

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas
Carmen T. Mullen, Circuit Court Judge

Case No. 2025-CP-27-00433
Appellate Case No. 2026-000932

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SC Court of Appeals

Karen Stevenson and Richard P. Philipot,

Respondents,

v.

Village Park Home, LLC, Howe Contracting,
LLC d/b/a Howe Roof, and Steve Campigotto,

Defendants,

of which

Village Park Home, LLC is the,

Appellant,

and

Howe Contracting, LLC d/b/a Howe Roof and
Steve Campigotto,

Third-Party Plaintiffs,

v.

Hernandez Roofing,

Third-Party Defendants.

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE CIRCUIT COURT ERR IN DEFINING THE SCOPE OF THE ARBITRATION AGREEMENT AS ENCOMPASSING THE ENTIRETY OF SECTION 10 OF THE PURCHASE AND SALE AGREEMENT (SECTIONS 10(A) THROUGH 10(D)) RATHER THAN CONFINING IT TO SECTION 10(C), THE PROVISION EXPRESSLY TITLED “ARBITRATION AGREEMENT,” IN VIOLATION OF THE SEPARABILITY DOCTRINE?
- II. DID THE CIRCUIT COURT ERR IN FINDING THE ARBITRATION AGREEMENT UNCONSCIONABLE WHEN, PROPERLY CONFINED TO SECTION 10(C) ALONE, THE PROVISION CONTAINS NO UNCONSCIONABLE TERMS?

STATEMENT OF THE CASE

This appeal arises from a residential construction dispute. Respondents Karen Stevenson and Richard P. Philpot purchased a home at 18 Garden Row Drive North, Hardeeville, South Carolina, in the Magnolia Walk community, from Appellant Village Park Homes, LLC, improperly named Village Park Home, LLC (“Village Park”). The Purchase and Sale Agreement (“PSA”) was executed on April 30, 2021 via DocuSign, with a purchase price of \$297,321.00.

On July 28, 2025, Respondents filed a Summons and Complaint alleging roofing defects and asserting claims for negligence, gross negligence, breach of implied warranty of service, breach of express and implied warranty of merchantability, unfair and deceptive trade practices, negligent misrepresentation, and a declaratory action seeking to have the arbitration clause declared unconscionable.

Village Park filed its Answer and Crossclaims, as well as a Motion to Dismiss, Compel Arbitration, or in the Alternative to Stay Proceedings pursuant to the Federal Arbitration Act (“FAA”) and the South Carolina Notice and Opportunity to Cure Construction Dwelling Defects Act, S.C. Code Ann. § 40-59-810 *et seq.* (the “Motion” or “Motion to Compel”). Defendants Howe Contracting, LLC d/b/a Howe Roof and Steve Campigotto filed their Answer and Third-Party Complaint against Hernandez Roofing. Thereafter, Village Park filed its Memorandum in Support

of the Motion to Compel Arbitration, and Respondents filed their Memorandum in Opposition.

On December 18, 2025, the circuit court conducted a hearing on Village Park's motions by WebEx before the Honorable Carmen T. Mullen. The court heard argument from counsel for all parties and took the matter under advisement. (Tr. 22:19-22.)

On March 4, 2026, the circuit court issued its Order denying Village Park's Motion to Dismiss and Motion to Compel Arbitration. The court found that the arbitration provision encompassed the entirety of Section 10 (Sections 10(a) through 10(d)) of the PSA, rather than Section 10(c) alone, and that the provision so defined was both procedurally and substantively unconscionable. (Order 4-9.) The court granted Village Park's alternative Motion to Stay proceedings pending Respondents' compliance with the Notice and Opportunity to Cure Act. (Order at 9-10.)

On March 16, 2026, Village Park timely filed a Motion to Alter or Amend the Court's Order pursuant to Rule 59(e), SCRCp. Two days later, on March 18, 2026, the circuit court denied Village Park's Motion to Alter or Amend without further hearing.

