RECEIVED

Jun 29 2026

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

The Honorable R. Scott Sprouse, Circuit Court Judge

Appellate Case No. 2026-001220

Raghu Athimoolam and Irene Athimoolam .... Respondents,

v.

Meritage Homes of South Carolina Inc. .... Appellant.

RESPONDENTS' RETURN TO PETITION FOR WRIT OF CERTIORARI

Robert T. Lyles, Jr. (SC Bar No. 10299)
Joseph Daniel Winterstein (SC Bar No. 105344)
Lyles & Associates, LLC
2113 Middle Street, Suite 202
Sullivan's Island, SC 29492
(843) 577-7730
rtl@lylesfirm.com
jdw@lylesfirm.com
Attorneys for Respondents,
Ragu Athimoolam and Irene Athimoolam

Other Counsel of Record:

David S. Cobb (SC Bar No. 66569)
Turner Padget
Post Office Box 22129
Charleston, SC 29413
(843) 576-2803
dcobb@turnerpadget.com
Attorney for Appellant,
Meritage Homes of South Carolina, Inc.

TABLE OF CONTENTS

QUESTIONS PRESENTED

Appellant Meritage Homes of South Carolina Inc. ("Meritage") poses the following questions presented includes three (3) subparts. Broken down, the questions presented to this Court are:

1) Whether the Court of Appeals erred by not vacating the Arbitrator's Order;

2) Whether the Court of Appeals erred by not overruling the Arbitrator's authority to decide issues related to the merits of the final decision and on procedural questions that grow out of the dispute;

3) Whether the Court of Appeals erred in holding the circuit court did not abuse its discretion in refusing to award sanctions.

The questions presented by Meritage rest on the unsupported premise that the October 4, 2023, Award was a final order. The circuit court rejected that argument, and the Court of Appeals did not address it. Meritage failed to raise the issue in its petition for rehearing, leaving the circuit court's determination undisturbed and rendering the issue unpreserved for further appellate review. Stated differently, the determination that the October 4, 2023, Award was not final has not been appealed. Accordingly, whether the October 4, 2023, Award was a final order is not an issue properly before this Court. The Court cannot reach the merits of Meritage's appeal because that issue was neither ruled upon by the Court of Appeals nor preserved for review.

STATEMENT OF THE CASE

This construction defect case concerns a newly-constructed home purchased by Irene and Ragu Athimoolam (the "Athimoolams") from Meritage.

The Athimoolams filed a complaint against Meritage on February 2, 2017 (R. pp. 23-28), and an Amended Complaint on March 3, 2017 (the "Complaint") (R. pp. 29-24) asserting claims of Negligence/Gross Negligence, Breach of Implied Warranty of Service, and Breach of the Implied Warranty of Habitability. (*See generally,* Amended Complaint ¶¶ 1-19.) (R. pp. 30-33.)

Meritage filed a Motion to Compel Arbitration, which was ultimately consented to on August 30, 2017, and the case was submitted to binding arbitration. (R. pp. 1-3.)

On February 11, 2020, Meritage asserted third-party claims (in Circuit Court) against a number of its subcontractors ("Subcontractor Defendants"). (*See* Meritage's Answer to Amended Complaint and Third-Party Complaint.) (R. pp. 62-73.) Those claims were never subject to the arbitration between the Athimoolams and Meritage. Meritage ultimately settled its third-party claims with the Subcontractor Defendants directly, and a Stipulation of Dismissal was filed on July 12, 2023. (July 12, 2023, Stipulation of Dismissal.) (R. pp. 76-80.) As part of that action, Meritage collected Three Hundred Fifty Thousand and No/100 Dollars ($350,000.00) from the Subcontractor Defendants, which is reflected in the Non-Confidential Settlement Agreement between Meritage and those subcontractors (Exhibit 3 to the Athimoolams' Memorandum in Opposition to Motion to Vacate filed March 20, 2024). (R. pp. 423-430.) The Athimoolams were not a party to those negotiations or the Settlement Agreement. Meritage and the Athimoolams were not able to settle their claims.

