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**May 28 2026**

**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

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Appellate Case No.: 2024-001996

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Raghu Athimoolam and Irene Athimoolam,.....Respondents,

v.

Meritage Homes of South Carolina, Inc.....Petitioner.

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**PETITION FOR A WRIT OF CERTIORARI**

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s/David S. Cobb

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ATTORNEYS FOR PETITIONER

May 28, 2026

## **CERTIFICATION OF COUNSEL**

Counsel for Petitioner certifies that a Petition for Rehearing was made on April 15, 2026 and was ruled on by the Court of Appeals on April 29, 2026.

### **QUESTION PRESENTED**

I. In this construction matter submitted to arbitration pursuant to the Federal Arbitration Act, did the Court of Appeals err by not vacating an improper post-Award ruling by the arbitrator that increased the money awarded to Respondents by 524% after Respondents used their post-Award motion to intentionally disclose to the arbitrator (in a blatant violation of the ADR Rules) the confidential settlement amount received by Petitioner from its subcontractors, the FAA did not allow Respondents to make the post-Award motion to the arbitrator, the FAA did not give the arbitrator the power to rule upon the post-Award motion, and the arbitrator acted contrary to the FAA and South Carolina statutory law?

### **STATEMENT OF THE CASE**

This lawsuit is a construction defects claim involving a house located at 116 Ariel Way in Easley, South Carolina. Respondents (Raghu Athimoolam and Irene Athimoolam) filed a Summons and Complaint against Meritage Homes of South Carolina, Inc. (“Meritage”) with the Anderson County Court of Common Pleas on February 24, 2017. APP 026. By consent order filed August 30, 2017, the Athimoolams and Petitioner (Meritage Homes of South Carolina, Inc.) agreed to stay the litigation and to compel arbitration pursuant to the terms of the sales contract and the Federal Arbitration Act (FAA). APP 003.

On February 11, 2020, Meritage filed an Answer to Amended Complaint and Third-Party Complaint that named various subcontractors and vendors implicated

by the Athimoolams' claims. APP 065.<sup>1</sup> Ultimately, Meritage settled its claims against the subcontractors during a lengthy mediation process that involved the Athimoolams. The subcontractors were dismissed from the proceedings by a Stipulation of Dismissal filed July 12, 2023. APP 079. The Athimoolams' claims against Meritage then proceeded to an arbitration hearing, which was conducted by Rebecca Laffitte on September 21-22, 2023. The Arbitrator issued the Award on October 4, 2023 by email to the attorneys for the parties. APP 084. Shortly before that publication, the Arbitrator filed the "Proof of ADR" with the Anderson County Clerk of Court on October 4, 2023, which stated "Order following arbitration will be issued on or before October 4, 2023." APP 106.

The 21-page October 4, 2023 Arbitration Award included a cover letter in which the Arbitrator stated she based "the Order ... on the testimony and evidence presented" at the September 21-22, 2023 arbitration hearing. APP 084. The Arbitrator awarded Athimoolams Fifty-One Thousand Four Hundred Thirteen and 88/100 Dollars (\$51,413.88). Id.

The Athimoolams admit that the October 4, 2023 Arbitration Award was an "Award" as defined by the FAA. Yet, they disagreed with that Award and filed with the arbitrator on October 16, 2023 a document titled "Motion for Reconsideration," which stated:

Pursuant to 9 U.S.C. Code (The Federal Arbitration Act) § 9, 10, 11, the Order of Arbitration, ... Plaintiffs, Raghu and Irene Athimoolam, (hereinafter "Plaintiffs"), by and through their undersigned attorneys and moves for reconsideration of the Arbitration Award (the "Award") dated October 4, 2023.

APP 108. In the motion, the Athimoolams argued:

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<sup>1</sup> The trial court's Consent Order Allowing Answer and Third-Party Complaint filed on February 11, 2020 lifted the previous stay to allow for the filing of the pleading, which brought the implicated subcontractors and vendors into the proceedings. APP 007.

1. The Award makes numerous finding that are completely unsupported by the evidence and are based on assumptions of defense counsel;
2. The Award is fundamentally flawed because of fundamental errors with respect to applicable law and even the burden of proof;
3. The Award reflects a flagrant disregard of uncontroverted evidence, including expert testimony; and
4. The errors reflect above reflect an improper partiality towards Meritage which justifies reconsideration of the Award or vacating the Award in its entirety.

