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| STATE OF SOUTH CAROLINA<br>COUNTY OF JASPER<br>Karen Stevenson and Richard P. Phlipot,<br>Plaintiffs,<br>v.<br>Village Park Homes, LLC, Howe Contracting, LLC d/b/a Howe Roof, and Steve Campigotto,<br>Defendants. | IN THE COURT OF COMMON PLEAS<br>CIVIL ACTION NO.: 2025-CP-27-00433<br>**ORDER** |
| Howe Contracting, LLC d/b/a Howe Roof and Steve Campigotto,<br>Third-Party Plaintiffs,<br>v.<br>Hernandez Roofing,<br>Third-Party Defendants. | |



This matter came before the Court on Defendant Village Park Homes, LLC's ("Village Park") Motion to Dismiss, Compel Arbitration, or in the Alternative, to Stay. The Court held a hearing on December 18, 2025. Having considered the motions, memoranda, exhibits, arguments of counsel, and the applicable law, the Court hereby **DENIES** Defendant's Motion to Dismiss and Motion to Compel Arbitration, and **GRANTS** Defendant's alternative Motion to Stay pending Plaintiffs' compliance with the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act.

## FACTUAL AND PROCEDURAL BACKGROUND

This action filed on July 28, 2025 arises from alleged defects in the roof design and construction of Plaintiff's single-family home in Hardeeville, South Carolina.

On September 8, 2025, Village Park filed its Motion to Dismiss, Compel Arbitration, or in the Alternative to Stay, arguing that the parties' Purchase and Sale Agreement contains a valid and enforceable arbitration agreement requiring all of Plaintiffs' claims to be submitted to binding arbitration. In the alternative, Village Park seeks a stay of this action pending Plaintiffs' compliance with the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. § 40-59-810 *et seq.* ("Right to Cure Act").

On April 30, 2021, Plaintiffs entered into a Purchase and Sale Agreement[1] ("the Agreement" or "PSA") with Village Park for the construction and purchase of a new home at Lot #0052 in the Magnolia Walk at Hilton Head Lakes subdivision. The predominantly relevant portion of the Agreement is contained within Paragraph 10, which is titled "New Home Warranty Security Plan." Paragraph 10 contains Subparagraphs 10(a) through 10(d), which address warranties, arbitration, dispute resolution, and exclusive remedies. Paragraph 10 of the Agreement is provided below:

10. New Home Warranty Security Plan:

(a) The Seller is a member of Quality Builders Warranty Program and you will be provided with a Ten Year Limited Warranty Agreement in connection with the purchase of your home. The Seller's sole responsibility shall be limited to the terms and conditions set forth in the Quality Builders Limited Warranty Agreement. The Purchaser agrees to submit to and be bound by the dispute settlement procedures under the Limited Warranty Agreement. Seller makes no further warranties, expressed, general, limited or implied, including implied warranty of merchantability, implied warranty for particular purpose or implied warranty of habitability except as contained in the Quality Builders Limited Warranty Agreement. **PURCHASER EXPRESSLY WAIVES ALL OTHER WARRANTIES EITHER EXPRESSED OR IMPLIED AND ANY WARRANTIES ARISING UNDER THE MAGNUSON MOSS WARRANTY ACT, INCLUDING BUT NOY LIMITED TO ALL WARRANTIES OF FITNESS, MERCHANTABILITY OR HABITABILITY.**

(b) Quality Builders Warranty Program (Acknowledgement of Receipt and Agreement to Read and Understand)

I/we hereby certify that on, or prior to, the date of this Agreement, I/we have received a sample of Quality Builders Limited Warranty ((QBLW) which commences on the date the title for the home is transferred to the first homeowner and expires ten (10) year(s) from the date the title for the home is transferred to the first homeowner. I/we agree that, prior to Closing/Settlement on the home to which this Agreement relates, I/we will read the sample QBLW in its entirety and will contact the builder with any questions I/we have about my/our or the builder's duties, rights and obligations under the 2QBLW or the coverage, limits or exclusions contained therein. I/we understand that I/we may contact Quality Builders Warranty Program Corporation to discuss these issues. I/we understand that I/we have the right to have the QBLW and any and all other documents related to my/our purchase of the home reviewed by an attorney of my/our choosing at my/our sole expense. This review does not allow the purchaser to alter the terms of the warranty, delay, or cancel the closing on the contracted home. I/we agree that my/our failure to read the sample QBLW and to obtain any needed assistance in understanding the QBLW document shall not in any way change my/our or the builder's rights, duties or obligations under this QBLW.