Arbitration was held on September 23-24, 2023. Following the hearing, the Arbitrator issued her initial Award on October 4, 2023. (the "Initial Award"). (R. pp. 81-104.) The Arbitrator held the record open and invited feedback on the Initial Award because the arbitration was conducted without a court reporter: "I have tried to be meticulous in recalling the testimony and evidence without the assistance of an official transcript. However, if you believe I have misstated the facts, please advise." (R. p. 81).[1]

The Athimoolams immediately filed a Motion to Reconsider, based on numerous grounds set forth therein (October 16, 2023, Motion to Reconsider). (R. pp. 105-120.) Both parties

[1] Neither the Arbitrator, Meritage, nor the Athimoolams filed the Initial Award with the trial court.

submitted memorandums (the Athimoolams' October 16, 2023, Motion for Reconsideration and Memorandum in Support (R. pp. 109-120), Meritage's October 30, 2023, Memorandum in Opposition (R. pp. 121-143)). After careful review of the law and the evidence presented at the arbitration, the Arbitrator requested a hearing with the parties which was held on November 17, 2023, via Zoom. (November 11, 2023, Letter from the Athimoolams following hearing). (R. pp. 144- 150). Meritage appeared at that hearing and argued its positions in opposition to the Athimoolams' Motion to Reconsider, never objecting to the jurisdiction of the Arbitrator to conduct the hearing or reconsider her Initial Award. Notably, Meritage did not argue the Arbitrator lacked authority to reconsider the Initial Award until its Motion to Vacate. Rather, Meritage continued to submit to the Arbitrator's jurisdiction and participated in the proceedings. (January 8, 2024, Email Exchanges). (R. pp. 569-571.)

The Arbitrator issued her final award, and filed it with the trial court, on January 23, 2024 (the "Final Award"). (R. pp. 180-206.) The Arbitrator found in the Final Award, the FAA was not applicable, and no aspect of the arbitration was administered by Judicial Arbitration and Mediation Services ("JAMS"), which was the arbitration procedure called for in Meritage's sale contract. (Final Award at 1.) (R. p. 180.).

On February 2, 2024, Meritage filed a Motion to Vacate the January 23, 2024, Arbitration Award and Motion to Reinstate the October 5, 2023, Arbitration Award. (February 2, 2024, Motion to Vacate). (R. pp. 207-355.) Both parties submitted memorandums, and a hearing was conducted on August 8, 2024. (March 20, 2024, the Athimoolams' Memorandum in Opposition (R. pp. 356-487)) (February 2, 2204, Meritage's Motion to Vacate (R. 207-355)). Following the August 8, 2024, hearing, the trial court remanded this matter to the Arbitrator for clarification. (September 5, 2024, Order.) (R. pp. 6-8.) Again, Meritage did not object to the Arbitrator's jurisdiction. The

Arbitrator filed a letter on October 3, 2024 (October 3, 2024, Letter from Arbitrator.) (R. pp. 574-575.) On October 25, 2024, Judge Sprouse denied Meritage's Motion (October 25, 2024, Order). (R. pp. 9-18.) On November 4, 2024, Meritage filed its Motion to Reconsider pursuant to Rule 59, *SCRCP*. (November 4, 2024, Motion.) (R. pp. 488-496.) The Motion was denied on November 6, 2024. (November 6, 2024, Order.) (R. pp. 19-22.) The South Carolina Court of Appeals affirmed the circuit court and denied Meritage's petition for reconsideration. Meritage now seeks further review.

