

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

Apr 15 2026

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
R. Ferrell Cothran, Jr., Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2024-002098
Court of Appeals Case No. 2022-001587
Supreme Court Case No. 2024-002098

315 Corley CW LLC; 368 Mount Pelia LLC; Bridge
Charleston Investments B LLC; Bridge Charleston
Investments C LLC; Bridge Charleston Investments E LLC;
Bridge Charleston Investments H LLC; Anne Bosler and
Dylan Hart as Trustees of the Bosler-Hart Trust; Geoffrey J.
Block; R. Jeffrey Kimball and Deborah S. Kimball; Sebrina
Leigh-Jones and Chris Leigh-Jones; Jennifer Albero; Live
Oak Assets LLC; Matthew N. Lynch and Barbara A. Lynch;
MKM 22 West LLC; One Rumford Lane LLC; Salt Works
LLC; and TTJR LLC; individually, derivatively, and as
class representatives Respondents,

v.

Palmetto Bluff Development, LLC; Palmetto Bluff Club, LLC;
Palmetto Bluff Real Estate Company, LLC; PLBH, LLC; Montage
Palmetto Bluff, LLC; Palmetto Bluff Preservation Trust, Inc.;
Palmetto Bluff Preservation Trust Board of Stewards: Jordan
Phillips; Mark Polites; Gray Ferguson; Henry Armistead; South
Street Partners LLC; and John Does 1-25 Petitioners.

**RESPONDENTS' RESPONSE TO BRIEF OF *AMICUS CURIAE*,
SOUTH CAROLINA RESTAURANT AND LODGING ASSOCIATION**

FORD WALLACE THOMSON LLC
Ian S. Ford
Ainsley F. Tillman
715 King Street
Charleston, South Carolina 29403
(843) 277-2011
Attorneys for Respondents

TABLE OF CONTENTS

Table of Authorities	ii
Reply to Introduction	1
Background Facts that SCRLA Overlooks	1
Argument.....	3
I. State Law Governs	4
A. In which SCRLA recoils at “boilerplate” language in a contract of adhesion.....	4
B. Dum Spiro Spero.....	7
II. <i>Automatic for the People</i> : Adding an Arbitration Clause.....	10
III. The circuit court did not abuse its discretion when it refused to re-write or change the Developer’s chosen words	12
CONCLUSION.....	15

TABLE OF AUTHORITIES

Cases

<i>Bradley v. Brentwood Homes, Inc.</i> , 398 S.C. 447, 730 S.E.2d 312 (2012)	7-9
<i>Damico v. Lennar Carolinas, LLC</i> , 437 S.C. 596, 879 S.E.2d 746 (2022)	12-13
<i>Hardy v. Aiken</i> , 369 S.C. 160, 631 S.E.2d 539 (2006)	6
<i>Huskins v. Mungo Homes</i> , 910 S.E.2d 474 (2025)	13-14
<i>Housing Authority v. Cornerstone Housing</i> , 356 S.C. 328, 588 S.E.2d 617 (Ct. App. 2003)	11
<i>Lampo v. Amedisys Holding</i> , 445 S.C. 305, 914 S.E.2d 139 (2025)	8-9
<i>Lee v. Univ. of S.C.</i> , 407 S.C. 512, 757 S.E.2d 394 (2014)	10
<i>Mathews v. Fluor Corp.</i> , 312 S.C. 404, 440 S.E.2d 880 (1993)	9
<i>Munoz v. Green Tree Financial Corp.</i> , 343 S.C. 531, 542 S.E.2d 360 (2001)	9
<i>Myrtle Beach Lumber Co., Inc. v. Willoughby</i> , 276 S.C. 3, 274 S.E.2d 423 (1981)	6
<i>New Hope Baptist Church v. Paragon</i> , 379 S.C. 620, 667 S.E.2d 1 (Ct. App. 2008)	11
<i>Palmetto Constr. Grp., LLC v. Restoration Specialists, LLC</i> , 432 S.C. 633, 856 S.E.2d 150 (2021)	4, 7, 11
<i>Pressl v. Appalachian Power Co.</i> , 842 F.3d 299 (4th Cir. 2016)	9
<i>Reconstruction Finance Corporation v. Beaver County, Pa</i> , 328 U.S. 204, 66 S. Ct. 992, 90 L.Ed. 1172 (1946)	9
<i>Zabinski v. Bright Acres Associates</i> , 346 S.C. 580, 553 S.E.2d 110 (2001)	3, 9