Id. As part of the motion, the Athimoolams also submitted the following argument:

**VIII. The Arbitrator's Award is Erroneous, and Her Impartiality is Established by Meritage's Settlement with its Subcontractors.**

As the Arbitrator is aware, this case was commenced in Circuit Court and arbitrated between Meritage and Plaintiffs by agreement. In Circuit Court, Meritage asserted indemnity claims against the Subcontractor Defendants to recover any sums Meritage was required to pay Plaintiffs arising from the faulty work of the Subcontractor Defendants. In reliance of the reports and testimony of Plaintiffs' experts, including Clements and Schauder, Meritage pursued claims against those Subcontractor Defendants, securing settlements from the Subcontractor Defendants totaling \$350,000.00.

***To be clear: The testimony and opinions of Plaintiffs, and their experts, which the Arbitrator heard at arbitration and blithely disregarded at the request of Meritage’s counsel, is the same evidence that allowed Meritage to recover \$350,000.00 from its subcontractors.***

Id. The Athimoolams knew about the settlement because those funds were offered to them as part of the mediation process conducted among the Athimoolams, Meritage, and the subcontractors before the arbitration hearing. Such information was confidential pursuant to the rules applicable to ADR in this state. The Athimoolams then submitted a “supplemental memorandum” and documents on November 22, 2023. APP 147.

Meritage filed responsive memoranda on October 30, 2023 (APP 124) and January 5, 2024 (APP 154) opposing any alteration of the October 4, 2023 Award. Meritage objected to the Athimoolams’ “motion” to the arbitrator because the FAA, and specifically 9 U.S.C. §§ 10-11, did not allow this filing by the Athimoolams with the arbitrator or that the arbitrator could modify the Award as requested by the Athimoolams. Specifically, 9 U.S.C. § 10(a) required any motion to vacate the Award be filed with the Court (and not the arbitrator), and 9 U.S.C. 11 permitted modification or correction of an Award only under limited circumstances that did not apply to the Athimoolams’ request, as found by the trial court.

The Arbitrator then completely changed the award and gave the Athimoolams Three Hundred Twenty Thousand Nine Hundred Seventeen and 63/100 Dollars (\$320,917,63) on January 23, 2024, an increase of 524%. APP 183. In response, Meritage filed a “Motion to Vacate the January 23, 2024 Arbitration Award and Motion to Reinstate the October 4, 2023 Arbitration Award” on February 2, 2024 with the Anderson County Clerk of Court. APP 210. Meritage asked the court for an order (a) vacating the purported January 23, 2024 Arbitration Award; (b) ruling the Arbitrator lacked subject matter jurisdiction to vacate or modify the October 4, 2023 Arbitration Award; (c) sanctioning Athimoolams for intentionally violating the ADR

Rules after the Arbitrator issued the October 4, 2023 award; and (d) reinstating the October 4, 2023 Arbitration Award. Id.

Judge Scott Sprouse denied the motion by order filed October 25, 2024. APP 012. Thereafter, Meritage filed a motion pursuant to Rule 59(e), SCRCF, on November 4, 2024. APP 494. Judge Sprouse denied that motion by order filed on November 6, 2024. APP 022.

Meritage then filed this appeal of the orders by Judge Sprouse filed on October 25, 2024 and November 6, 2024 and concerning the second arbitration award on January 23, 2024. Meritage received notice of the filed order denying its Rule 59(e), SCRCF, motion on November 6, 2024.

The South Carolina Court of Appeals affirmed the trial court on April 1, 2026 (APP 634), Meritage filed the Petition for Rehearing on April 15, 2026, and the Court of Appeals responded to the Petition for Rehearing with a substituted opinion on April 29, 2026 (APP 639; APP 648).

### **STATEMENT OF FACTS**

The matter between the Athimoolams and Meritage was submitted to binding arbitration to be conducted pursuant to the FAA. The “Consent Order Staying Case and Compelling Arbitration” for this matter was agreed to by both parties, filed on August 30, 2017, and stated that “Athimoolams agree that this action should be stayed and arbitration compelled pursuant to the terms of the [Construction] Agreement and the FAA.” APP 004.