STATEMENT OF THE FACTS

This action was brought by the Athimoolams and involves construction deficiencies associated with development, construction, and sale of the Athimoolams' residence located at 116 Aerial Way, Easley, South Carolina, 26462 (the "Home"). Meritage was the developer, seller, and general contractor for the construction of the Home, and ultimately attempted and performed certain repairs (Amend. Compl., ¶¶ 3, 5). (R. pp. 30-31.). The defects at issue in the claim include water intrusion, premature degradation of components, structural deficiencies, the presence of mold and mildew, and latent and previously undiscoverable deficiencies (Amend. Compl., ¶ 6). (R. p. 31.) Many of these problems are the results of defects and building code violations. Meritage knew or should have known of these defects for several reasons, including its post-construction repair efforts at the Home. (R. p. 31.) The Athimoolams' claimed damages exceeded $700,000 and the Arbitrator awarded $320,917.63.

STANDARD OF REVIEW

Generally, an arbitration award is conclusive and courts will refuse to review the merits of an award. *Gissel v. Hart*, 382, S.C. 235, 241, 676 S.E.2d 320, 323 (2009). "[T]he scope of judicial review for an arbitrator's decision 'is among the narrowest known at law because to allow full scrutiny of such awards would frustrate the purpose of having arbitration at all . . . .'" *Group III Mgmt. v. Suncrete of Carolina, Inc.*, 425 S.C. 141, 819 S.E.2d 781 (Ct. App. 2018) (quoting *Three S Del., Inc. v. DataQuick Info. Sys., Inc*, 492 F.3d 520, 527 (4th Cir. 2007). The award is presumptively correct, and "[i]t is the general rule that the courts will refuse to review the merits of an arbitration award" *Trident Technical College v. Lucas & Stubbs, Ltd.*, 286 S.C. 98, 333 S.E.2d 781 (1985) (quoting *Newarks Stereotypes' Union No. 18 v. Neward Morning Ledger Co.*, 261 F.Supp, 832 (D.N.J. 1966), *aff'd* 397 F.(2d) 594 (3d Cir. 1968), *cert. denied*, 393 U.S. 954, 89 S.Ct. 378, 21 L.Ed (ed) 365 (1968).

"[C]ourts defer to the arbitral panel both on the merits of the final decision **and on procedural questions that 'grow out of the dispute,' even where those questions 'bear on its final disposition.'**" *Group III Mgmt. v. Suncrete of Carolina, Inc.*, 425 S.C. 141, 819 S.E.2d 781 (Ct. App. 2018) (quoting *UBS Fin. Servs., Inc*, 842 F.3d 336, 339 (4th Cir. 2016)) (emphasis supplied).

Generally speaking, "[a]n award within the scope of submission is conclusive on fact issues and interpretation of law." *Trident Technical College v. Lucas & Stubbs, Ltd.*, 286 S.C. 98, 333 S.E.2d 781 (1985) (quoting *Oinoussian Steamship Corp. v. Sabre Shipping Cort.*, 224 F. Supp. 807, 809 (D.N.Y 1963) (footnote omitted). Additionally, [cases vacating an arbitration awarded where there is a manifest disregard of the law] requiring circumstances far more egregious than mere errors in interpreting or applying the law. *Trident Technical College c. Lucas & Stubbs, Ltd.*, 286 S.C. 98, 333 S.E.2d 781 (1985).

"Manifest disregard of the law occurs when the arbitrator knew of a governing legal principle yet refused to apply it, and the law disregarded was well defined, explicit, and clearly applicable to the case." *Bazzle v. Green Tree Fin. Corp.*, 351 S.C. 244, 268, 569 S.E.2d 349, 361

(2002), *vacated and remanded on other grounds*, 539 U.S. 444, 156 L. Ed. 2d 414, 123 S. Ct. 2402 (2003).

An arbitrator exceeds his powers and authority when he attempts to resolve an issue that is not arbitrable because it is **<u>outside the scope of the arbitration agreement</u>**. *See, e.g., United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, S. Ct. 1358, 4 L. Ed. (2d) 1424 (1960) (emphasis added).

Under the FAA, 9 U.S.C. §10 (a), grounds for vacating an arbitration award **<u>by the Court</u>** are only allowed when:

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 arbitrator exceeds 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 states modification or correction to an award **<u>by the Court</u>** can be made when:

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.

d. The order may modify and correct the award, so as to effect the intent thereof and promote justice between the parties.