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[1] See Exhibit A to Plaintiffs' Memorandum in Opposition to Village Park's Motion to Dismiss, Compel Arbitration, or in the Alternative to Stay (hereinafter "Ex. A"). The Agreement is also attached as Exhibit A to Village Park's Motion and Village Park's Memorandum in Support of its Motion.

(c) Arbitration Agreement. Any and all claims, disputes and controversies by or between Seller and Purchaser arising from or related to the Purchase Contract, the Home, the real property on which it is located, and any common elements in which Purchaser shall have any interest, including without limitation, any claim of negligent or intentional misrepresentation, shall be settled by arbitration. Agreeing to arbitration means you are waiving your right to a jury trial. Any person in contractual privity with Seller who Purchaser contends is responsible for any construction defect shall be entitled to enforce this arbitration agreement. The decision of the arbitrator shall be final and binding and may be entered as judgment in any sale or federal court of competent jurisdiction.

The arbitration shall be conducted by the American Arbitration Association, DeMars & Associates, Ltd., or some other mutually agreeable service. The choice of arbitration service shall be that of the claimant. The arbitration shall be conducted pursuant to the applicable rules of the arbitration service selected. If for any reason this method for selecting an arbitration service cannot be followed, the parties to the arbitration shall mutually select an arbitration service.

The parties expressly agree that this arbitration agreement involves and concerns interstate commerce and is governed by the provisions of the Federal Arbitration Act (9U.S.C. Section 1, et seq.), to the exclusion of any different or inconsistent state or local law, ordinance or judicial rule.

(d) Exclusive Remedy Agreement.

The agreement contained in this paragraph shall be effective if but only if Seller shall enroll the Home in the Homebuyer Warranty Program and shall furnish Purchaser with an QBLW Warranty. Effective one year from the date of closing on the purchase of the Home, Purchaser(s) waives the right to seek damages or other remedies from the Seller, its subcontractors, agents, suppliers or design professionals for any defect to the Home, the real property upon which it is situated, and any common elements in which Purchaser, shall have any interest, under any common law or statutory theory of liability, including but not limited to negligence and strict liability. Purchaser's(s') exclusive remedy for any such defect shall be the coverage provided in the QBLW Warranty. The agreement contained in this paragraph shall be enforceable to the maximum extent permitted by the law of the state in which the Home is located and shall be applicable to any claim made after the effective date of the agreement contained in this paragraph. This paragraph shall not be applicable where prohibited by law or to any written warranty provided by a manufacturer or vendor who has supplied any appliance or component.

## DISCUSSION

The central dispute in this matter is what provisions of the Agreement comprise the arbitration clause for purposes of the Court's analysis.

Village Park contends that only Subparagraph 10(c) – titled "Arbitration Agreement" – constitutes the arbitration clause. Village Park argues that Subparagraph 10(c) is a standalone arbitration provision that does not incorporate any other provisions by reference. At the hearing, Village Park further argued that the warranty provisions in Subparagraphs 10(a), 10(b), and 10(d) are separate from the arbitration provision in Subparagraph 10(c), and that Subparagraph 10(c) does not reference any warranties or warranty agreements.

Plaintiffs contend that the arbitration clause encompasses the entirety of Paragraph 10, including all four subparagraphs. Plaintiffs argue that Paragraph 10's subparagraphs are intertwined and contain cross-references to one another, such that they must be read as a whole.

## ANALYSIS

After careful consideration, the Court finds that the arbitration clause encompasses the entirety of Paragraph 10, not merely Subparagraph 10(c).

The Court is not persuaded by Village Park's argument that the warranty and arbitration provisions are standalone because Subparagraph 10(c) does not expressly reference the warranty provisions. This argument elevates form over substance. The subparagraphs are located together under a single heading, address interrelated subject matter, and contain internal cross-references.