Statutes

S.C. Code § 15-30-1031
S.C. Code § 27-1-701
S.C. Code § 33-31-1011

Rules

Rule 220(c), SCACR7

Miscellaneous

17A C.J.S. Contracts § 324.....3
17A AM.JUR.2D *Contracts* § 507.....10
R.E.M. Automatic for the People. Warner Bros., 199210

REPLY TO INTRODUCTION

In the name of “Southern hospitality,” the South Carolina Restaurant and Lodging Association (“SCRLA”) asks this Court to elevate economic interests over the constitutional right to a jury trial. Referencing “service contracts” and situations that are not at issue in this case, the SCRLA apparently supports the position that its members’ “guests” should be stripped of their access to South Carolina courts without their knowing, voluntary consent and agreement. It is clear from its brief that the SCRLA does not understand the facts of this case, nor the application of the law to them.

Background Facts that SCRLA Overlooks

Palmetto Bluff is a breathtakingly beautiful place to buy a home. But behind the curtains of Spanish moss is a contaminated development structure. The covenants and restrictions that purport to run with the land contain the highly unusual—and unlawful—requirement that homeowners be bound, automatically upon acceptance of title, to a for-profit Club. (e.g. App. 455). This may not be intuitive: Although it is typical in communities to have a membership club of some sort, in which homeowners are actually *members* in the legal sense of the word¹ because (typically) the club is a nonprofit corporation and homeowners have a common ownership interest in the amenities, **that is not what is happening here**. The Palmetto Bluff Club is the Developer’s for-profit entity, but the Developer takes the position that homeowners, *via* their real estate titles, are subject to various transfer fee covenants that *per se* impair the alienability of their real property.² (See App. 1028-59).

¹ See S.C. Code § 33-31-101 *et seq.*, outlining the rights and obligations of members of nonprofit corporations, which include voting and transfer rights, as well as the duties of directors. None of these statutory provisions apply here, because the Palmetto Bluff Club is the Developer’s for-profit company.

² The purported obligations to “join” and pay transfer fees to the Club do not touch and concern the land, are void as against public policy, and are unenforceable as a matter of law. S.C. Code § 27-1-70 (“(B)(2) a transfer fee covenant violates this public policy by impairing the marketability of title to the affected real property and constitutes an unreasonable restraint on alienation, regardless of the duration of the covenant

In Palmetto Bluff, homeowners are ostensibly bound (“automatically,” upon “acceptance of a deed”) to a mandatory ream of Club governing documents, on which they have no vote, which can be changed unilaterally, at any time, by the Developer alone, and which purport to dictate their real property obligations:

By acceptance of a deed, each Owner: (i) shall automatically become a member³ of the Palmetto Bluff Club; (ii) shall automatically assume and agree to be bound by all of the terms and conditions of the Palmetto Bluff Club Documents, which terms and conditions are incorporated herein by reference . . .

. . . The Palmetto Bluff Club Documents may be amended from time to time without the consent of the Owners.

(App. 455-456, Fifty-Seventh [Unilateral] Supplement to Community Charter for Palmetto Bluff).

The ever-changing, undefined “Palmetto Bluff Club Documents” have never been recorded with the register of deeds.