Similarly, under the SCUAA an arbitration award can only be vacated **by the Court** when one of the following is met:

1. The award was procured by corruption, fraud or other undue means;

2. There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;

3. The arbitrators exceeded their powers;

4. The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of Section 15-48-50, as to prejudice substantially the rights of a party; or

5. There was no arbitration agreement and the issue was not adversely determined in proceedings under Section 15-48-20 and the party did not participate in the arbitration hearing without raising the objection.

S.C. Code Ann. §15-48-130 (a). Further, modification of an arbitration award **by the Court** is allowed only when:

1. There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;

2. The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

3. The award is imperfect in a matter of form, not affecting the merits of the controversy.

S.C. Code Ann. §15-48-140.

A court's mandate under the plain language of both acts is that confirmation "shall" or "must" be made in the absence of grounds for warranting vacating, modifying, or correcting the award. Confirmation is a ministerial act of recording the results of the arbitration. *Henderson v. Summerville Ford-Mercury, Inc.*, 405 S.C. 440, 748 S.E.2d 221 (2013).

Under the SCUAA, a party may move the circuit court to confirm an award, vacate an award, or modify or correct an award. S.C. Code Ann. §§15-48-10 et seq. "If the application to vacate is denied . . . the court **shall confirm the award**" (S.C. Code Ann. §15-48-130 (d)).

When reviewing judge's order of sanctions, the appellate court takes its own view of the facts. "[W]here the appellate court agrees with the trial court's findings of fact, it reviews the decision to award sanctions, as well as the terms of those sanctions, under an abuse of discretion standard." An abuse of discretion may be found if the trial court's conclusions lack reasonable factual support. *Ex Parte Bon Secours St. Francis Xavier Hosp., Inc*, 393 S.C. 590, 597, 713 S.E.2d 624, 628 (2011) (internal citations omitted).

REASONS FOR DENYING MERITAGE'S PETION

This Court should deny Meritage's Petition because it presents no legitimate questions for this Court's consideration. This case presents no "special and important" reasons that warrants a writ of certiorari. *See* Rules of Appellate Practice, 242 (b). This is largely because the trial court and the Court of Appeals both correctly declined to reverse the decisions of the Arbitrator who unquestionably made rulings of law, facts and procedural issues in the case that was submitted to her. Additionally, Meritage failed to preserve an issue fundamental to its appeal, that the Arbitrator's Initial Award was not "final", as Meritage contends. Since the trial Court's finding that the Initial Award was not "final", and Meritage has not preserved that issue, it is the law of the case which is fatal to Meritage's argument. Even if properly preserved, the circuit court and Court of Appeals properly denied Meritage's requested relief.

I. Meritage's Questions Presented Are Not Properly Before This Court Because the Determination That The Initial Award Was Not Final Is Not Preserved for Appeal.

Meritage's argument rests upon Meritage's belief that the Arbitrator's Initial Award was final and must be effectively reinstated. However, the law of the case is that the Initial Award was not final, a specific finding by the trial court. (R. p. 19). Since the Initial Award was not final, there is nothing Meritage can ask the Supreme Court to reinstate.

Critically, Meritage did not preserve the issue of the finality of the Initial Award. As a threshold matter, the law of the case is that "there was no finality on the October 4, 2023 Award" is not preserved for review. (R. p. 19). It is well settled law that issues not properly preserved for review cannot be considered by the Supreme Court:

> An issue not raised to or addressed by the trial court or the Court of Appeals is not properly preserved for review by the Supreme Court on certiorari. *See Anonymous v. State Bd. of Medical Examiners*, 329 S.C. 371, 496 S.E.2d 17 (1998); *Camp v. Springs Mfg. Corp.*, 310 S.C. 514, 426 S.E.2d 304 (1993) (issue not preserved for appeal where the Court of Appeals did not address the issue and petitioner did not petition for rehearing for the court to consider it). "Only those questions raised in the Court of Appeals and in the petition for rehearing shall be included in the petition for writ of certiorari as a question presented to the Supreme Court." Rule 226(d)(2), SCACR (emphasis added).