Both parties used expert testimony at the September 2023 arbitration to advance their respective positions. Meritage contested the vast majority of the alleged defect claims and the amount needed to repair any defective condition. After hearing the testimony and reviewing the evidence, the Arbitrator awarded the Athimoolams Fifty-One Thousand Four Hundred Thirteen and 88/100 Dollars (\$51,413.88). The “Proof of ADR” filed on October 4, 2023 stated “Order following arbitration will be issued on or before October 4, 2023.” APP 106. The Arbitrator then emailed the Arbitration Award, which included a cover letter to the award in

which the Arbitrator stated she based “the Order ... on the testimony and evidence presented” at the September 21-22, 2023 arbitration hearing. APP 084. Importantly, the Athimoolams agreed the October 4, 2023 award from the arbitrator was the “Award” for this dispute as contemplated by the FAA.

The Athimoolams then improperly filed a motion to reconsider the Award with the arbitrator on October 16, 2023, which included the previously-discussed confidential settlement information, and supplemental memorandum and documents with the arbitrator on November 22, 2023. APP 108 and APP 147. The FAA did not permit the Athimoolams to file this motion with the arbitrator. 9 U.S.C § 11 required that motion to be filed with the Court.

Meritage opposed that motion and argued the items that are raised by this appeal. APP 124 and APP 154. Essentially, Meritage argued that the arbitrator lacked authority under the FAA and South Carolina law to change the October 4, 2023 Award and that the Athimoolams’ “intentional and blatant violation of the confidentiality provision of the applicable South Carolina Alternative Dispute Resolution Rules by including in their current motion the specific amount of the settlement between Meritage and its subcontractors should not and cannot be tolerated.” Id.

On January 23, 2024, the Arbitrator issued a second award of Three Hundred Twenty Thousand Nine Hundred Seventeen and 63/100 Dollars (\$320,917,63) by order filed January 23, 2024. Meritage then filed a “Motion to Vacate the January 23, 2024 Arbitration Award and Motion to Reinstate the October 4, 2023 Arbitration Award” on February 2, 2024. APP 210. Meritage asked the trial court for an order (a) vacating the purported January 23, 2024 Arbitration Award; (b) ruling the Arbitrator lacked subject matter jurisdiction to vacate or modify the October 4, 2023 Arbitration Award; (c) sanctioning Athimoolams for intentionally violating the ADR Rules after the Arbitrator issued the October 4, 2023 award; and (d) reinstating the October 4, 2023 Arbitration Award. Id.

Meritage argued the Arbitrator erred by (1) concluding the FAA did not apply; (2) by improperly modifying the October 4, 2023 Arbitration Award because none of

the circumstances allowing the alteration of the October 4, 2023 Arbitration Award existed under the FAA or under the South Carolina Uniform Arbitration Act; (3) the Athimoolams' motion for reconsideration did not meet the Arbitration Rules and Comprehensive Procedures of the Judicial Arbitration and Mediation Services ("JAMS"), as mandated by the contract between the parties; and (4) not sanctioning Athimoolams for the intentional and blatant violation of the confidentiality provision (Rule 8) of the South Carolina Alternative Dispute Resolution Rules by including with their motion for reconsideration the specific dollar amount of the prior confidential settlement between Meritage and its subcontractors. Id.

Judge Sprouse held a hearing on August 14, 2024 and then issued an Order on October 25, 2024 that denied Meritage's motion. APP 012. Judge Sprouse found that the Arbitrator did not meet the statutory grounds to modify the October 4, 2023 Arbitration Award, but concluded that he was restrained in vacating or modifying the January 23, 2024 second award. Id. Meritage timely filed the Rule 59(e) motion, in which it argued the trial court erred by (1) not vacating the January 23, 2024 second award after finding that the Arbitrator lacked the authority to modify the October 4, 2023 Arbitration Award (2) concluding that the October 4, 2023 Arbitration Award had to be filed with the Clerk of Court in order to be considered an official arbitration award; and (3) not assessing sanctions because of the Athimoolams' violation of the confidentiality provision (Rule 8) of the South Carolina Alternative Dispute Resolution Rules by including the specific dollar amount of the prior confidential settlement between Meritage and its subcontractors. APP 494. Judge Sprouse denied that motion, and this appeal followed. The Athimoolams did not appeal the determination that the Arbitrator's modification of the October 4, 2023 Arbitration Award was improper because it did not comply with the statutory requirements to modify an arbitration award.