The Court distinguishes *Damico v. Lennar Carolinas.* In *Damico*, the arbitration clause was titled "Mediation/Arbitration of Disputes" and dealt "solely with the scope of arbitration and the requisite formalities accompanying an arbitration proceeding." 437 S.C. at 610, 879 S.E.2d at 754. Critically, "there [was] nothing that refer[red] to the limited warranty booklet or incorporate[d] it by reference." *Id.* Here, by contrast, Subparagraph 10(a) expressly requires Plaintiffs to "submit to and be bound by the dispute settlement procedures under the Limited Warranty Agreement," and Subparagraph 10(d) conditions the effectiveness of "the agreement contained in this paragraph" on enrollment in the warranty program and delivery of the warranty. Unlike in *Damico*, the provisions here are not confined to a single, freestanding section dealing only with arbitration formalities.

Further, the Plaintiffs argue the arbitration clause is unconscionable.

> An arbitration agreement is unconscionable if there is (1) an absence of meaningful choice in entering the agreement and (2) oppressive and one-sided terms." *315 Corley CW LLC v. Palmetto Bluff Dev., LLC*, 444 S.C. 521, 531, 908 S.E.2d 892, 897 (Ct. App. 2024) (citing *D.R. Horton*, 417 S.C. at 49, 790 S.E.2d at 4).

A lack of meaningful choice reflects the "fundamental fairness of the bargaining process." *D.R. Horton*, 417 S.C. at 49, 790 S.E.2d at 4 (citing *Gladden v. Boykin*, 402 S.C. 140, 148, 739 S.E.2d 882, 886 (2013)). "In determining whether an absence of meaningful choice taints a contractual term, such as an arbitration provision, courts must consider, among all facts and circumstances, the relative disparity in the parties' bargaining power, the parties' relative sophistication, and whether the plaintiffs are a substantial business concern of the defendant." *Damico*, 437 S.C. at 613, 879 S.E.2d at 756.

When an arbitration clause is contained within an adhesion contract, additional scrutiny is required. "Adhesion contracts are standard form contracts offered on a take-it-or-leave-it basis, and the terms are non-negotiable." *D.R. Horton*, 417 S.C. at 49, 790 S.E.2d at 4. "While adhesion contracts are not unconscionable per se, courts tend to look upon them with 'considerable skepticism' because they give rise to 'considerable doubt that any true agreement ever existed to submit disputes to arbitration.'" *Id.* at 50, 790 S.E.2d at 4 (quoting *Simpson*, 373 S.C. at 26-27, 644 S.E.2d at 669-670).

This Court finds the Agreement is gly

a contract of adhesion. It is a standardized, pre-printed form drafted by Village Park. The substantive terms of Paragraph 10 were entirely non-negotiable. Additionally, Subparagraph 10(b) explicitly states that nothing permits the purchaser to "alter the terms of the warranty, delay, or cancel the closing on the contracted home," if the buyer has an issue with Paragraph 10.

The sophistication of Plaintiffs pales in comparison to Village Park. At the time of execution, Plaintiffs were not represented by legal counsel and lacked experience in the real estate industry. Village Park, by contrast, is a sophisticated commercial entity. Our courts "have taken

judicial cognizance of the fact that a modern homebuyer of new residential housing is normally in an unequal bargaining position as against the seller." *Kennedy v. Columbia Lumber & Mfg. Co.*, 299 S.C. 335, 343, 384 S.E.2d 730, 735-36 (1989). Plaintiffs are individual homebuyers purchasing a single residence for personal use. As in *Damico*, they "are not a substantial business concern of [Village Park] in any sense." 437 S.C. at 614, 879 S.E.2d at 756.

Further, Subparagraph 10(c), the provision titled "Arbitration Agreement," is buried within the broader "New Home Warranty Security Plan" paragraph. It is printed in the same small, uniform font as the rest of the Agreement, with nothing to draw the reader's attention to its significance. The arbitration provision is sandwiched between warranty acknowledgments and exclusive remedy provisions, surrounded by warranty language that makes it easy for a layperson to overlook its significance.