On April 15, 2026, Village Park timely filed a Notice of Appeal from the March 4, 2026 Order and the March 18, 2026 Order.

STATEMENT OF FACTS

Respondents Karen Stevenson and Richard P. Phlipot entered into a Purchase and Sale Agreement ("PSA") via DocuSign with Village Park for the purchase of a home in the Magnolia Walk community. (Mot. Ex. 1.) Village Park was the general contractor for constructing the residence purchased by Respondents. (Compl. ¶ 8.)

The very first page of the PSA prominently displays the following notice in bold, capitalized, large-font text a notice that the Agreement is subject to binding arbitration. (*Id.*; Tr.

6:7-12, 10:18-22.)

Section 10 of the PSA is titled “New Home Warranty Security Plan” and contains four lettered parts. (Mot. Ex. 1, § 10.) Section 10(a) addresses Village Park’s membership in the Quality Builders Warranty Program and the ten-year limited warranty. (*Id.* at § 10(a).) Section 10(b) addresses acknowledgment and receipt of the warranty sample. (*Id.* at § 10(b).)

Critically, Section 10(c) is separately and distinctly titled “Arbitration Agreement.” (*Id.* at § 10(c).) It provides, in pertinent part:

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.

(*Id.*)

Section 10(c) further provides that the claimant selects the arbitration service from a choice of the American Arbitration Association, DeMars & Associates, Ltd., or another mutually agreeable service. (*Id.*) The provision expressly states that it “involves and concerns interstate commerce and is governed by the provisions of the Federal Arbitration Act (9 U.S.C. Section 1, *et seq.*), to the exclusion of any different or inconsistent state or local law, ordinance or judicial rule.”

(*Id.*)

Notably, Section 10(c) makes no reference whatsoever to the warranty provisions in Section 10(a) or 10(b), to the Limited Warranty Agreement, or to any limitation on remedies or statutes of limitation. It is a freestanding provision devoted exclusively to the method, forum, and governing law of dispute resolution. (*Id.*; Tr. at 6:15-21.)

Section 10(d), titled “Exclusive Remedy Agreement,” is a separate provision. (Mot. Ex. 1, § 10(d).) It provides that, effective one year from closing, the purchaser waives the right to seek

damages from Village Park and its subcontractors for any defect to the home, with the purchaser's exclusive remedy being the coverage provided in the Quality Builders Limited Warranty. (*Id.*) Section 10(d) contains the phrase "[t]he 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." (*Id.*; Tr. at 7:1-4.) This state-law reference stands in direct contrast to Section 10(c)'s express invocation of the FAA "to the exclusion of any different or inconsistent state or local law." (Mot. Ex. 1, § 10(d); Tr. at 7:6-18.) Moreover, Section 10(d) uses the phrase "*the agreement contained in this paragraph*" numerous times, emphasizing that Section 10(d) is its own separate agreement. (Mot. Ex. 1, § 10(d) (emphasis added).) Notably, it does not state "the agreement contained in this *Section*."

At the December 18, 2025 hearing, Village Park's counsel argued that Section 10(c) is a standalone arbitration agreement and that, when properly confined to Section 10(c) alone, there are no unconscionable terms. (Tr. at 6:20-10:25.) Respondents' counsel argued that all of Section 10 should be construed as a single arbitration provision, relying on *Smith v. D.R. Horton, Inc.*, 417 S.C. 42, 790 S.E.2d 1 (2016). (Tr. at 13:4-16:19.)

The circuit court ultimately sided with Respondents, finding the arbitration provision to encompass all of Section 10 and concluding that, so construed, the provision was both procedurally and substantively unconscionable. (Order 4-9.) The circuit denied Village Park's Motion to Compel Arbitration, instead staying the action for Appellants to comply with the requirements of the Notice and Opportunity to Cure Act. This appeal followed.