This real estate requirement—buried deep within hundreds of pages of community covenants that cross-reference hundreds of pages of unrecorded “governing documents”—is the infected source of the arbitration clause at issue in this appeal. Within the unrecorded, unilaterally amendable Palmetto Bluff Club Documents, on the next-to-last page, may be found this provision:

This “Arbitration/Mediation” provision shall apply only to members who acquire their membership on or after June 19, 2017. Subject to the provisions of below paragraph, any and all controversies, disputes or claims relating directly or indirectly to, or arising directly or indirectly from this Membership Plan, including but not limited to breach of this Membership Plan, shall be resolved by mandatory arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the “Rules”) then in effect (unless the member [and/or any person exercising such member’s membership rights] and Palmetto Bluff Club, LLC mutually agree otherwise), applying the substantive laws of South Carolina. . . . Any arbitration shall be limited to a party’s actual, out-of-pocket, compensatory damages only. No consequential, lost profits, diminution in value, lost opportunity, intangible, emotional, trebled, enhanced or punitive damages may be awarded in said arbitration . . . The party demanding arbitration of any controversy, dispute or claim hereunder

or the amount of the transfer fee set forth in the covenant.”).

³ The word “member” has no legal meaning whatsoever and is just a misleading label.

shall give written notice of such demand to the other party and shall file the same with the American Arbitration Association. Such written notice shall be given no later than sixty (60) calendar days after the conclusion of the mediation (pursuant to below paragraph) of the controversy, dispute or claim which is the subject of the notice. . . .

App. 486-87.

Notably, the Palmetto Bluff Club documents were amended unilaterally (1) in 2017 to *insert* this arbitration provision, and (2) at some point later to insert a provision on the first page of (*some*) of the Club's (unrecorded) documents. (*compare* App. 736 with App. 834 with App. 862 with App. 929). At some point, a "Club Membership Agreement" was also introduced; it is given to owners to sign *after* they "automatically become a member of the Club" "by acceptance of a deed" at their real estate closing.

Also notably, because of the evolving nature of the "Palmetto Bluff Governing Documents," the vast majority of the plaintiffs in this case never signed *anything* containing an arbitration clause or a jury trial waiver. They simply accepted a real estate title to their homes. SCRLA wrongly assumes that this dispute involves actual arbitration "agreements," but here the circuit court specifically found, *inter alia*, that "fifteen of the Plaintiffs have never signed any agreement to arbitrate any dispute with any of the Defendants, whatsoever." (App. 243-244).

ARGUMENT

Despite SCRLA's hand-wringing, there are no "broader commercial consequences" to the Court of Appeals' Opinion, which at its core does nothing more than apply well-established contract law, and the standard of review, to the peculiar facts at issue in this unique case about real estate development.

The law concerning arbitration, though at times perhaps complicated and counterintuitive, has a very simple foundation: "Arbitration is a matter of contract, and a party cannot be required to submit to arbitration any dispute which he has not agreed to submit." *Zabinski v. Bright Acres Associates*, 346 S.C. 580, 596, 553 S.E.2d 110 (2001). In other words,

arbitration is nothing more than a creature of contractual choice, to be construed no differently than any other alleged agreement that finds itself on the doorstep of the judiciary. See *Palmetto Constr. Grp., LLC v. Restoration Specialists, LLC*, 432 S.C. 633, 639, 856 S.E.2d 150, 153 (2021) (“[W]hen considered in the proper context, our statements that the law ‘favors’ arbitration mean simply that courts must respect and enforce a contractual provision to arbitrate as it respects and enforces all contractual provisions. There is, however, no public policy—federal or state—‘favoring’ arbitration.”).

The good news for SCRLA is that SCRLA seems to be the master of its own contracts. SCRLA’s members may take the decisions in this case to heart, learn from them, and draft their service contracts, guest agreements, and vendor arrangements accordingly.

I. State Law Governs.

The SCRLA relies on its “daily experience in the hospitality industry” to “confirm” that “these transactions are interstate in nature.” (SCRLA Brief at p. 2). But Respondent Homeowners rely on the Record and the law for the assurance that real estate conveyances are the quintessential *intrastate* transaction. Because the arbitration clause at issue here is literally bound to South Carolina land, the circuit court was right that South Carolina state law applies. (App. 473: “THIS MEMBERSHIP PLAN SHALL BE A COVENANT RUNNING WITH THE LAND WITHIN PALMETTO BLUFF”) (emphasis in original). And, as the Court of Appeals correctly found, the language that the Developer eventually unilaterally drafted and added to the front page of (some of) its Palmetto Bluff Club Governing Documents explicitly confirms what these real estate transactional documents already mean: State law applies.