Kleckley v. Northwestern Nat'l Cas. Co., 338 S.C. 131, 138, 526 S.E.2d 218, 221 (2000).

The Court of Appeals Opinion was silent as to the circuit court's finding that there was no finality to the Initial Award. In fact, the Court of Appeals' Opinion does not address the finality of the Initial Award. Instead, the Court of Appeals entire analysis is "[r]egardless of whether the Initial Award was final - and regardless of whether the arbitrator erred by "modifying" the Initial Award - the arbitrator neither exceeded her power nor manifestly regarded the law as [Meritage] asserts. (Footnote omitted).

Meritage did not include in its Petition for Rehearing that the Court of Appeals erred in not ruling on whether the Initial Award was final. Rather, Meritage's petition for rehearing included, in pertinent part, only that the arbitrator lacked authority under the FAA to alter the award. Whether the arbitrator had authority to alter an award is of no consequence because there must be a final award to alter. The circuit court clearly found the Initial Award was not final.

Therefore, whether the Initial Award, order was final or not is not preserved for review by the Supreme Court. Consequently, Meritage's questions presented are moot and there is nothing for this Court to consider.

II. Even if the Questions Presented Were Properly Preserved, the Court of Appeals Correctly Affirmed the Trial Court's Denial of Meritage's Motion to Vacate.

Even assuming arguendo, the issue was properly preserved and the Initial Award was final, the Court of Appeals and the circuit court correctly (1) refused to vacate or restrict the Final Award; and (2) held the Arbitrator acted within her scope and powers when she held the record open, requested, and received, additional evidence and arguments.

A. The Court of Appeals and the Trial Court Properly Refused to Vacate or Restrict the Final Award.

The Court of Appeals correctly affirmed that no scenario existed for it to vacate or restrict the Final Award. Grounds for court intervention of an arbitration award are limited, and do not apply here. Generally, an arbitration award is conclusive, and courts will refuse to review the merits of an award. *Gissel v. Hart*, 382, S.C. 235, 241, 676 S.E.2d 320, 323 (2009). "[T]he scope of judicial review for an arbitrator's decision 'is among the narrowest known at law because to allow full scrutiny of such awards would frustrate the purpose of having arbitration at all . .

..’” *Group III Mgmt. v. Suncrete of Carolina, Inc.*, 425 S.C. 141, 819 S.E.2d 781 (Ct. App. 2018) (quoting *Three S Del., Inc. v. DataQuick Info. Sys., Inc*, 492 F.3d 520, 527 (4th Cir. 2007).

The award is presumptively correct, and “[i]t is the general rule that the courts will refuse to review the merits of an arbitration award” *Trident Technical College v. Lucas & Stubbs, Ltd.*, 286 S.C. 98, 333 S.E.2d 781 (1985) (quoting *Newarks Stereotypes’ Union No. 18 v. Neward Morning Ledger Co.*, 261 F.Supp, 832 (D.N.J. 1966), *aff’d* 397 F.(2d) 594 (3d Cir. 1968), *cert. denied*, 393 U.S. 954, 89 S.Ct. 378, 21 L.Ed (ed) 365 (1968). The grounds for a Court vacating an arbitration award are nearly identical whether the FAA or SCUAA applies.

Under the FAA, 9 U.S.C. §10 (a), grounds for vacating an arbitration award **by the Court** are only allowed when:

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 arbitrator exceeds 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 states modification or correction to an award **by the Court** can be made when:

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.

d. The order may modify and correct the award, so as to effect the intent thereof and promote justice between the parties.