### **ARGUMENT**

Meritage respectfully contends that the Court of Appeals overlooked or misapprehended the following:

- (A) The Federal Arbitration Act (“FAA”) applied to this arbitration, the Athimoolams admitted the October 4, 2023 Arbitration Award was the “Award” pursuant to the FAA, the FAA did not permit the Athimoolams’ post-Award motion to the arbitrator, and the arbitrator lacked the jurisdiction and power to alter the October 4, 2023 Award as she did; and
- (B) The Athimoolams’ intentional disclosure of confidential settlement information to the arbitrator in violation of the ADR Rule of Confidentiality, which resulted in an increase of the monetary result by 524% in their favor, should not be allowed.

**I. THE COURT OF APPEALS ERRED BY NOT VACATING THE JANUARY 23, 2024 RULING BY THE ARBITRATOR BECAUSE THE FEDERAL ARBITRATION ACT APPLIED TO THE ARBITRATION, THE FAA DID NOT PERMIT THE POST-AWARD MOTION BY THE ATHIMOOLAMS TO THE ARBITRATOR, AND THE ARBITRATOR DID NOT HAVE THE POWER UNDER THE FAA TO RULE ON THAT MOTION.**

The Federal Arbitration Act (“FAA”) applied to the arbitration. The consent order filed with the Circuit Court that referred the case to arbitration required the arbitration to be conducted pursuant to the FAA. Thus, the parties were entitled to an arbitration and post-Arbitration process that met the mandatory provisions of the FAA, which did not happen in this matter. The post-Award filing and the actions by the arbitrator after issuing the Award did not comply with the FAA. Moreover, the arbitrator incorrectly concluded that the FAA did not apply to this arbitration, which meant that she did not apply the specific mandates of the FAA to the filings or matters that occurred after the October 4, 2023 Award.

The Athimoolams acknowledged that the October 4, 2023 Award was the “Award” for this dispute. The Athimoolams’ October 16, 2023 filing submitted to the arbitrator titled “Motion for Reconsideration” stated:

Pursuant to 9 U.S.C. Code (The Federal Arbitration Act) § 9, 10, 11, the Order of Arbitration, ... Plaintiffs, Raghu and Irene Athimoolam, (hereinafter “Plaintiffs”), by and

through their undersigned attorneys and moves for reconsideration of the Arbitration Award (the “Award”) dated October 4, 2023.

APP 108. Thus, as of October 16, 2023, the Athimoolams acknowledged that the October 4, 2023 arbitration decision by the arbitrator constituted an “Award” pursuant to the FAA. Accordingly, any modification of that Award was required to comply with the specific mandates of the FAA, which did not happen.

The FAA did not permit the arbitrator to “re-decide” the same issue. Under the FAA, the arbitrator lacked subject matter jurisdiction to vacate or modify the October 4, 2023 Award because, under the FAA, only a court of competent jurisdiction can do that in certain, very limited circumstances. The governing provisions of the FAA, particularly the provisions of 9 U.S.C. §§ 10-11, did not permit the arbitrator to alter the October 4, 2023 Award as she did. These are jurisdictional requirements, which neither party waived or stated would not be applied.

9 U.S.C. § 10(a) provides that an arbitration award may be vacated by the court (not an arbitrator) only under the following circumstances:

1. where the award was procured by corruption, fraud, or undue means;
2. where there was evident partiality or corruption in the arbitrators, or either of them;
3. where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
4. where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

Further, 9 U.S.C. § 11 provides an arbitration award may be modified or corrected by the court (again, not an arbitrator) only under the following

circumstances:

- (a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.
- (b) Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted.
- (c) Where the award is imperfect in matter of form not affecting the merits of the controversy.

Accordingly, the Athimoolams' filings with the arbitrator on and after October 16, 2023 seeking relief from the October 4, 2023 Award did not comply with the FAA. Further, the arbitrator lacked jurisdiction and authority to act on those submittals. The arbitrator was required under the FAA to reject the submittals from the Athimoolams. Instead, the arbitrator acted contrary to the FAA, moved forward with the submittals, and altered the award significantly.

As the trial court noted, the reasons stated by the arbitrator to support the second award did not meet the South Carolina statutory requirements (which mirror the FAA) to modify or correcting the first award; therefore, the arbitrator did not have the power or authority to issue the second award. Further, the FAA clearly did not permit the arbitrator to alter the October 4, 2023 Award. Any modification or correction of the arbitration award had to meet the requirements of 9 U.S.C. § 11, which (1) required a court (and not the arbitrator) to modify or correct the award and (2) only allowed modification or correction by the court under a specific set of circumstances not met in this matter.