While Subparagraph 10(c) contains the statement "Agreeing to arbitration means you are waiving your right to a jury trial," this critical warning is buried within the paragraph's dense text rather than prominently displayed. There is no separate acknowledgment, signature, or initials line for the arbitration provision specifically. This inconspicuous presentation weighs in favor of finding procedural unconscionability.

Village Park argues that Plaintiffs had a meaningful choice because they were free to purchase a home from another builder, purchase a pre-existing home, or purchase no home at all. This argument is unpersuasive. Accepting this logic would render the procedural unconscionability inquiry meaningless in virtually every adhesion contract case. The relevant inquiry is whether Plaintiffs had a meaningful choice in negotiating the terms of the arbitration clause, not whether they could abandon the transaction entirely. *See Damico*, 437 S.C. at 614, 879 S.E.2d at 756.

Village Park also argues that Plaintiffs could have retained counsel. While true, this does not cure the lack of meaningful choice. Subparagraph 10(b) explicitly states that even if Plaintiffs retained counsel and objected to Paragraph 10, they could not have altered the terms.

Further, the Court finds Substantive Unconscionability, Oppressive and One-Sided. The Agreement provides:

> **Terms.** Subparagraph 10(a) provides that "The Seller's sole responsibility shall be limited to the terms and conditions set forth in the Quality Builders Limited Warranty Agreement," and "PURCHASER EXPRESSLY WAIVES ALL OTHER WARRANTIES EITHER EXPRESSED OR IMPLIED AND ANY WARRANTIES ARISING UNDER THE MAGNUSON MOSS WARRANTY ACT, INCLUDING BUT NOT LIMITED TO ALL WARRANTIES OF FITNESS, MERCHANTABILITY OR HABITABILITY."

This blanket disclaimer confines all of Village Park's rights, responsibilities, and liabilities to the Limited Warranty Agreement while disclaiming all implied warranties and any other legal responsibility outside of the Limited Warranty Agreement.

Significantly, Subparagraph 10(d) provides that, effective one year from closing, Plaintiffs, "waive[] the right to seek damages or other remedies from the Seller, its subcontractors, agents, suppliers, or design professionals for any defect to the Home . . . under any common law or statutory theory of liability, including but not limited to negligence and strict liability." This provision effectively shortens the statute of limitations to one year after closing, regardless of when defects are discovered, contravening S.C. Code Ann. § 15-3-140. *See Huskins v. Mungo Homes, LLC*, 444 S.C. 592, 910 S.E.2d 474 (2024) (holding that contract term seeking to shorten the statute

of limitations is unenforceable and substantively unconscionable); *Damico*, 437 S.C. at 617, 879 S.E.2d at 758.

Further, the Agreement in Subparagraph 10(d) provides that "[p]urchaser's(s') exclusive remedy for any such defect shall be the coverage provided in the QBLW Warranty." When the Limited Warranty Agreement is made the exclusive remedy, as it is here, its limitations become concerning.

Additionally, the Limited Warranty Agreement contains numerous exclusions that would leave homebuyers without recourse for significant defects, when it contains the exclusive rights and remedies like here. For example:

- The LWA excludes "[v]iolations of applicable building codes or ordinances, original dwelling plans and specifications."
- The LWA excludes "[a]ny defects caused by or resulting from improper design of the home."
- The LWA excludes "[l]oss or damage caused by or to roof sheathing after one year from the effective date of warranty."

These exclusions are particularly significant in this case, which involves alleged roof defects. If Plaintiffs' roof defects resulted from improper design, violated building codes, or involve roof sheathing damage discovered after one year, they would have no remedy whatsoever under the Limited Warranty Agreement – and thus no remedy at all under the arbitration clause's exclusive rights and remedies provisions.

Further, under the LWA, "[t]he decision whether to repair or replace, or to pay the reasonable cost of repair or replacement, resides with the Builder or QBW. The choice of the method of repair resides with the Builder or QBW." Before receiving any remedy, purchasers

must "sign and deliver to your Builder or QBW a full and unconditional release of all legal obligations with respect to that defect." *Id.* This structure is oppressive: Village Park controls both whether and how defects are remedied, and homeowners must surrender all legal rights before receiving any remedy. As the Supreme Court observed in *D.R. Horton*, leaving the remedy "entirely in the discretion of [the seller] . . . is no remedy at all because it leaves the relief to the whim of [the seller]." 417 S.C. at 52, 790 S.E.2d at 6.