Similarly, under the SCUAA an arbitration award can only be vacated **by the Court** when one of the following is met:

1. The award was procured by corruption, fraud or other undue means;

2. There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;

3. The arbitrators exceeded their powers;

4. The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of Section 15-48-50, as to prejudice substantially the rights of a party; or

5. There was no arbitration agreement, and the issue was not adversely determined in proceedings under Section 15-48-20 and the party did not participate in the arbitration hearing without raising the objection;

S.C. Code Ann. §15-48-130 (a). Further, modification of an arbitration award **by the Court** is allowed only when:

1. There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;

2. The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

3. The award is imperfect in a matter of form, not affecting the merits of the controversy.

S.C. Code Ann. §15-48-140.

No scenario exists for judicial intervention in the Final Award, and the Court of Appeals properly affirmed the trial court's denial of Meritage's request. (October 25, 2024, Order (R. pp. 9-18)); (November 6, 2024, Order (R. pp. 19-22)). Further, the Court of Appeals correctly affirmed the Arbitrator was within her right to receive additional evidence. (October 25, 2024, Order (R. pp. 9-18)); (November 6, 2024, Order (R. pp. 19-22)).

When a dispute is submitted to arbitration, the arbitrator determines questions of both law and fact. *Gissel*, 382, S.C. at, 241. Further, "[C]ourts defer to the arbitral panel both on the merits of the final decision **and on procedural questions that 'grow out of the dispute,' even where those questions 'bear on its final disposition.'**" *Group III Mgmt. v. Suncrete of Carolina, Inc.*, 425 S.C. 141, 819 S.E.2d 781 (Ct. App. 2018) (quoting *UBS Fin. Servs., Inc*, 842 F.3d 336, 339 (4th Cir. 2016)) (emphasis supplied). Contrary to Meritage's contention, an Arbitrator is vested with authority to determine when her award becomes final, after taking up the arguments and evidence she wishes to consider. In this case, the January 23, 2024 Final Award was her final decision relating to this case, and both the Court of Appeals and the trial court correctly agreed.

The Court of Appeals correctly affirmed the deferral to the arbitrator both on the merits of the final decision and on procedural questions that 'grow out of the dispute,' even where those questions 'bear on its final disposition'." (October 25, 2024, Order (R. pp. 9-18)); (November 6, 2024, Order (R. pp. 19-22)). Similarly, this Court should not disturb the Arbitrator's findings. Judicial intervention in this case frustrates the purpose of arbitration and Meritage's requests must be denied.

B. The Court of Appeals and Trial Court Properly Found the Arbitrator Had Authority to Reconsider Her Award.

In the Final Award, the Arbitrator specifically found that there was no finality in the Initial Award. (January 23, 2024, Order (R. pp. 180-206)). The trial court correctly held the Arbitrator acted within her scope and there was no finality in the Initial Award (October 25, 2024, Order (R. pp. 9-18)); (November 6, 2024, Order (R. pp. 19-22)). So long as she retained jurisdiction and ruled on what was in the scope of the arbitration, she was free to reconsider the evidence and law, alter or change her own non-final awards, withdraw them or vacate them.

An arbitrator exceeds his powers and authority when he attempts to resolve an issue that is not arbitrable because it is **<u>outside the scope of the arbitration agreement</u>**. *See, e.g., United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, S. Ct. 1358, 4 L. Ed. (2d) 1424 (1960) (emphasis added). Here, the Arbitrator's Final Award resolved the issue that was submitted to arbitration.

To be clear, Meritage continues to take the irrational position that the Arbitrator was legally precluded from changing her mind about her decision in response to the Athimoolams' Motion to Reconsider, despite asking for a response from both parties at the time she issued the Initial Award and still having jurisdiction of the matter. (Meritage's February 2, 2024, Motion (R. pp. 207-355)). In Meritage's view, once the Initial Award was sent to the parties when the Arbitrator hit "Send" by email, the die was cast for the Arbitrator and she was, at that instant, precluded from doing anything with the matter over which she still had jurisdiction. Nothing in any applicable rules provides that. An arbitrator, like a court, is free to consider and reconsider arguments and evidence as long as they have jurisdiction and do so in comportment with applicable rules. (October 25, 2024, Order (R. pp. 9-18)); (November 6, 2024, Order (R. pp. 19-22)).