STANDARD OF REVIEW

"Arbitrability determinations are subject to de novo review." *D.R. Horton*, 417 S.C. at 47, 790 S.E.2d at 3 (citing *Bradley v. Brentwood Homes, Inc.*, 398 S.C. 447, 453, 730 S.E.2d 312, 315

(2012)). “Nevertheless, a circuit court’s factual findings will not be reversed on appeal if any evidence reasonably supports the findings.” *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 22, 644 S.E.2d 663, 667 (2007) (citing *Thornton v. Trident Med. Ctr., L.L.C.*, 357 S.C. 91, 94, 592 S.E.2d 50, 51 (Ct. App. 2003)).

ARGUMENTS

I. THE CIRCUIT COURT ERRED IN DEFINING THE SCOPE OF THE ARBITRATION AGREEMENT AS ENCOMPASSING ALL OF SECTION 10 RATHER THAN CONFINING IT TO SECTION 10(C).

The circuit court’s threshold error was defining the Arbitration Agreement to encompass all of Section 10 rather than confining it to Section 10(c). The court devoted less than one page to this critical question and offered little analysis beyond the conclusory assertion that the “subparagraphs are located together under a single heading, address interrelated subject matter, and contain internal cross-references.” (Order 4.) That reasoning cannot withstand scrutiny of the PSA’s actual text.

Section 10 of the PSA is not a monolithic provision. It contains four separately labeled sections, three of which bear their own distinct headings. Section 10(c) alone is titled “Arbitration Agreement.” Its language addresses exclusively the forum, scope, and governing law of arbitration, and makes no reference whatsoever to the warranty-related material in Sections 10(a), (b), or (d).

A. The *Prima Paint* Separability Doctrine Requires Courts to Isolate the Arbitration Agreement from the Broader Contract.

The United States Supreme Court has long held that an arbitration clause embedded in a larger contract must be treated as a separable and independently enforceable agreement. *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 402-04 (1967). Under this separability doctrine, a court asked to evaluate the enforceability of an arbitration agreement must confine its

analysis to the arbitration provision itself. *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 540, 542 S.E.2d 360, 364 (2001) (citing *Prima Paint*, 388 U.S. 395). Challenges directed at the container contract as a whole are for the arbitrator, not the court. *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 445-46 (2006).

The South Carolina Supreme Court has expressly adopted this principle. *See S.C. Pub. Serv. Auth. v. Great W. Coal (Kentucky), Inc.*, 312 S.C. 559, 562–63, 437 S.E.2d 22, 24 (1993) (adopting a broad interpretation of *Prima Paint* in South Carolina and holding an arbitration clause is separable from the contract). In *D.R. Horton, Inc.*, the Court confirmed that “in conducting an unconscionability inquiry, courts may only consider the provisions of the arbitration agreement itself, and not those of the whole contract.” 417 S.C. at 48, 790 S.E.2d at 4. The critical first step in any unconscionability challenge to an arbitration provision is therefore to accurately define the boundaries of the arbitration agreement.

The circuit court’s order expanded the scope of the arbitration agreement beyond its actual boundaries. By construing the entirety of Section 10—including the warranty provisions in Sections 10(a) and 10(b) and the exclusive-remedy provision in Section 10(d)—as part of the “arbitration agreement,” the court gathered into the unconscionability analysis provisions that have nothing to do with the arbitration mechanism. (Order 4-9.) This violated *Prima Paint* and its progeny.

B. Under *Damico*, Section 10(c) Is a Standalone Arbitration Provision.

The South Carolina Supreme Court squarely addressed how to determine the boundaries of an arbitration provision embedded in a larger contractual section in *Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 879 S.E.2d 746 (2022). In *Damico*, the Court examined a purchase and sale agreement where the arbitration provision (there, Section 16) appeared within a larger

contract that also contained warranty disclaimers and remedy limitations. The Court held that the arbitration agreement was “contained solely within Section 16 of the purchase and sale agreement” because that section was titled “Mediation/Arbitration of Disputes,” dealt exclusively with the scope and formalities of arbitration, and contained no cross-reference to the limited warranty booklet. *Id.* at 610, 879 S.E.2d at 754.