In summary, the arbitrator in this matter exceeded her powers when she:

- (1) ruled the FAA did not apply to this arbitration;
- (2) accepted the post-Award filing from the Athimoolams when the FAA required the post-Award filing to be made to a court;
- (3) moved forward with a consideration of the claims made in that post-

Award filing, including the impermissible disclosure of the amount of Meritage's settlement with its subcontractors;

- (4) refused to apply the specific terms of the FAA to her post-Award actions;
- (5) ignored the specific mandates of the FAA that did not permit the arbitrator to alter the October 4, 2023 Award;
- (6) issued a revised award that did not comply with the FAA; and
- (7) issued a revised award that did not comply with S.C. Code Ann. § 15-48-140.

Thus, this Court is required to vacate the improper second award under the applicable statutory law and/or common law because the arbitrator refused to apply the mandatory provisions of the FAA and instead decided to substantially increase the award without any regard or compliance to the FAA or any applicable South Carolina statute.

### **The FAA:**

According to the FAA, because Meritage demonstrated “one of the infirmities listed in § 10 of the [FAA]”, this Court **must** vacate the January 23, 2024 ruling. Trident Technical College v. Lucas & Stubbs, Ltd., 286 S.C. 98, 333 S.E.2d 781 (1985) (emphasis added); Smith v. Transport Workers Union of America, AFL-CIO Air Transport Local 556 374 F.3d 372 (5th Cir. 2004). Specifically, 9 U.S.C. §10(a)(4) mandates vacatur of any “modified” arbitration award after the October 4, 2023 Award. In fact, this exact issue was examined by the Fifth Circuit in Smith v. Transport Workers Union of America, AFL-CIO Air Transport Local 556 374 F.3d 372 (5th Cir. 2004).

Therein, an arbitration award was issued to the plaintiff but “[q]uestions about taxation of additional costs and the arbitration panel's authority to modify its initial award gave rise to this controversy. The arbitral panel determined that it had such authority and modified the award to tax additional costs against the [defendant], favoring [plaintiff]. In district court [plaintiff] moved to confirm the modified award

and the [defendant] opposed confirmation of the award as modified, but not the original award. The district court agreed with the [defendant] and vacated the modified award, confirming only the original award.” Id. at 374.

As noted by that court, “[a]rbitration is a matter of contract; a party cannot be required to submit to arbitration unless it agreed in advance that the dispute would be arbitrated. [Footnote omitted.] Although the law imposes a presumption in favor of arbitrability, the policy that favors resolving doubts in favor of arbitration ‘cannot serve to stretch a contractual clause beyond the scope intended by the parties or authorize an arbiter to disregard or modify the plain and unambiguous provisions of the agreement.’” Id. at 374–375.

Indeed “[t]he plain wording of the arbitration agreement contemplates that the arbitrators will not consider correcting the arbitral award at all at the behest of the parties, and forbids a correction or amendment on the arbitrators own motion more than three business days after the award. We conclude that the modification made was beyond the reach of the arbitrators' power. If an arbitral panel exceeds its authority, it provides grounds for a court to vacate that aspect of its decision.” Id. at 375.

The specific mandates of the FAA did not allow the arbitrator to act as she did. Her decision to ignore the requirements of the FAA and move forward without complying with 9 U.S.C § 11 or related provisions was not just a “procedural” move, as stated by the Court of Appeals. Her actions went well beyond any power or jurisdiction conferred to the arbitrator by the FAA. And, neither Meritage nor the Athimoolams ever waived the applicability of each provision of the FAA to this arbitration.

**South Carolina statutory law:**

S.C. Code Ann. § 15-48-130 provides that “the court shall vacate an award” when “[t]he arbitrator[] exceeded their powers.” (emphasis added). Accordingly, the Court of Appeals erred when it did not vacate the January 23, 2024 decision. The trial court correctly ruled the Arbitrator lacked authority under the South Carolina

Uniform Arbitration Act to modify the October 4, 2023 Arbitration Award; however, the trial court erred when it determined that the court did not have the ability to vacate the improper second arbitration award. S.C. Code Ann. § 15-48-130 clearly provided that path.