Additionally, the exclusive remedy provision effectively prevents Plaintiffs from recovering treble damages under the South Carolina Unfair Trade Practices Act ("SCUTPA"), S.C. Code Ann. § 39-5-10 *et seq.* The Supreme Court has held that provisions preventing recovery of mandatory statutory remedies under SCUTPA are oppressive and one-sided. *Simpson*, 373 S.C. at 28-30, 644 S.E.2d at 670-71 (holding that such prohibition is unenforceable because "unconditionally permitting the weaker party to waive these statutory remedies pursuant to an adhesion contract runs contrary to the underlying statutes' very purposes"). Like in *Simpson*, Plaintiffs have alleged SCUTPA violations in this action.

Paragraph 10 disclaims all implied warranties and confines Village Park's responsibilities solely to the Limited Warranty Agreement. It forces Plaintiffs to waive the right to seek damages under any legal theory after one year from closing. It makes the Limited Warranty Agreement – with its extensive exclusions, builder-controlled remedies, and requirement that homeowners release all legal claims before receiving any remedy – the exclusive remedy.

In the alternative to compelling arbitration, Village Park seeks a stay of this action pending Plaintiffs' compliance with the South Carolina Notice and Opportunity to Cure Construction

Dwelling Defects Act, S.C. Code Ann. § 40-59-810 *et seq.* (the "Right to Cure Act"). The Right to Cure Act provides that:

> "in an action brought against a contractor or subcontractor arising out of the construction of a dwelling, the claimant must, no later than ninety days before filing the action, serve a written notice of claim on the contractor." S.C. Code Ann. § 40-59-840. Upon receipt, the contractor has thirty days to inspect, offer to remedy, offer to settle, or deny the claim. *Id.*, § 40-59-850(A). "If the claimant files an action in court before first complying with the requirements of this article, on motion of a party to the action, the court shall stay the action until the claimant has complied with the requirements of this article." *Id.* § 40-59-830.

Plaintiffs concede that they did not serve a written notice of claim ninety days before filing this action on July 28, 2025. Accordingly, the action is stayed until Plaintiffs have complied with the requirements of the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. § 40-59-810 et seq.

## CONCLUSION

**THEREFORE,** based on the foregoing, it is hereby **ORDERED**:

1. Defendant Village Park Homes, LLC's Motion to Dismiss is **DENIED**.
2. Defendant Village Park Homes, LLC's Motion to Compel Arbitration is **DENIED**.
3. Defendant Village Park Homes, LLC's Motion to Stay is **GRANTED**. This action is **STAYED** until Plaintiffs have complied with the requirements of the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. § 40-59-810 et seq.

**AND IT IS SO ORDERED!**

_____
Carmen T. Mullen
Fourteenth Judicial Circuit

Date: _____
Jasper County, South Carolina

Jasper Common Pleas

**Case Caption:** Karen Stevenson , plaintiff, et al VS Village Park Home, Llc , defendant, et al

**Case Number:** 2025CP2700433

**Type:** Order/Other

So Ordered

s/Carmen T Mullen 2142

**Exhibit 2**

**FORM 4**

**STATE OF SOUTH CAROLINA**
**COUNTY OF** Jasper
**IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE**

**CASE NO.** 2025CP2700433

Karen Stevenson et al
PLAINTIFF(S)

Village Park Home, Llc et al
DEFENDANT(S)

**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.

☐ **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:

This matter came before the Court pursuant to Village Park Homes, LLC's Motion to Alter or Amend the Court's Order filed on March 16, 2026. After review of the filed motion, the motion is denied without further hearing.

**ORDER INFORMATION**

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/18/2026 .

D/B/A Howe Roof
Hernandez Roofing



**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

## Court Reporter:

**E-Filing Note: 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 judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.**

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Jasper Common Pleas

**Case Caption:** Karen Stevenson , plaintiff, et al VS Village Park Home, Llc , defendant, et al

**Case Number:** 2025CP2700433

**Type:** Order/Electronic Form 4

So Ordered

s/Carmen T Mullen 2142