The *Damico* Court expressly distinguished *D.R. Horton*, where the arbitration clause appeared within a paragraph entitled “Warranties and Dispute Resolution” that contained “numerous cross-references” tying the arbitration and warranty provisions together. *Damico*, 437 S.C. at 609, 879 S.E.2d at 754 (citing *D.R. Horton*, 417 S.C. at 48, 790 S.E.2d at 4). The Court described the *Damico* provision as a “standalone arbitration provision, dissimilar from that in *D.R. Horton*.” *Id.* at 609, 879 S.E.2d at 754.

Section 10(c) of the PSA here is materially indistinguishable from the provision upheld in *Damico*. Like Section 16 in *Damico*, Section 10(c) bears its own distinct title: “Arbitration Agreement.” (Mot. Ex. 1, § 10(c).) Section 10(c) deals exclusively with the method, forum, and governing law of arbitration proceedings. (*Id.*) It identifies the types of disputes subject to arbitration, the available arbitration services, the rules to be applied, and the governing statutory framework (the FAA). (*Id.*) Section 10(c) contains no reference whatsoever to any other section or subsection of the PSA. (*Id.*) Moreover, Section 10(c) is governed exclusively by the FAA, while Section 10(d) expressly invokes state law—a distinction that underscores their independence. (*Id.* at §§ 10(c) & (d).)

The circuit court erred by relying on the language in Sections 10(a) and 10(d) to distinguish the Arbitration Agreement from the arbitration clause in *Damico*. (Order 4.) But those Sections are separate provisions; they do not alter the self-contained nature of Section 10(c). Notably absent

from the circuit court’s analysis was any examination of Section 10(c) itself, which, as demonstrated above, is materially indistinguishable from the standalone arbitration provision in *Damico*. The circuit court’s contrary conclusion finds no support in the text of the Arbitration Agreement.

C. Section 10(d)’s Internal Reference to “This Paragraph” Confirms the Separateness of Each Provision.

The circuit court’s conclusion that all of Section 10 constitutes a single integrated provision was influenced by Section 10(d)’s language: “[t]he agreement contained in this paragraph.” (Order 4.) The circuit court apparently construed “this paragraph” to refer to Section 10 as a whole. This was error.

Section 10(d) is a standalone subsection within the PSA. Its opening sentence—“The agreement contained in this paragraph”—is a self-referential term that refers to that paragraph of Section 10(d) itself, not to the entirety of Section 10. (Mot. Ex. 1, § 10(d).) This reading is confirmed by the final sentence of Section 10(d), which states that the agreement “shall be enforceable to the maximum extent permitted by the law of the state in which the Home is located.” (*Id.*; Tr. at 7:13-18.) This state-law governance provision is flatly inconsistent with Section 10(c)’s express declaration that the Arbitration Agreement “is governed by the provisions of the Federal Arbitration Act . . . to the exclusion of any different or inconsistent state or local law, ordinance or judicial rule.” (Mot. Ex. 1, § 10(c).)

If “the agreement contained in this paragraph” referred to all of Section 10—including Section 10(c)—then a single provision would simultaneously be governed by the FAA “to the exclusion” of state law (per Section 10(c)) and by “the law of the state in which the Home is located” (per Section 10(d)). Such a reading produces an irreconcilable internal contradiction. The only coherent interpretation is that Sections 10(c) and 10(d) are separate, self-contained

agreements, each with their own governing-law clause. (Tr. at 7:6-18.)

