**THE STATE OF SOUTH CAROLINA**
**IN THE COURT OF APPEALS**

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APPEAL FROM THE CHARLESTON COUNTY COURT OF COMMON PLEAS
Deadra L. Jefferson, Circuit Court Judge
Case No.: 2011-CP-10-5191

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Appellate Case No. 2013-002679

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Lend Lease (US) Public Partnership, LLC, f/k/a Actus Lend Lease..... Respondent,

vs.

Allsouth Electrical Contractors, Inc. ..... Appellant.

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# INITIAL BRIEF OF APPELLANT

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Smith, Bundy, Bybee, & Barnett, PC
W. H. Bundy, Esquire
M. Brent McDonald, Esquire
Post Office Box 1542
Mount Pleasant, SC 29465-1542
843-881-1623
Attorneys for Appellant Allsouth
Electrical Contractors, Inc

Mt. Pleasant, South Carolina
April 14, 2014

Other Counsel of Record:

Edward James "Trip" Coyne, III, Esquire
Williams Mullen, P.C.
300 N. Third Street, Suite 420
Wilmington, NC 28401
Attorney for Lend Lease (US) Public Partnership, LLC

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## Statement of Issues on Appeal

**The Circuit Court erred in compelling arbitration in this action because the parties did not contractually agree to arbitrate all of the claims alleged by the Respondent. The Circuit Court erred in ignoring the plain language of the contracts and finding that all of the causes of action alleged by the Respondent were for indemnification. The Circuit Court erred in ruling on the merits of the claim.**

## Statement of the Case

On July 21, 2011, Respondent Lend Lease (US) Public Partnerships, LLC f/k/a Actus Lend Lease (hereinafter "Lend Lease") served an arbitration demand in the amount of $950,000 on Appellant Allsouth Electrical Contractors, Inc. (hereinafter "Allsouth"). See Arbitration Demand. The majority of the demand was for the replacement of alleged defective work by Allsouth. Lend Lease stated in the arbitration demand that various causes of action against Allsouth were subject to arbitration. Lend Lease stated as follows:

> "Claim by General Contractor against Electrical Subcontractor for breach of 4 separate but project related subcontracts based on defective workmanship and breach of the contract warranties for the defective work and failure to cure the defective work, as well as negligence and indemnity on a government facility."

See Arbitration Demand. On July 22, 2011, Lend Lease also filed a civil action in the South Carolina Court of Common Pleas for Charleston County. See Complaint[1]. The same legal causes of action alleged in the Arbitration Demand were alleged in the Complaint, though Lend Lease alleged it was entitled to arbitrate all of its causes of action against Allsouth. On September 29, 2011, Allsouth filed an Answer to Lend Lease's Complaint and alleged, in part, that Lend Lease was not entitled to arbitration because it failed to comply with the provisions of the Subcontracts related to arbitration. See Answer. On October 5, 2011, Lend Lease moved the circuit court in Charleston County for an Order compelling

[1] The Complaint alleges causes of action relating to four separate subcontracts. As will be explained below, the terms of the four subcontracts relevant to the present appeal are substantially the same. Therefore, the cases of action related to Subcontract 1 will be discussed herein as representative.

arbitration of its entire action and staying the matter. See Lend Lease Motion to Stay and Compel Arbitration. Allsouth once again objected to the arbitration of this matter pursuant to the plain terms of the Subcontract. On October 17, 2011, Allsouth filed a written objection to the motion to compel arbitration. See Allsouth Memorandum in Opposition to Motion to Compel Arbitration. Allsouth argued that Lend Lease failed to comply with the South Carolina Uniform Arbitration Act, and, therefore, its claim for arbitration was barred. Allsouth also argued that Lend Lease waived its right to bring its claims because it failed to bring the claims or suit within 180 days of the date it knew or should have known it had a potential cause of action against Allsouth. The contracts between the parties read, in pertinent part, as follows:

> Claims, disputes, or other matters in question between the parties arising out of or related to the Subcontract, not finally resolved pursuant to the above Section, shall be subject to and decided by binding arbitration as follows:
>
> Any controversy or claim arising out of, or in any way related to this Agreement shall be decided by binding arbitration, pursuant to the United States Arbitration Act (Title 9, U.S. Code), under the supervision of the American Arbitration Association ("AAA"), or privately before an arbitrator unaffiliated with AAA if the parties mutually agree, and in accordance with the Construction Industry Dispute Resolution Procedures of AAA in effect at the time the demand for arbitration is filed. A single arbitrator shall decide the dispute or claim, and he/she shall be selected pursuant to the AAA rules. Any award rendered by the arbitrator may be entered in any court of competent jurisdiction. **Except for claims by the Contractor for express and implied indemnity arising from or relating to claims for patent or latent defects in the Work performed by Subcontractor, and except for those claims waived by Subcontractor as a result of acceptance by it of progress and/or final payment, a demand for arbitration must be made within 180 days after the party knew, or should have reasonably known, of facts giving rise to the claim. If a claim is not brought within that time period, the party shall be deemed to have waived any such claims.** In no event, however, may a claim be brought after the time when institution of legal or equitable proceedings would be barred by the applicable statute of limitations.

See Section 4.2.1.2 Exhibit 1 to the Affidavit of Alan Roman.[2] Prior to the hearing, Allsouth served the affidavit of William Lesesne, President of Allsouth, which authenticated correspondence sent by Lend Lease regarding Lend Lease's knowledge of facts giving rise to its alleged claims against Allsouth. See Affidavit of William Lesesne with attachments. Lend Lease began sending the letters to Allsouth alleging that it had claims against it on May 21, 2010. This date is more than 180 days prior to Lend Lease's arbitration demand and its civil action.