The arbitration agreement, and further, the Consent Order Staying Case and Compelling Arbitration, grants the authority and power to the Arbitrator to decide the merits of this case, including procedural matters "**that 'grow out of the dispute,' even where those questions 'bear on its final disposition'**" *Group III Mgmt.* 425 S.C. 141.

Somehow, after drafting the arbitration agreement, consenting to arbitration in this matter, and being dissatisfied with the result after all facts, testimony, and evidence was properly considered, Meritage wants this Court to overrule the Court of Appeals and circuit court and conclude that the Arbitrator acted outside the powers and authority granted to her, not only by the trial court, but by the **consent of Meritage**. (August 30, 2017, Order.) (R. pp. 1-3.) To allow this type of argument and position completely undermines the purpose of arbitration and would render arbitration pointless, and the trial court correctly found the Arbitrator acted within her right.

Our courts have consistently held that "Arbitrators do not act as junior varsity trial courts where subsequent appellate review is readily available to the losing party." *Group III Mgmt.* 425 S.C. 141 (quoting *Remmey v. PaineWebber, Inc*, 32 F.3d 143, 146 (4th Cir. 1994). The Court of Appeals and trial court properly refused to undermine the Arbitrator and act as the "Varsity Team." This Court should do the same.

The Athimoolams submitted a Motion to Reconsider on October 16, 2023. (October 16, 2024, Motion to Reconsider.) (R. pp. 105-120.) Rather than seeking to confirm the preliminary arbitration award, Meritage continued to engage in the arbitration proceedings, continued to submit motions and memoranda, continued to participate in hearings, and continued to submit and consent to the jurisdiction of arbitration. (Meritage's October 30, 2023, Memorandum in Opposition.) (R. pp. 121-143.) The continued argument by counsel for Meritage at this juncture that the Arbitrator lacked authority, or lacked jurisdiction, is disingenuous as Meritage's action evidence its consent to the Arbitrator's continued assertion and assumption of its jurisdiction of this matter. Any argument that the Arbitrator did not have the power to rule on the very issue submitted to her is devoid of logic and must not be considered by this Court.

The Court of Appeals and trial court properly found the Arbitrator acted within her power and scope.

III. The Court of Appeals Correctly Affirmed the Trial Court's Denial of Meritage's Request for Sanctions.

The Court of Appeals correctly affirmed the trial court's refusal to impose sanctions on the Athimoolams. (November 6, 2024, Order.) (R. pp. 19-22.) Meritage continues to misrepresent the nature of the Athimoolams' disclosure. The Athimoolams became aware that Meritage settled its claims with its Subcontractor Defendants through the normal course of litigation.

As evidenced by the pleadings, Meritage brought third-party claims against its Subcontractor Defendants. The Athimoolams did not bring any direct actions against any party other than Meritage (*see generally*, Amend. Compl.). (R. pp. 29-34.) Meritage settled its claims with its Subcontractor Defendants, executed the Settlement Agreement (the terms of which Meritage likely drafted and unquestionably agreed to) and filed a Stipulation of Dismissal (July 12, 2023, Stipulation of Dismissal). (R. pp. 76-80.)

The Athimoolams brought no direct claims against the Subcontractor Defendants and were not a party to the Settlement Agreement or the negotiations leading to the settlement between Meritage and its subcontractors. The Athimoolams received ***nothing*** from that settlement. (Exhibit 3 to the Athimoolams' March 20, 2024, Memorandum in Opposition to Motion to Vacate). (R. pp. 423-430.)

The dismissal of Meritage's claims against its Subcontractor Defendants is a matter of public record, and the Settlement Agreement does not contain any confidentiality provision (which would not be binding on the Athimoolams even if it were, since the Athimoolams were not parties to that agreement). (July 12, 2023, Stipulation of Dismissal.) (R. pp. 76-80.)