Other provisions of the PSA confirm that Section 10's subsections operate independently and that Section 10(c), in particular, does not address warranties. Section 24 governs the inspections process, and Subsection 24(d) specifically delineates Village Park's repair obligations, providing that Village Park "shall not be required to correct or repair any defect in construction that does not constitute a violation of: . . . (2) the building guidelines and standards of the provider of the Structural Warranty to *subsection a of section 10 herein above.*" (Mot. Ex. 1, § 24(d) (emphasis added).) This cross-reference is significant: the PSA expressly distinguishes among Section 10's subsections by citing only Subsection 10(a) in connection with the Structural Warranty. If Section 10 were a unified warranty provision, there would be no reason to single out one subsection. The PSA's deliberate specificity demonstrates that the parties understood Section 10(c) to be entirely separate from—and to serve a different purpose than—the warranty provisions in Section 10(a).

The circuit court's construction of "the agreement contained in this paragraph" also contravenes the plain meaning of "paragraph." Black's Law Dictionary defines "paragraph" as "[a] block of handwritten or typed text set off from the rest of a body of text by indentation or extra blank space." *Paragraph*, Black's Law Dictionary (12th ed. 2024). It further specifies that "[i]n some legal documents, [a paragraph is] an organizational unit within a hierarchy of units." *Id.* The PSA's structure confirms this definition: Section 10(c) contains three distinct paragraphs, each set off by indentation, while Section 10(d) contains a single paragraph separated by both indentation *and* extra blank space. These are separately labeled sections with their own independently formatted paragraphs and own separate section headings, not a single undifferentiated block of text.

The circuit court therefore erred by expanding “paragraph” beyond its plain and ordinary meaning to encompass multiple distinct sections, a construction unsupported by the PSA’s text or standard legal usage.

D. Section 10(c) Is Materially Distinguishable from the Integrated Provision in *D.R. Horton*.

Section 10(c) stands in stark contrast to the arbitration clause invalidated in *D.R. Horton*, 417 S.C. 42, 790 S.E.2d 1. There, the entire section bore the title “Warranties and Dispute Resolution,” and its subparts contained “numerous cross-references” that interwove the warranty, arbitration, and remedy provisions into a single integrated scheme. *Id.* at 48, 790 S.E.2d at 4.

No such integration exists here. Section 10(c) bears its own distinct title—“Arbitration Agreement”—and contains not a single cross-reference to the warranty or exclusive-remedy provisions. In *Damico*, the South Carolina Supreme Court, in a unanimous opinion authored by Chief Justice Kittredge (who had dissented in *D.R. Horton*), distinguished *D.R. Horton* on precisely this basis. *Damico*, 437 S.C. at 610, 879 S.E.2d at 754.

That Section 10(c) appears within a broader Section 10 titled “New Home Warranty Security Plan” does not transform it into part of a unified warranty-and-arbitration provision. *Damico* makes clear that the controlling inquiry is whether the arbitration clause itself is self-contained, deals solely with arbitration, and is free of cross-references to other contractual provisions. Section 10(c) satisfies each criterion.¹

¹ Chief Justice Kittredge’s dissent in *D.R. Horton* is directly on point. He recognized that “the challenged warranty disclaimers and liability limitations are separate and distinct from the agreement to arbitrate, in terms of both formatting and subject matter.” *D.R. Horton, Inc.*, 417 S.C. at 61, 790 S.E.2d at 10 (Kittredge, J., dissenting). This distinction, he explained, follows from the parties’ deliberate structuring: “the gravamen of each of these terms is distinct and independently operative,” rendering them “discrete terms rather than as a cohesive contractual provision.” *Id.* That reasoning applies with even greater force here. Unlike in *D.R. Horton*, Section 10(c) contains

II. WHEN PROPERLY CONFINED TO SECTION 10(C), THE ARBITRATION AGREEMENT IS NOT UNCONSCIONABLE.

As a result of the circuit court's improper circumscription of the Arbitration Agreement, the circuit court failed to analyze whether Section 10(c), the applicable arbitration agreement, contained unconscionable terms that would render the agreement to arbitrate unenforceable.

