STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
2025-CP-10-01435

A SITE ON RIVERS, LLC, and SHELLY LEEKE LAW FIRM, LLC,)
)
Plaintiffs,)
)
v.)
)
MASHBURN CONSTRUCTION COMPANY, INC.; PLUMBING AUTHORITY, LLC; DESIGNBIULD MECHANICAL CORPORATION; LOWCOUNTRY DOORS & HARDWARE, INC.; COLLINS & WRIGHT, INC.; EXTERIOR SOLUTIONS OF GEORGIA, LLC D/B/A BONE DRY ROOFING; B & C UTILITIES, INC.; B&C DEVELOPMENT, INC.; PALMETTO STATE GLASS, INC.; CAPITAL DRY WALL, LLC; AIR DIAGNOSTICS, INC.; and THERMATECH SERVICES, LLC.)
)
Defendants.)

LOWCOUNTRY DOORS & HARDWARE, INC.,)
)
Third-Party Plaintiff,)
)
v.)
)
GLOBAL INSTALLATION CONTRACTING OF CHARLESTON, LLC d/b/a GLOBAL INSTALLATION CONTRACTING, LLC.)
)
Third-Party Defendant.)

ORDER GRANTING MOTION TO DISMISS, OR IN THE ALTERNATIVE, STAY AND COMPEL ARBTIRATION

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SC Court of Appeals

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Date of Hearing:	**November 5, 2025**
Presiding Judge:	**The Honorable Jennifer B. McCoy**
Attorney for Plaintiff:	**Amanda Blundy, Esquire**
Attorney for Defendant:	**James A. Bruorton, IV, Esquire**

This matter came before the Court upon motion of Defendant, Mashburn Construction Company, Inc. ("Defendant") by and through its counsel, to dismiss this matter, or in the alternative, stay litigation of the claims in this matter between Plaintiffs A Site on Rivers, LLC and Shelly Leeke Law Firm, LLC ("Plaintiffs") and Defendant and compel arbitration. The basis for this Order is that there is a valid and enforceable arbitration provision within the contract between Plaintiffs and Defendant and that arbitration is a more effective form of dissolution in this matter. As discussed in greater detail below, the Court rules that Defendants' Motion to Dismiss, or in the Alternative, Stay and Compel Arbitration is hereby **GRANTED**.

BACKGROUND

On or around March 4, 2021, Shelly Leeke Law Firm, LLC and A Site on Rivers, LLC entered into a contract with Mashburn Construction Company, Inc. for design-build construction services for the Shelly Leeke Law Firm, LLC headquarters to be located on Rivers Avenue in North Charleston, South Carolina, 29406 ("Project"). The executed contract is a ConsensusDocs 415 Standard Design-Build Agreement and General Conditions Between Owner and Design-Builder ("Design-Build Agreement"), as revised and agreed to between the Plaintiffs and Mashburn.

Towards the end of construction, Plaintiffs claim to have discovered construction deficiencies in the work performed by or on behalf of Defendant on the Project. Since receiving notice of alleged deficiencies from the Plaintiffs, Defendant has disputed the same and attempted to resolve any issues between the parties. Plaintiffs thereafter initiated legal proceedings in the

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Charleston County, Court of Common Pleas against Defendant on March 14, 2025. On May 15, 2025, in lieu of answering, Defendant filed a Motion to Dismiss, or in the Alternative, Stay and Compel Arbitration pursuant to the terms of the Design-Build Agreement, which is attached as Exhibit A to Defendant's motion. The relevant sections of the Design-Build Agreement are as follows:

> 12.5. BINDING DISPUTE RESOLUTION If the matter is unresolved after submission of the matter to a mitigation procedure or to mediation, the Parties shall submit the matter to the binding dispute resolution procedure selected below:
>
> Arbitration using:
>
> the current Construction Industry Arbitration Rules of the South Carolina Arbitration Association and administered by the South Carolina Arbitration Association. The administration of the arbitration shall be as mutually agreed by the Parties.
>
> 12.5.1. COSTS The costs of any binding dispute resolution procedures and reasonable attorneys' fees shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.
>
> 12.5.2. VENUE The venue of any binding dispute resolution procedure shall be the location of the Project, unless the Parties agree on a mutually convenient location.
>
> 12.5.3. Neither Party may commence arbitration if the claim or cause of action would be barred by the applicable statute of limitations had the claim or cause of action been filed in a state or federal court. Receipt of a demand for arbitration by the person or entity administering the arbitration shall constitute the commencement of legal proceedings for the purposes of determining whether a claim or cause of action is barred by the applicable statute of limitations. If, however, a state or federal court exercising jurisdiction over a timely filed claim or cause of action orders that the claim or cause of action be submitted to arbitration, the arbitration proceeding shall be deemed commenced as of the date the court action was filed, provided that the Party asserting the claim or cause of action files its demand for arbitration with the person or entity administering the arbitration within thirty (30) Days after the entry of such order.
>
> 12.5.4. An award entered in an arbitration proceeding pursuant to this Agreement shall be final and binding upon the Parties, and judgment may be entered upon an award in any court having jurisdiction.

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> 12.6. MULTIPARTY PROCEEDING The Parties agree that all Parties necessary to resolve a matter shall be Parties to the same dispute resolution procedure. Appropriate provisions shall be included in all other contracts relating to the Work to provide for the joinder or consolidation of such dispute resolution proceedings.
>
> 12.7. LIEN RIGHTS Nothing in this article shall limit any rights or remedies not expressly waived by the Design-Builder that the Design-Builder may have under lien laws.

LAW AND LEGAL ANALYSIS

South Carolina policy favors arbitration and creates a strong presumption in favor of the validity of arbitration agreements. *Towles v. United HealthCare Corp.*, 338 S.C. 29, 37, 524 S.E.2d

839, 844 (Ct. App. 1999); *MailSource, LLC v. M.A. Bailey & Assocs., Inc*., 356 S.C. 370, 588 S.E.2d 639 (Ct. App. 2003). "A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract." S.C. Code Ann. § 15-48-10.

Here, Plaintiffs challenge the validity and enforceability of the arbitration agreement contained in Article 12 of the Design-Build Agreement between the parties, also known as ConsensusDocs 415. Specifically, Plaintiffs argue that (1) Defendant allegedly did not comply with the conditions precedent to arbitration, (2) it has claims against necessary parties that it does not have arbitration agreements with, (3) Defendant waived its right to arbitration by filing a mechanic's lien, and (4) the arbitration agreement is unconscionable. The Court disagrees and finds that the arbitration agreement is valid and enforceable, and concerns over joinder, alleged conditions precedent, and the filing of a mechanic's lien have no impact on the validity or enforceability of the arbitration clause within the Design-Build Agreement. The Court further finds that the arbitration agreement is not unconscionable.

I. Plaintiff is the one who failed to comply with the conditions precedent under the Contract before initiating legal proceedings, not Defendant.

Article 12 of the Design-Build Agreement sets forth the process a party to the Contract must follow before commencing arbitration. Specifically, it requires the parties to endeavor to reach a resolution in good faith through direct discussions between the Parties' representatives, then through identified mitigation procedures, proceed to mediation, and if all else fails, have claims decided through arbitration. Plaintiffs argue that Defendant waived its right to arbitration by allegedly failing to comply with the conditions precedent set forth in the Design-Build Agreement, asserting that Defendant denied Plaintiffs' rights under the statutory Right to Cure Act

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after Plaintiffs served Defendant with a written notice of construction defects on January 12, 2024. In contrast, Defendant contends that Plaintiffs, as the parties asserting claims against Defendant, were required to satisfy the contractual conditions precedent before initiating any dispute. Defendant argues that Plaintiffs failed to comply with these conditions prior to filing suit by refusing to engage in good-faith direct discussions, bypassing the agreed-upon mitigation procedures, declining to participate in mediation, and instead commencing litigation in direct contravention of the Contract's express requirement that disputes be resolved through arbitration. The Court agrees. Here, Defendant is not the party asserting claims but is instead responding to claims initiated by Plaintiffs. Accordingly, Defendant, in this instance, cannot be required to satisfy conditions precedent that apply to the initiation of dispute resolution, and such argument by Plaintiff does not defeat that the claims between Plaintiffs and Defendant are subject to arbitration.