A. In which the SCRLA recoils at “boilerplate” language in a contract of adhesion.

There is no question that the arbitration clause here is just one component of a contract of adhesion. The documents themselves trumpet the utter lack of meaningful choice for

homeowners at Palmetto Bluff, who ostensibly surrender their right to a jury trial based on unrecorded documents that purport to run with their land:

By acceptance of a deed, every Owner of a residence or homesite within Palmetto Bluff shall become a “Community Member” of the Club and *shall automatically assume and agree to be bound* by all of the terms and conditions of this Membership Plan, including the obligation to pay Membership Joining Fees, Club Dues, User Fees and other charges as set forth herein, while he or she remains an owner of a residence or homesite. This **covenant running with the land** is set forth at Chapter 19 of the Charter (as defined herein) and the Declaration of Recreational Covenant for Palmetto Bluff, dated April 17, 2003 (“Recreational Covenant”).

(App. 467) (emphasis added) (*see also* App. 223).

The Developer’s governing documents at issue here – with their allowance for unilateral amendment – should be the very model of clarity. The Developer certainly had the opportunity to craft its own mandates in such a way that the necessity of arbitration would be beyond question. For example, the Developer decided what language to add, in all caps, to the first page of (some) of its membership agreements, and it certainly could have chosen to broadcast the FAA as the applicable law. But it didn’t. Instead, the Developer expressly invoked the SCUAA:

THIS MEMBERSHIP AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO SOUTH CAROLINA CODE SECTION 15-48- 10, ET. SEQ.

(App. 862).

And yet, despite the Developer-drafter’s meaningful choice of what to say within its own unilateral, automatic, mandatory “agreement,” and its specific decision to call out the SCUAA in ALL CAPS, the SCRLA complains that the “Court of Appeals elevated a boilerplate statutory notice on the front page of [a] membership agreement over the arbitration clause at issue here.” (SCRLA Brief at 3). Rather than a deliberate choice of law and language that the Developer made, the SCRLA hopes this Court will believe that the “front-page notice” is simply “a standardized statutory notice alerting parties to the existence of an arbitration clause.” (*Id.* at 4). But that would be absurd. The Developer drafted the front-page notice, unilaterally inserted it into (some of) its Club governing documents, and now seeks to use it as a platform to force all parties to this lawsuit

to surrender their rights to trial by jury. At a minimum, the Developer could have chosen to specifically and clearly reference the FAA if its intent was truly that the FAA apply. But the Developer deliberately chose not to do so, and this Court should not permit Petitioners to wriggle out of their own words. Nor should this Court rewrite the “agreement” to alter the Developer-drafter’s clear choice of South Carolina procedural law.

SCRLA tries to salvage the Developer’s choice by arguing that because the unrecorded Club Plan later refers to the “substantive laws of South Carolina” and refers vaguely to the AAA rules, this “means that the parties’ deliberate choice to invoke only South Carolina’s substantive law necessarily excludes its procedural arbitration law from the agreement’s reach.” (SCRLA Br. at 4). Not only are the “parties” (plural) not making choices here—solely the Developer wrote this document—but also the SCRLA ignores hornbook contract law principles, including that when provisions are unclear or conflicting, contracts of adhesion must be construed against the drafter. *See Myrtle Beach Lumber Co., Inc. v. Willoughby*, 276 S.C. 3, 8, 274 S.E.2d 423, 426 (1981), quoting 17A C.J.S. Contracts § 324 (“any ambiguity in a contract, doubt, or uncertainty as to its meaning should be resolved against the party who prepared the contract or is responsible for the verbiage. The reason for the rule of strict construction against the party preparing the contract is that one who speaks or writes can, by exactness of expression, more easily prevent mistakes in meaning more than one with whom he is dealing, and that he who has brought the agreement into existence and is thus primarily responsible for its inadequacy should justly suffer for its shortcomings.”). This should be particularly true, here, where the arbitration clause is buried in (unrecorded) covenants and restrictions. *See Hardy v. Aiken*, 369 S.C. 160, 166, 631 S.E.2d 539, 542 (2006) (“[A] restriction on the use of the property must be created in express terms or by plain and unmistakable implication, and all such restrictions are to be strictly construed, with all doubts resolved in favor of the free use of property.”); *see also Palmetto Constr. Grp. LLC*, 856 S.E.2d at 152

("Our courts' statements that the law 'favors' arbitration were never intended to elevate a contractual right of arbitration above the procedural rules of the court or other contractual provisions.").