"[U]nconscionability is defined 'as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms which are so oppressive that no reasonable person would make them and no fair and honest person would accept them.'" *Damico*, 437 S.C. at 611, 879 S.E.2d at 754 (first citing *Fanning v. Fritz's Pontiac-Cadillac-Buick, Inc.*, 322 S.C. 399, 403, 472 S.E.2d 242, 245 (1996); and then citing 17A Am. Jur. 2d *Contracts* § 272 (2016)). These two prongs are characterized as procedural and substantive unconscionability, both of which should be considered in analyzing unconscionability. *Id.*; *D.R. Horton*, 417 S.C. at 49 n.5, 790 S.E.2d at 4 n.5.

"In analyzing claims of unconscionability in the context of arbitration agreements, the [United States Courts of Appeals for the] Fourth Circuit has instructed courts to focus generally on whether the arbitration clause is geared towards achieving an unbiased decision by a neutral decision-maker." *Simpson*, 373 S.C. at 25, 644 S.E.2d at 668. "[T]o constitute unconscionability, the contract terms must be so oppressive that no reasonable person would make them and no fair and honest person would accept them." *Damico*, 437 S.C. at 612, 879 S.E.2d at 755 (2022) (citing *Fanning*, 322 S.C. at 403, 472 S.E.2d at 245).

Applying this standard, the circuit court erred in finding the Arbitration Agreement unconscionable.

no cross-references to other provisions whatsoever, eliminating entirely the textual entanglement that concerned the majority in that case.

A. Section 10(c) Contains No Substantively Unconscionable Terms.

“Substantive unconscionability” focuses on whether the terms of the arbitration clause itself are unreasonably favorable to one party. *Id.* at 615, 879 S.E.2d at 757. As instructed by the Fourth Circuit and accepted by the South Carolina Supreme Court, courts should examine “whether the arbitration clause is geared towards achieving an unbiased decision by a neutral decision-maker.” *Id.* at 612, 879 S.E.2d at 755; *Simpson*, 373 S.C. at 25, 644 S.E.2d at 668.

When the analysis is properly limited to Section 10(c), the provision contains no substantively unconscionable terms. To the contrary, Section 10(c) is mutual and even-handed in every material respect.

First, the obligation to arbitrate is mutual. Section 10(c) provides that “[a]ny and all claims, disputes and controversies by or between Seller and Purchaser” must be arbitrated, binding both parties equally. (Mem. Supp. Ex. 1, § 10(c).) Second, the waiver of jury trial is likewise mutual; both parties waive the right to a jury trial, not just the homebuyer. (*Id.*) Third, the claimant selects the forum. (*Id.*) The provision permits the claimant (here, Respondents) to choose the arbitration service from among the AAA, DeMars & Associates, or another mutually agreeable service. (*Id.*) This provision actually favors the Respondents. Fourth, the arbitration is conducted under the applicable rules of the selected arbitration service, ensuring procedural safeguards and neutral administration. (*Id.*) Fifth, Section 10(c) imposes no limitation on remedies or statutes of limitation. (*Id.*) There is no cap on damages, no shortened limitations period, no waiver of statutory claims, and no exclusion of consequential damages. Finally, Section 10(c) is governed by the FAA, which provides robust protections and a well-developed framework for the conduct of arbitration.

The circuit court identified several provisions as substantively unconscionable: warranty disclaimers in Section 10(a), the one-year remedy waiver in Section 10(d), and exclusions in the

Limited Warranty Agreement. (Order 7-8.) But every one of these provisions exists outside Section 10(c). Under *Prima Paint*, challenges to provisions in the broader contract that are not part of the arbitration agreement itself must be resolved by the arbitrator, not the court. *D.R. Horton*, 417 S.C. at 48, 790 S.E.2d at 4.

Section 10(c), considered in isolation, is neither oppressive nor one-sided. It is designed to achieve an unbiased decision by a neutral decision-maker. The Arbitration Agreement is therefore not substantively unconscionable, meaning it is enforceable.