**Common Law:**

“The permissible common law grounds for vacating an [arbitration] award ‘include those circumstances where an award fails to draw its essence from the contract, or the award evidences a manifest disregard of the law.” Dewan v. Walia, 544 Fed. Appx. 240 (4th Cir. 2013) (emphasis added). “... [A] manifest disregard of the law is established only where the ‘arbitrator[] understand[s] and correctly state[s] the law, but proceed[s] to disregard the same.’” Id.

South Carolina courts have reversed arbitrator’s decisions when the decision constituted a “manifest disregard of the law” after the arbitrator exceeded the arbitrator’s powers. C-Sculptures, LLC v. Brown, 403 S.C. 53, 742 S.E.2d 359 (2013) (citing S.C. Code Ann. § 15-48-130 and Gissel v. Hart, 382 S.C. 235, 676 S.E.2d 320 (2009)). In C-Sculptures, LLC, the court noted “[a]n 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.” Id., 742 S.E.2d at 360. See also Waldo v. Cousins, 442 S.C. 662, 901 S.E.2d 276 (2024) (vacating arbitration award). “Manifest disregard requires that ‘(1) the applicable legal principle is clearly defined and not subject to reasonable debate; and (2) the arbitrator refused to heed that legal principle.’” Constellium Rolled Products Ravenwood, LLC v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial & Service Workers Int’l Union AFL-CIO/CLC, 18 F.4<sup>th</sup> 736 (4th Cir. 2021). Here, the arbitrator knew about the FAA, but refused to apply the FAA to the post-Award filing and the subsequent decision.

Accordingly, the Court of Appeals erred by not vacating the second award because the modification of the October 4, 2023 Award did not comply with any provision of the FAA, South Carolina statutory law, or the common law.

II. THE COURT OF APPEAL ERRED IN ALLOWING THE ATHIMOOLAMS TO INTENTIONALLY DISCLOSE CONFIDENTIAL SETTLEMENT INFORMATION TO THE ARBITRATOR, WHICH RESULTED IN AN ENORMOUS INCREASE IN THE RECOVERY AWARDED TO THE ATHIMOOLAMS.

The post-Award filing and submittals from the Athimoolams claimed the October 4, 2023 Award was:

“unsupported”

“fundamentally flawed”

reflected “a flagrant disregard of uncontroverted evidence” and showed “an improper partiality towards Meritage.”

The motion also disclosed to the trier of fact, the arbitrator that:

... Meritage ... secur[ed] settlements from the Subcontractor Defendants totaling \$350,000.00.

***To be clear: The testimony and opinions of Plaintiffs, and their experts, which the Arbitrator heard at arbitration and blithely disregarded at the request of Meritage’s counsel, is the same evidence that allowed Meritage to recover \$350,000.00 from its subcontractors.***

(emphasis in the original.)

This claim was designed solely to improperly influence the arbitrator into changing the ruling, which it obviously did because the January 23, 2024 decision increased the money to the Athimoolams by 524% from the October 4, 2023 Award. Respectfully, the Court of Appeals erred when it concluded this improper disclosure and violation of the ADR Rules did not damage Meritage. This intentional conduct not only damaged Meritage – it damaged the ADR process in this state.

Rule 8 of the ADR Rules specifically prohibited this conduct. Rule 8 of the ADR Rules very clearly stated that “any mediation communications disclosed during a mediation ... shall be confidential, and shall not be divulged by anyone in attendance at the mediation participating in the mediation” except as permitted by circumstances that do not apply here. Rule 8 further required: “The parties and any other person present or participating [in the mediation] shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence at any arbitral, judicial or other proceeding, any mediation communication disclosed in the course of a mediation ....” (emphasis added in both).

Further, ADR Rule 10(b) speaks of sanctions for conduct done “without good cause.” The disclosure on behalf of the Athimoolams was intentional, the disclosure was made specifically and directly to the ultimate decision maker, the disclosure was made with the specific purpose to alter the October 4, 2023 Award, and the party who intentionally disclosed the confidential information profited substantially (as evidenced by the increase of 524%) because of the intentional conduct. All without penalty. This conduct should not be rewarded. Clearly, Meritage disagrees with the conclusion that “no damage was done” given the humongous increase in the decision after that intentional disclosure of confidential settlement information that the arbitrator should have never known. Moreover, neither the trial court nor the Court of Appeals’ described how the conduct at issue met a “good cause” standard.