Moreover, the Developer's contract itself addresses the procedure where its documents' terms are conflicting—and the circuit court's ruling in this regard is an independent ground on which to sustain its decision, pursuant to Rule 220(c), SCACR. *See* App. 247-249 (noting that the "Palmetto Bluff Club Documents" are defined as "Governing Documents" by the Community Charter, which contains a conflicting and different ADR provision and states: "Conflicts. If there are conflicts between any of the Governing Documents and South Carolina law, South Carolina law shall control. If there are conflicts between or among any of the Governing Documents, then the Charter, the Articles, and the By-Laws (in that order) shall control.").

Despite SCRLA's fretting, the Court of Appeals' decision to bind the Palmetto Bluff Developer to the words that it drafted does not render SCRLA's future arbitration agreements "uncertain" or "unsettle[d]." Instead, members of the hospitality industry bent on depriving guests of their right to a jury trial may clearly and unambiguously state that the FAA applies, and then diligently procure their guests' signed consent to the agreement that they wish to enforce against them.

B. Dum Spiro Spero.

Arguendo, if this Court should find that the Court of Appeals was mistaken to construe the Developer's all-caps, underlined announcement that the Club documents are "SUBJECT TO ARBITRATION PURSUANT TO SOUTH CAROLINA CODE SECTION 15-48- 10, ET. SEQ.," as a clear announcement that South Carolina Code Section 15-48-10, *et seq.*, applies, then this Court should nonetheless *not* apply the FAA to the purely intrastate real estate transactions at issue here. *Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 730 S.E.2d 312, 317 (2012) ("the development

of real estate is an inherently intrastate transaction.”). This is not a construction defect lawsuit between buyers and their builder — this is a real property dispute between homeowners and their Developer. It is a dispute about the dirt, to which “dirt law” applies; it is not construction litigation about roofing, or windows, or insulation, or construction components potentially transported over state lines.

The SCRLA’s Brief, on pages 4 and 5, waxes at length about the hospitality industry in South Carolina, even though “the family from Ohio seated at a Myrtle Beach restaurant on a July Saturday” does not appear anywhere in this Record on Appeal. This lawsuit is not a case about “the corporate group from Atlanta holding a conference at a Hilton Head resort,” nor is it about “the wedding party from New York filling an inn on the South Carolina Coast” — all of whom SCRLA apparently believes have given up their rights to trial by a jury. (SCRLA Br. at 5). Instead, this case is about real property development, accomplished through covenants and restrictions which explicitly state that they run with land in Beaufort County, South Carolina. There’s just no two ways about it: “A COVENANT RUNNING WITH THE LAND WITHIN PALMETTO BLUFF” is simply not capable of crossing over state lines. (App. at 473) (emphasis and all-capitalization in original).

This Court should not feel pressured by the decisions from Nevada, Missouri, Delaware, and Arkansas, cited by SCRLA in its attempt to revive the old “strong public policy in favor of arbitration” spiel. This Court has soundly rejected SCRLA’s argument that the “policies underlying arbitration” are “the supreme law of the land.” Beginning in *Palmetto Construction Group, LLC* and progressing through *Lampo v. Amedisys Holding*, in a series of thoughtful, thoroughly-researched opinions that fall back on the “old chestnuts” of contract law, this Court has held that **there is no federal or state policy “favoring” arbitration.** *Lampo v. Amedisys Holding*, 445 S.C. 305, 317, 914 S.E.2d 139 (2025) (“Amedisys — like many parties and some of our

courts—continues to argue there is a federal and state ‘policy favoring arbitration.’ We remind our litigants and lower courts that we dispensed with this incorrect notion almost four years ago.”).