II. Plaintiffs' claims against third parties it does not have an arbitration agreement with is not a bar to compelling the valid and enforceable arbitration agreement between Plaintiffs and Defendant.

Plaintiffs argue arbitration would sever the Plaintiffs' claims and fracture the case to where the Plaintiffs must proceed in different forums. However, Defendant, pursuant to the terms of the Contract, has the right for any claim against it arising from or related to the Design-Build Agreement to be subject to arbitration, irrespective of whatever claims Plaintiffs believe it has against third parties. Specifically, the express terms of the agreed upon Design-Build Agreement provides for multiparty arbitration proceedings. Pursuant to Article 12.6 of the Design-Build Agreement, Plaintiffs and Defendant agreed that all parties necessary to resolve a matter shall be parties to the same dispute resolution procedure. Defendant submitted evidence that its subcontractor agreements contain arbitration provisions requiring the implicated subcontractors to participate in the same dispute resolution proceeding as claims between Plaintiffs and Defendant. The Court therefore finds there is no sever to Plaintiffs' claims as all necessary parties will be

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subject to the same rules within the same forum. Notably, even if it did sever Plaintiffs' claims, it does not defeat the fact there is a valid and enforceable arbitration agreement that would require the claims between Plaintiffs and Defendant in this matter to be subject to arbitration.

III. Defendant did not waive its right to arbitration by filing its Notice and Certificate of Mechanic's Lien.

Plaintiffs argue that Defendant waived its right to arbitration by filing its Notice and Certificate of Mechanic's Lien with the Charleston County Register of Deeds Office on May 24, 2024. However, Defendant never filed suit to foreclose on its mechanic's lien and therefore never initiated any proceeding through the judicial system for action on its mechanic's lien. Notably, even if Defendant had foreclosed on its mechanic's lien, Article 12.7 of the Design-Build Agreement expressly states that nothing within the Dispute Resolution Article of the Arbitration Agreement limits any rights or remedies that the Design-Builder may have under the lien laws. Critically, South Carolina law requires a lien claimant to strictly adhere to the statutory requirements for establishing and enforcing mechanic's liens or the lien may be dissolved. *Kitchen Planners, LLC v. Friedman* 432 S.C. 267, 851 S.E.2d 724 (S.C. App. 2020). Further, the South Carolina Uniform Arbitration Act expressly allows parties to file and perfect mechanic's liens while engaging in arbitration. *See* S.C. Code Ann. § 15-48-220. Specifically, the Act states "[n]othing in this chapter shall preclude the filing and perfecting of a mechanic's lien by any party." *Id.* Thus, the South Carolina Uniform Arbitration Act reflects a legislative intent to promote arbitration while safeguarding lien rights. *See id.*

Plaintiffs provide no legal authority that the mere filing of a mechanic's lien waives a party's right to arbitration. Both cases cited in Plaintiffs' Opposition were situations where the plaintiff foreclosed on its mechanic's lien and proceed for extended periods of time in the judicial system before seeking arbitration. Here, Defendant's responsive pleading to the initial Complaint

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was the subject Motion to Dismiss, or in the Alternative, Stay and Compel Arbitration, which is the subject of this proceeding. Defendant, at all times relevant hereto, has sought its right to arbitrate under the Contract. The Court therefore finds that the filing of a mechanic's lien alone does not waive arbitration rights, especially when done solely to preserve lien rights within statutory deadlines.

IV. The arbitration agreement is not unconscionable and is instead valid and enforceable.

Plaintiff argues that the arbitration agreement is unconscionable. The Court disagrees. Unconscionability refers to "the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms which are so oppressive that no reasonable person would make them and no fair and honest person would accept them." *Id*. (quoting *Fanning v. Fritz's Pontiac-Cadillac-Buick, Inc*., 322 S.C. 399, 403, 472 S.E.2d 242, 245 (1996)). In other words, an arbitration agreement is unconscionable when there is both (1) an absence of meaningful choice in entering the agreement ("procedural unconscionability"), and (2) oppressive and one-sided terms ("substantive unconscionability"). *315 Corley CW LLC v. Palmetto Bluff Dev., LLC*, 444 S.C. 521, 531, 908 S.E.2d 892, 897 (Ct. App. 2024) (citing *Smith v. D.R. Horton, Inc*., 417 S.C. 42, 49, 790 S.E.2d 1, 4 (2016)). Notably, Adhesion contracts are not per se unconscionable. *Simpson v. MSA of Myrtle Beach, Inc*., 373 S.C. 14, 27, 644 S.E.2d 663, 669 (2007); 17A Am. Jur. 2d *Contracts* § 274; 17 C.J.S. *Contracts* § 9 & n.9 (collecting cases).

a. The Arbitration agreement is not procedurally unconscionable.