The failure to sanction a party for an intentional violation (as opposed to accidental or inadvertent disclosure) effectively eliminates moving forward any adverse consequence against anyone that intentionally discloses confidential information to the ultimate decision maker at a trial or arbitration about offers, demands, or settlements made during a mediation. To allow this result essentially renders meaningless the cautionary warning given at the start of every in mediation in this state that the mediator cannot be called as a witness at a trial or that confidential information learned during a mediation cannot and shall not be disclosed to the trier of fact.

Every mediation conducted in South Carolina includes a specific disclosure and

warning by the mediator to the parties at the start of the mediation that all mediation discussions and negotiations are confidential and that none of the discussions and negotiations held during a mediation can be disclosed at any trial or hearing. This significant guarantee of confidentiality must be enforced. Otherwise, the negative impact to every mediation to be conducted is obvious, and the negative impact to every mediation moving forward because of this conduct cannot be understated.

The rationale for the confidentiality rule is clearly designed for an open discussion of the issues and settlement offers and demands in an effort to resolve all pending claims. To allow a party who participated in a mediation to intentionally disclose the confidential settlement discussions from a mediation in an obvious and blatant effort to gain an advantage in a post-arbitration motion should never be allowed and should be sanctioned. Otherwise, the impact of this conduct will be obvious. Moving forward, any party who does not settle at a mediation and who thinks they did not prevail at a subsequent trial or arbitration will intentionally disclose mediation conversations, including offers, demands, and settlements with others, in an attempt to undo a result that the party does not like. Athimoolams' conduct runs directly in contradiction of the mediation process.

An immediate mistrial would have been required if the Athimoolams in this case had disclosed the confidential information during a trial or during the arbitration hearing. To allow the Athimoolams to disclose that information without the sanction being an immediate dismissal of their pending motion only rewarded their egregious conduct. However, our appellate courts and the applicable rules do not reward that bad faith conduct. See Jones v. Robinson, 2023-UP-369 (S.C. Ct. App. Unpublished opinion filed November 15, 2023) (holding, among other things, that sanctions were appropriate for mediation abuses pursuant to Rule 10(b), SCADR, to include “payment of attorney’s fees, neutral’s fees, and expenses incurred by persons attending the conference; contempt; *and any other sanction authorized by Rule 37(b), SCRCPL.*” (emphasis in original). Rule 37(b), SCRCPL, permits dismissal as a sanction. Here, the Athimoolams clearly acted intentionally and in bad faith. Their conduct mocks the mediation rules and should not be tolerated. Furthermore,

Athimoolams cannot credibly argue that the intentional disclosure of the confidential settlement information did not have a significant negative impact on this matter and on the mediation process in general. If the Court allows this willful and deliberate conduct to go unchecked, mediations and arbitrations throughout this state change dramatically.

The Athimoolams are and were bound by the confidentiality requirements of the ADR Rules. Their intentional violation of the confidentiality requirement can only be explained as an attempt by them to improperly gain an advantage with the Motion for Reconsideration submitted to the arbitrator, as an attempt to improperly influence the outcome of their Motion for Reconsideration, and as an attempt to prejudice Meritage. That conduct runs counter to the spirit and purpose of the ADR process. The Athimoolams took the risk of not settling at mediation and forcing this matter through arbitration. They should not now be allowed to use a confidential settlement entered into by other parties to unfairly influence an attempt to alter the arbitration award simply because they did not like the October 4, 2023 Award.

Respectfully, the determination that no damage resulted to Meritage from the intentional disclosure should be reversed as an abuse of any discretion by the trial court. Clearly, the conduct violated the applicable ADR Rules, and Meritage clearly was prejudiced by the resulting 524% increase in the ruling from the arbitrator. “An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion that is without evidentiary support.” See Hawkins v. Pathology Associates of Greenville, PA, 330 S.C. 92, 498 S.E.2d 395 (Ct. App. 1998). The intentional injection of the settlement amounts was designed to prejudice Meritage and cannot be characterized objectively as “harmless.” The arbitrator’s altered award clearly showed an influence by the settlement disclosure and her efforts to increase the award without complying with the FAA or South Carolina statutory law.

**CONCLUSION**

For these reasons, Meritage respectfully submits this Court should grant the Petition For A Writ of Certiorari.

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