There is, however, both state and federal law recognizing that real estate covenants and restrictions—the source of the arbitration “agreement” here—are intrastate in nature. *Zabinski*, 346 S.C. at 595, 553 S.E.2d at 117-18 (“The development of land within South Carolina borders is the quintessential example of a purely intrastate activity.”); see also *Butner v. United States*, 440 U.S. 48, 55, 99 S. Ct. 914, 59 L.Ed.2d 136 (1979), *superseded by statute* (“Property interests are created and defined by state law.”); *Reconstruction Finance Corporation v. Beaver County, Pa.*, 328 U.S. 204, 66 S. Ct. 992, 90 L. Ed. 1172 (1946) (“Concepts of real property are deeply rooted in state traditions, customs, habits, and laws.”); *Pressl v. Appalachian Power Co.*, 842 F.3d 299, 305 (4th Cir. 2016) (finding it lacked federal subject matter jurisdiction because “the interpretation of a state conveyance is a quintessential question of state property law.”); *Bradley*, 398 S.C. at 447 (“the development of real estate is an inherently intrastate transaction.”); *Mathews v. Fluor Corp.*, 312 S.C. 404, 440 S.E.2d 880 (1994), *overruled on other grounds by Munoz v. Green Tree Financial Corp.*, 343 S.C. 531, 539 n. 3, 542 S.E.2d 360, 363 n. 3 (2001) (holding interstate commerce was not involved in a contract for the sale of a commercial building located in South Carolina to out-of-state parties even though, incidental to the sale, the parties utilized the services of a North Carolina engineer and procured financing from a Pennsylvania lender).

If this Court reaches this question, it should soundly reject the argument that deeds, covenants, easements, and restrictions—which explicitly state that they run with South Carolina land—are interstate in nature. If *land* is not intrastate, what is? Further, this Court should use this case as a platform to discourage sophisticated real estate developers from burying arbitration agreements and jury trial waivers within real property instruments, and it should recognize the

particularly egregious circumstances at issue here, where the purported arbitration “agreements” state they “run with the land” but have never been recorded and are therefore hidden from prospective real estate owners.

II. *Automatic for the People*⁴: Adding an Arbitration “Agreement.”⁵

The SCRLA’s argument that “a unilateral modification right does not infect an arbitration clause unless that right is . . . specifically directed at the arbitration agreement itself” is tone-deaf to the Record. There would be no arbitration clause at all, here, except that Developer unilaterally decided in 2017, fourteen years after it first recorded the Community Charter for Palmetto Bluff and began selling homes, to change the unrecorded, low-level Club documents to thrust a one-sided arbitration clause into their already dubious provisions. *But see Lampo*, 445 S.C. at 313 (“an agreement to arbitrate is – by definition – a bilateral contract.”); *Lee v. Univ. of S.C.*, 407 S.C. 512, 518, 757 S.E.2d 394, 398 (2014) (“[O]ne party to a contract may not unilaterally alter its terms.”) (citing 17A AM.JUR.2D *Contracts* § 507).

As SCRLA has misconstrued the nature of this case, it has also misconstrued the nature of the documents at issue, which are primarily real property written instruments running with real estate title, not service contracts. Perhaps SCRLA entered this fray without reading the Record. Either way, as detailed above, this case involves more than a membership agreement simply addressing “dues, access, modification authority, and dispute resolution together;” this case includes detailed and controlling master covenants (the “Community Charter”) that permit suit “in any court.” (App. 136; 215-16).

Moreover, while SCRLA may find fault with the Court of Appeals’ citation of *New Hope Baptist Church v. Paragon*, 379 S.C. 620, 667 S.E.2d 1 (Ct. App. 2008), it is not actually “particularly

⁴ 1992. Studio Album by R.E.M. Warner Bros.

