999
CHARLESTON SC 29402-0999

IKJ-SP1 29402

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	IN THE NINTH JUDICIAL CIRCUIT
THOMAS H. MORGAN,	)	
	)	CASE NUMBER 2012-CP-10-00580
Plaintiff,	)	
	)	
v.	)	TRANSCRIPT OF JUDGMENT
	)	
JOHN L. GILBERT, STUART L. FRED, BELLA VISTA 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,	)	
Defendant.	)	

NOTICE IS HEREBY GIVEN that in the above-captioned proceeding, filed in the Court of Common Pleas of the State and County aforesaid, judgment was entered in favor of Thomas H. Morgan and against John L. Gilbert, Stuart L. Fred, Bella Vista 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, the Defendants in the action, on the 6th day of February, 2024, plus costs and fees as applicable. Attorneys of record are Robert A. Bernstein, Andrew W. Gowder, Jr., Laura Simons Greaver, and Christopher B. Staubes representing the Plaintiff, and Michael Rhett DeHart, Morris A. Ellison, Henry E. Grimball, and Matthew Tillman representing the Defendants.

FURTHER, NOTICE IS GIVEN that interest will accrue from the date of docketing of judgment, October 14, 2025.

TOTAL AMOUNT OF JUDGMENT: $3,672,743.00

I CERTIFY that the foregoing is a correct transcript from the Docket of Judgments kept in my office.

_____

Julie Armstrong
CHARLESTON COUNTY CLERK OF COURT

October ___, 2025580

SCCA/250 (06/2015)

Common Pleas

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

Case Number: 2012CP1000580

Type: Transcript/Signed Transcript of Judgment

So Ordered

s/Julie J. Armstrong, Charleston County Clerk of Court, by ALB

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	IN THE NINTH JUDICIAL CIRCUIT
THOMAS H. MORGAN,)	
)	CASE NUMBER 2012-CP-10-00580
Plaintiff,)	
)	AMENDED
v.)	TRANSCRIPT OF JUDGMENT
)	
JOHN L. GILBERT, STUART L. FRED,)	
BELLA VISTA 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,)	
)	
Defendant.)	
)	

NOTICE IS HEREBY GIVEN that in the above-captioned proceeding, filed in the Court of Common Pleas of the State and County aforesaid, judgment was entered in favor of Thomas H. Morgan and against John L. Gilbert, Stuart L. Fred, Bella Vista 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, the Defendants in the action, on the 6th day of February, 2024, plus costs and fees as applicable. Attorneys of record are Robert A. Bernstein, Andrew W. Gowder, Jr., Laura Simons Greaver, and Christopher B. Staubes representing the Plaintiff, and Michael Rhett DeHart, Morris A. Ellison, Henry E. Grimball, and Matthew Tillman representing the Defendants.

FURTHER, NOTICE IS GIVEN that interest will accrue from the date of docketing of judgment, February 6, 2024.

TOTAL AMOUNT OF JUDGMENT: $3,672,743.00

I CERTIFY that the foregoing is a correct transcript from the Docket of Judgments kept in my office.

_____

Julie Armstrong
CHARLESTON COUNTY CLERK OF COURT

November ___, 2025

SCCA/250 (06/2015)

Common Pleas

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

Case Number: 2012CP1000580

Type: Transcript/Signed Transcript of Judgment

So Ordered

s/Julie J. Armstrong, Charleston County Clerk of Court, by ALB

RECEIVED
Nov 17 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS

Appeal from the Court of Common Pleas
For Charleston County
Honorable Jennifer B. McCoy, Circuit Judge
Civil Action No.: 2012-CP-10-00580

THOMAS H. MORGAN,

Respondent,

v.

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,

Of whom 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, are the

Appellants.