B. Section 10(c) Is Not Procedural Unconscionable, and Procedural Unconscionability Alone Is Insufficient.

Procedural unconscionability typically speaks to the fundamental fairness of the bargaining process. In considering fundamental fairness, “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 755 (citing *Simpson*, 373 S.C. at 25, 644 S.E.2d at 669). Critically, however, “[a]dhesion contracts are not per se unconscionable.” *Id.* at 613, 879 S.E.2d at 756 (citations omitted); *see also Munoz*, 343 S.C. at 541, 542 S.E.2d at 365. Similarly, “[i]nequality of bargaining power alone will not invalidate an arbitration agreement.” *Munoz*, 343 S.C. at 541 n. 5, 542 S.E.2d at 365 n.5 (citation omitted).

Respondents had a meaningful choice to contract with Village Home. Indeed, as the United State District Court for the District of South Carolina has recently explained in conducting a conscionability analysis in a similar case, “[homeowners are] free to purchase a home from another builder, purchase a pre-existing home, or purchase no home at all.” *Wood v. D.R. Horton, Inc.*, No. 8:25-CV-03367-JDA, 2026 WL 368934, at *7 (D.S.C. Feb. 10, 2026). Additionally, Respondents were free to obtain counsel to review the PSA. That Plaintiffs failed to have the PSA

reviewed by counsel of their choosing prior to execution is not attributable to Village Park.

Further, even assuming the PSA is an adhesion contract, procedural unconscionability alone cannot render an arbitration clause unenforceable. The South Carolina Supreme Court made this clear in *Damico*: “*adhesive contracts are not unconscionable in and of themselves so long as the terms are even-handed.*” 437 S.C. at 614, 879 S.E.2d at 756 (emphasis in original). As demonstrated above, the terms of Section 10(c) are unquestionably even-handed. The provision imposes mutual obligations, provides the claimant with the choice of forum, and contains none of the one-sided features that courts have found substantively unconscionable. That the PSA may have been presented on a take-it-or-leave-it basis does not, without more, render the arbitration provision unenforceable. *See id.*

The circuit court compounded its error by looking beyond Section 10(c) to find procedural unconscionability. The court cited language from Section 10(b) to conclude the agreement was “entirely non-negotiable” and speculated that even if Respondents “retained counsel and objected to [Section] 10, they could not have altered the terms.” (Order at 5, 7.) But nothing in Section 10(c)—the Arbitration Agreement—supports these findings. And no evidence in the record establishes whether Respondents attempted to negotiate or not, much less that any such attempt would have been futile. Under *Prima Paint*, the unconscionability inquiry must be confined to the arbitration clause itself; reliance on extraneous provisions and unsupported speculation about hypothetical negotiations is reversible error.

Moreover, the PSA’s first page contains a conspicuous notice that the agreement is “SUBJECT TO MANDATORY BINDING ARBITRATION,” and Section 10(c) is titled “Arbitration Agreement.” (Mot. Ex. 1.) These features negate any claim that the arbitration provision was hidden or inconspicuous. Respondents had ample notice of the arbitration

requirement and chose to proceed with the purchase.

That Village Park may be more sophisticated than Respondents, or that the parties may have had unequal bargaining power, does not alter the fact that Section 10(c) contains terms that are fair to both parties.

In sum, the circuit court erred by expanding its unconscionability analysis beyond Section 10(c). When properly confined to the Arbitration Agreement itself, the provision is mutual, even-handed, and free of any substantively unconscionable terms. It should be enforced.

CONCLUSION

For the foregoing reasons, the circuit court erred in denying Appellant Village Park Homes, LLC's Motion to Compel Arbitration. Accordingly, this Court should reverse the circuit court's March 4, 2026 Order denying Village Park's Motion to Compel and March 18, 2026 Order denying Village Park's Motion to Alter or Amend, and compel arbitration of Respondents' claims pursuant to the terms of Section 10(c) of the Purchase and Sale Agreement.

Respectfully submitted,

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