⁵ 2017. Plan by Palmetto Bluff Club. Palmetto Bluff Club, LLC.

difficult to reconcile” that citation with the court’s holding. (SCRLA Br. at 8). To start, the holding in *New Hope* is not what SCRLA says it is – it does not hold that “even where the overall contract is unenforceable, the arbitration provision survives unless the grounds of unenforceability ‘specifically relates to the arbitration provision.’” (*Id.*). Although the opinion includes that language, it appears as a quotation from another case, which the court uses to support its observation that “[c]ommon sense implies that if a party challenged the validity of a contract which contained an arbitration clause, the validity of the arbitration clause is also challenged. The courts have found otherwise.” *Id.* at 630 (quoting *Housing Authority v. Cornerstone Housing*, 356 S.C. 328, 340, 588 S.E.2d 617, 623 (Ct. App. 2003))⁶.

The actual holding of *New Hope*, however, is as follows:

“We hold a party cannot avoid arbitration through rescission of the entire contract when there is no independent challenge to the arbitration clause.”

Id. at 628. And because the Homeowners here obviously challenge the validity of the arbitration provision, *New Hope*’s holding above is irrelevant in this matter.

Furthermore, it is clear from the Court of Appeals’ citation to *New Hope* in the appealed Opinion (preceded by a *See* signal) that the court used the quotation as support for the proposition that the unilateral modification provision could be analyzed in assessing the validity of the arbitration provision (which Homeowners have challenged). (App. 9, 42). This makes sense given that the quote originated from *Cornerstone Housing* where the Court of Appeals, relying upon South Carolina contract law, reviewed two separate contracts together to determine

⁶ It is also worth noting that case law on arbitration in South Carolina has shifted significantly since the publication of *New Hope* and *Cornerstone Housing*. Compare *New Hope Baptist Church*, 379 S.C. at 630 (“The policies of the United States and this State favor arbitration of disputes.”); and *Cornerstone Housing*, 356 S.C. at 334 (“There is a strong presumption in favor of the validity of arbitration agreements because of the strong policy favoring arbitration.”) (quotation omitted), with *Palmetto Construction Group, LLC v. Restoration Specialists, LLC*, 432 S.C. 633, 639, 856 S.E.2d 150, 153 (2021) (“Our statements that the law ‘favors’ arbitration mean simply that courts must respect and enforce a contractual provision to arbitrate as it respects and enforces all contractual provisions. There is, however, no public policy—federal or state—‘favoring’ arbitration.”).

whether a valid arbitration agreement existed between the parties. *See* 356 S.C. at 336 (“Reading the two contracts in this case together, it is evident the parties agreed that any dispute arising after the signing of the first contract was to be arbitrated.”). Thus, the Court of Appeals’ decision in this matter is not as unusual as SCRLA suggests.

Accordingly, this Court should reject SCRLA’s myopic view of this case and South Carolina arbitration law. While SCRLA may be looking out for the interests of its members, it is assuredly not looking out for the residents of Palmetto Bluff.

III. The circuit court did not abuse its discretion when it refused to re-write or change the Developer’s chosen words.

It is unclear which oppressive, one-sided terms SCRLA would have this Court sever from the “otherwise functional arbitration agreement” it claims exists within the unrecorded, unsigned, and ever-changing Club documents. The Court of Appeals rightly recognized that no reasonable person would accept the drastic remedial limitations within Palmetto Bluff’s purported arbitration clause, or the unilateral amendment provision (which the Developer unilaterally exercised in 2017 to unilaterally insert an arbitration clause into low-level, unrecorded governing documents). These two aspects alone sufficed to convince the Court of Appeals that the purported arbitration “agreement” was infected with unconscionable terms, and so it found it “need not address” the remaining terms. (App. 44).

But the circuit court waded deeper into the purported “agreement,” and this Court should not reverse the circuit court’s thorough findings and decision on this issue, which do not show an abuse of discretion. *Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 619, 879 S.E.2d 746, 759 (2022) (“courts have discretion [] to decide whether a contract is so infected with unconscionability that it must be scrapped entirely, or to sever the offending terms so the remainder may survive.”) (cleaned up). In addition to terms allowing unilateral amendment and

barring statutory treble damages, the circuit court held that the purported requirement to arbitrate is evidently one-sided, does not bind Developers (according to Developers), and thus is unconscionable. The circuit court found that the Developers frequently file suit in court against homeowners “as shown in the public record, where the Club has filed many liens with the Beaufort County Register of Deeds, and then sought to foreclose on them in the Beaufort County Court of Common Pleas.” (App. 260; *see also* App. 1000-1022).