Plaintiffs contend the Standard Form ConsensusDocs Design-Build Agreement executed by the parties is an adhesion contract, arguing Plaintiffs lacked meaningful choice in entering into the arbitration provision within the Design-Build Agreement. The arguments and evidence presented to the Court show that not only did Plaintiffs have an opportunity to review and make

revisions to the proposed Design-Build Agreement, Plaintiffs did in fact make such revisions, including noted changes to the Arbitration provision being questioned before this Court. Defendant presented evidence that multiple iterations of the contract with mark-ups from Defendant, Plaintiffs, the lender, and the design professionals took place before the Design-Build Agreement was finalized and executed. Further, the parties engaged in such contract negotiations are sophisticated parties. Notably, Plaintiff Shelly Leeke Law Firm, LLC is a law firm that was not at a disadvantage in negotiating the Design-Build Agreement with Defendant.

Plaintiffs further cited to the United States Constitution and United States Supreme Court Cases from the 1800s to argue that a trial by jury is a natural right and should be maintained to secure the liberty of the people as a pre-existent right of nature. However, South Carolina recognizes alternative methods of dispute resolution aside from a jury trial. A written agreement to submit a controversy to arbitration or a provision in a written contract to submit a controversy to arbitration is valid and enforceable. *See* S.C. Code Ann. § 15-48-10. South Carolina's Uniform Arbitration Act acknowledges the right to a jury but also provides that parties can agree otherwise. The Court therefore finds Plaintiffs, being sophisticated parties, did have a meaningful choice in entering the arbitration agreement and chose to submit the controversy to arbitration.

b. The arbitration clause is not substantively unconscionable.

Because the Arbitration clause is not procedurally unconscionable, the Court need not reach substantive unconscionability. Even if it did, the clause is not substantively unconscionable. Plaintiffs contend that because certain subcontractors are allegedly necessary parties, and Plaintiffs lack arbitration agreements with them, the clause could force parallel proceedings and allow improper shifting of blame between arbitration and circuit court. Plaintiffs rely on *Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 611, 879 S.E.2d 746, 754 (2022), but the arbitration clause

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in that case is significantly distinguishable from the one in the current Design-Build Agreement. In *Damico*, the arbitration agreement was substantively unconscionable because it contained multiple one-sided and oppressive provisions, including granting the builder unilateral discretion to include or exclude subcontractors from arbitration, thereby depriving homeowners of control over whom to sue and creating a risk of inconsistent findings that could bar recovery on procedural grounds. No such provisions exist here, and notably, Article 12.6 of the Design-Build Agreement expressly requires that all parties necessary to resolve a dispute participate in the same dispute resolution proceeding and mandates joinder or consolidation through related contracts. Defendant has presented evidence that its subcontractors are subject to arbitration agreements consistent with this requirement. Accordingly, the arbitration clause is not substantively unconscionable and instead is valid and enforceable.

CONCLUSION

For all the reasons set forth herein, the Defendant's Motion to Dismiss, or in the Alternative, Stay and Compel Arbitration is hereby **GRANTED**.

IT IS THEREFORE ORDERED that the claims between Plaintiffs and Defendant are hereby stayed pending arbitration of the claims pursuant to the agreement between Plaintiffs and Defendant. Any disputes regarding the joinder of additional parties, the scope of discovery, the need for additional discovery, dispositive motions, and the scheduling of the case for arbitration shall be decided by the Arbitrator(s).

IT IS SO ORDERED.

____
The Honorable Jennifer B. McCoy

Charleston, SC
December ______, 2025

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Charleston Common Pleas

Case Caption:	A Site On Rivers Llc , plaintiff, et al VS Plumbing Authority Llc , defendant, et al
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Type:	Order/Stay

So Ordered

s/Jennifer B. McCoy #2764

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