PROOF OF SERVICE FOR THE NOTICE OF APPEAL

Stephen P. Groves, Sr., Esquire
S.C. Bar No. 7854
BUTLER SNOW LLP
25 Calhoun Street, Suite 250
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Telephone: 843.277.3704
Telecopier: 843.277.3701
E-Mail: Stephen.Groves@butlersnow.com

Attorneys for the Appellants,
Stuart L. Fred, Bella Vista Partnership, a Texas General Partnership; Bomasada Group, Inc., a Texas Corporation; Bomasada Investment Group II, a Texas Limited Liability Company; Lauralis Management, Inc., a Texas Corporation; and 150 Bee Street, LLC, a South Carolina Limited Liability Company

I, Stephen P. Groves, Sr., Esquire, hereby certify that on ***17 November 2025***, I served a copy of the ***Notice of Appeal*** (with attached order and judgment transcripts) submitted by the Appellants, Stuart L. Fred, Bella Vista Partnership, a Texas General Partnership; Bomasada Group, Inc., a Texas Corporation; Bomasada Investment Group II, a Texas Limited Liability Company; Lauralis Management, Inc., a Texas Corporation; and 150 Bee Street, LLC, a South Carolina Limited Liability Company, on counsel for the Respondent, Thomas H. Morgan via e-mail at the address noted:

Robert A. Bernstein, Esquire
BERNSTEIN & BERNSTEIN, P.A.
E-Mail: rbernstein@bernsteinpa.com

W. Andrew Gowder, Jr., Esquire
AUSTEN & GOWDER LLC
E-Mail: andy@austengowder.com

Laura Simons Greaver, Esquire
E-Mail: lgsimons@gmail.com

Christopher B. Staubes, III, Esquire
STAUBES LAW FIRM, LLC
E-Mail: chris@chrisstaubes.com

Attorney for the Respondent,
Thomas H. Morgan

Signed: *Stephen P. Groves, Sr.*
Stephen P. Groves, Sr.

Charleston, South Carolina

17 November 2025
98376185.v1

RECEIVED
Jan 12 2026
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS

Appeal from the Court of Common Pleas
For Charleston County
Honorable Jennifer B. McCoy, Circuit Judge
Civil Action No.: 2012-CP-10-00580
Appellate Case No. 2025-002323

THOMAS H. MORGAN,

Respondent,

v.

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,

Of which 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, are the

Appellants.

PROOF OF SERVICE
for
APPELLANTS' RESPONSE TO RESPONDENT'S MOTION TO DISMISS APPEAL

Stephen P. Groves, Sr., Esquire
S.C. Bar No. 7854
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E-Mail: Stephen.Groves@butlersnow.com

Attorneys for the Appellants,
Stuart L. Fred, Bella Vista Partnership, a Texas General Partnership; Bomasada Group, Inc., a Texas Corporation; Bomasada Investment Group II, a Texas Limited Liability Company; Lauralis Management, Inc., a Texas Corporation; and 150 Bee Street, LLC, a South Carolina Limited Liability Company

.

I, Stephen P. Groves, Sr., Esquire, hereby certify that on ***12 January 2026***, I served a copy of the ***Response to Motion to Dismiss Appeal*** submitted by the Appellants, Stuart L. Fred, Bella Vista Partnership, a Texas General Partnership; Bomasada Group, Inc., a Texas Corporation; Bomasada Investment Group II, a Texas Limited Liability Company; Lauralis Management, Inc., a Texas Corporation; and 150 Bee Street, LLC, a South Carolina Limited Liability Company, on counsel for the Respondent, Thomas H. Morgan, via e-mail at the addresses noted:

Robert A. Bernstein, Esquire
BERNSTEIN & BERNSTEIN, P.A.
E-Mail: rbernstein@bernsteinpa.com

W. Andrew Gowder, Jr., Esquire
AUSTEN & GOWDER LLC
E-Mail: andy@austengowder.com

Attorney for the Respondent, Thomas H. Morgan

Signed: *Stephen P. Groves, Sr.*
Stephen P. Groves, Sr.

Charleston, South Carolina

12 January 2026
99077031.v1