Moreover, the circuit court held—even prior to *Huskins v. Mungo Homes*—that “the asserted arbitration clause purports to impose a 60-day statute of limitations period, which violates South Carolina law.” (App. 259, *citing* S.C. Code § 15-3-140 “No clause, provision or agreement in any contract of whatsoever nature, verbal or written, whereby it is agreed that either party shall be barred from bringing suit upon any cause of action arising out of the contract if not brought within a period less than the time prescribed by the statute of limitations, for similar causes of action, shall bar such action . . .”). Thus, the offending arbitration clause in this case mirrors the clause at issue in *Huskins*. Dissonantly, the SCRLA seems to not know that Palmetto Bluff’s alleged arbitration “agreement” illegally and drastically shortens the statute of limitations, just like the clause at issue in *Huskins* that this Court found unconscionable and declined to sever. And SCRLA apparently *agrees* (as well it should) with the *Huskins* Court’s reasoning when it decided not to sever a clause that “purported to shorten the statutory limitations period to ninety day [sic] making that provision void by express command of S.C. Code Ann. § 15-3-140.” SCRLA Br. at 9 (*citing* 444 S.C. at 597, 910 S.E.2d at 477).

The Court of Appeals correctly observed that Palmetto Bluff’s Developer chose not to include a severability provision in the arbitration “agreement,” which meant that there was no intent that unconscionable terms be severed. App. 44, n. 6. Particularly here, as in *Huskins*, where the alleged “agreement” is an “automatic” and “mandatory” contract of adhesion, entirely

drafted by the Developer, the Developer should be held to the words it chose, and the Court should not salvage it from its “brash push to accomplish through arbitration something our statutory law forbids.” *Huskins*, 910 S.E.2d at 477 (2025) (“Mungo wrote the contract and deemed its terms nonnegotiable. Huskins could not even edit it. This forceful proof of Mungo’s intent that the contract not be tinkered with convinces us that we should not rewrite it now.”). It is further significant that the Developer chose to include a severability clause within its Community Charter. (App. 422, § 20.3). So, the Developer was no stranger to the concept of severability—it just intentionally omitted such a clause from the Palmetto Bluff Club documents and their (unilaterally inserted) arbitration clause, while allowing those documents to be modified only by the Developer “in its sole and absolute discretion.” (App. 485).

Ultimately, the severability question comes back to the nature of arbitration “agreements.” They are alleged contracts—nothing more, and nothing less. Courts are rightly reluctant to rewrite contracts; in general, a contracting party is held to its terms regardless of their wisdom or folly. And here, the Developer *decided* that unconscionable terms from its arbitration clause are not severable and the power to modify them belongs only to the Developer. It may be that Palmetto Bluff’s Developer will look back upon and regret its choice not to include a severability provision, its decision to give itself unilateral amendment power, its maneuver to foreclose statutory damages, its election to truncate the statute of limitations, and its practice of suing its members in court while requiring them to arbitrate—and, in hindsight, the Developer may even regard those provisions as “folly.” Nonetheless, this Court should not rescue the Developer from its own words, which are categorically unconscionable and, by Developer’s own design, inseverable and beyond judicial alteration.

CONCLUSION

The Court of Appeals was correct to affirm the circuit court's denial of Developers' Motion to Compel Arbitration. This Court should affirm and remand for trial by jury.

Respectfully submitted,

FORD WALLACE THOMSON LLC

By: s/ Ainsley F. Tillman

Ian S. Ford, S.C. Bar No. 12463

Ian.Ford@FordWallace.com

Ainsley F. Tillman, S.C. Bar No. 70551

Ainsley.Tillman@FordWallace.com

Justin Moffitt, S.C. Bar No. 106389

Justin.Moffitt@FordWallace.com

715 King Street

Charleston, SC 29403

(843) 277-2011 | www.FordWallace.com

April 15, 2026
Charleston, South Carolina