Meritage's logic is misguided and non-sensical, and the trial court correctly refused to award sanctions. In making that argument, Meritage wrongly conflates protected settlement discussions (of which the Athimoolams were not even a party and did not disclose) with the non-protected final settlement terms (which the Athimoolams received when the settlement between Meritage and its subcontractors was final as evidenced by the non-confidential settlement agreement).

"Rule 8 is designed to protect the communications **made during the mediation itself** and to protect the process . . . Further, any confidential matters the parties do not want disclosed can be protected through court proceedings including confidentiality provisions." *Huck v. Oakland Wings, LLC,* No. 5500, 2018 S.C. App. LEXIS 22 (Ct. App. Mar 28, 2018) (emphasis added). Had Meritage wanted to conceal the settlement terms, it could have done so and could have made the Athimoolams parties to that agreement in exchange for some valid consideration, none of which occurred. Further, Meritage could have taken steps to ensure that its non-confidential settlement agreement was not provided to the Athimoolams.

All information disclosed by the Athimoolams is discoverable, and disclosure of that information is neither improper nor sanctionable. If the settlement terms were not relevant or admissible, that is a decision that was within the authority of the Arbitrator to decide which she did. (Finding, in her Final Award, the following relative to the information regarding the settlement: "[a]t no time during the Arbitration was the Arbitrator aware of any monetary recovery by defendant Meritage against any subcontractors brought in as third-party defendants. Accordingly, this Order will only reflect the testimony of lay and expert witnesses and evidence presented during arbitration and an analysis of the applicable law." (January 23, 2024, Final Award at p. 2.) (R. p. 181.) The trial court correctly noted that no consideration was given to this information.

Not only that, but it is also common practice for a court (in both jury and nonjury matters), or an arbitrator (like in the present matter), to know of settlements between parties in a case to consider set-off, contribution and other similar issues. In addition, in appropriate circumstances, attorneys routinely tell not just courts, but juries, that certain parties to litigation have settled in order to make what is commonly referred to as "empty chair" arguments.

None of the Athimoolams' actions violated any ADR Rule. In fact, it is **Meritage who has violated the ADR Rule**s by continually to include in its brief and arguments that Meritage offered, and the Athimoolams rejected, the monies collected from its Subcontractor Defendants **as part of the mediation process**. *See e.g.* Meritage Petition for Writ at p. 4. If sanctions, should be imposed, they **should be imposed on Meritage** for making an obviously fallacious argument, not once but now three times, while at the same time being the one to violate the ADR Rules.

As noted above, the Arbitrator expressly held that she did not consider the settlement evidence. (January 23, 2024, Final Award.) (R. pp. 180-206.) Thus, even if the provision of the non-confidential settlement information to the Arbitrator was in error, which the Athimoolams deny, it is well settled that South Carolina Courts shall disregard harmless errors. *See* Rule 61, South Carolina Rules of Civil Procedure ("No error in either the admission or exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.")

CONCLUSION

In sum, Meritage presents no question that preserved for review and this Court. Even if properly preserved, the Court of Appeals properly affirmed the Arbitrator was within her right to reconsider her award. Meritage presents no compelling evidence or argument that the Arbitrator ruled on anything outside of her scope. Further, and more importantly, Meritage cannot (and does not even attempt to) show the trial court abused its discretion in refusing to award sanction. The trial court's order must therefore be affirmed.

Respectfully submitted,

s/Robert T. Lyles, Jr.

Robert T. Lyles, Jr. (SC Bar No. 10299)
Joseph Daniel Winterstein (SC Bar No. 105344)
Lyles & Associates, LLC
2113 Middle Street, Suite 202
Sullivan's Island, SC 29492
(843) 577-7730
rtl@lylesfirm.com
jdw@lylesfirm.com
Attorneys for Respondents,
Ragu Athimoolam and Irene Athimoolam

June 29, 2026
Sullivan's Island, South Carolina