At the hearing on the motion to compel arbitration, Lend Lease argued that the South Carolina Uniform Arbitration Act did not apply as it was bringing its claim pursuant to the Federal Arbitration Act. Lend Lease also argued that the foregoing section on the limitation of any rights to arbitration did not bar its claims as all of its causes of action are actually for indemnity, and, as such, the time limitations of the Subcontract do not apply. The Court ruled that though Lend Lease styled some of its causes of action under a heading for various other causes of action (including breach of contract, negligence, and breach of warranty), all of its claims actually "lie in indemnity." Order filed 2/9/12, p. 7. The Court ruled that the "180 day waiver deadline" did not apply to Lend Lease's demand for arbitration for any of its causes of action and the Court compelled the entire matter to arbitration. The Court necessarily ruled that the parties contractually agreed to arbitrate all of the claims brought by Lend Lease against Allsouth. On February 21, 2012, Allsouth filed a Motion to Alter or Amend the Order. See Motion to Alter or Amend. On March 6, 2012, the Court once again ruled that all of Lend

[2] As noted in the Designation of Matter, the four Subcontracts are the same with regard to the provisions cited herein. For ease of reference, Allsouth will refer to Exhibit 1 of the Affidavit of Alan Roman, which is a Subcontract dated March 1, 2006, as representative of the other Subcontracts.

Lease's causes of action were subject to arbitration because all of the claims "were in the scope of indemnity." See Order dated March 6, 2012, pp. 3-4.

Subsequent to the Arbitration of this action, on August 26, 2013, Allsouth filed a Motion to Lift the Stay in the state court action. On November 27, 2013, the circuit court granted the motion to lift the stay. See Order Lifting Stay. Allsouth filed the Notice of Appeal on December 11, 2013.[3]

## Statement of the Facts

Allsouth subcontracted with Lend Lease for the performance of electrical infrastructure work related to the construction of military housing on Parris Island in South Carolina. See Exhibit 1 to the Affidavit of Alan Roman. Beginning on May 21, 2010, Lend Lease sent correspondence to Allsouth stating that it claimed Allsouth's work was not in accordance with the Subcontract documents and that Allsouth was required to correct Allsouth's own work as a result of various warranties contained in the Subcontract documents. See Affidavit of William Lesesne with attachments. Allsouth denied that it was required to perform any repairs to its work. See Complaint, ¶ 13.

As stated above, on July 22, 2011, Lend Lease brought a civil action against Allsouth. Lend Lease alleged, in pertinent part, as follows[4]:

> **4.** Lend Lease entered into certain contracts for construction ("Contracts") with Tri- Command Managing Member LLC ("Owner"), the owner of certain real property in Beaufort, South Carolina, under the general terms of which Lend Lease was to demolish and renovate certain existing housing units and related facilities located at the Beaufort Marine Corps Air Station Parris Island Marine Corps Recruiting Depot or the Beaufort Naval Hospital in Beaufort County, South Carolina ("Projects").

[3] This Court directed Allsouth to file a Memorandum on Appealibility of this matter on January 6, 2014. Allsouth filed its memorandum on January 15, 2014. This court agreed to hear this appeal on March 17, 2014. That memorandum is incorporated herein to the extent it is necessary.

[4] See Footnote 1 , above.

**5.** In connection with the performance of the Contracts and Projects, Lend Lease, entered into four (4) separate contracts with Allsouth to perform a part or portion of the electrical work required by the Contracts and Projects ("Subcontracts"). Specifically, Lend Lease and Allsouth entered into the following four Subcontracts:

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**6.** Allsouth undertook to perform all four Subcontracts.

**7.** Subsequently, the Owner discovered, and notified Lend Lease, **that the electrical work performed by Allsouth was defective and that its workmanship was faulty based on, among other things, the primary and secondary feeders being installed out of compliance with the plans and specifications for reasons including, among other things, that electrical conduit was not buried at the specified depths.**

**8. The Owner has required that the work be redone to comply with the plans and specifications (the "Repairs").**

**9.** Lend Lease has given notice to Allsouth of the defective work and the Owner's demand and made demand on **Allsouth to honor its contracts and warranties by making the Repairs.**

**10.** Despite notice and demand, **Allsouth has failed and refused to honor its contracts and warranties and has not made the Repairs.**

**11.** Per the requirements of the Owner, Lend Lease has undertaken, after notice to Allsouth, to enter into subcontract with a third-party electrical subcontractor, namely Gaylor, Inc., to make the Repairs, with an initial cost estimate in excess of $700,000.00.

**12.** Lend Lease, in addition to incurring the cost of the Repairs, will incur other damages including, but not limited to, the costs of extended general conditions and overhead to manage the Repairs (estimated at approximately $90,000.00), the costs of additional work necessitated by the Repairs, such as the replacement of fencing and landscaping (estimated at approximately $90,000.00), and additional damages as may be incurred in connection with the defective work and making the Repairs all as will be shown.

**13.** Lend Lease has given notice to Allsouth, but Allsouth has failed to resolve the matter.

**14.** Contemporaneous with the filing of this civil action, Lend Lease has served and filed with the American Arbitration Association a demand for arbitration of the claims asserted herein in accordance with the provisions of the Subcontracts. The cover pages of each of the Subcontracts, along with the respective arbitration provisions, are attached hereto as Exhibit 1.

**15.** Any conditions precedent to the commencement of this action have been met.

MOTION TO STAY AND TO COMPEL ARBITRATION

**16. The Claims set forth herein are subject to arbitration pursuant to the express terms of the Subcontracts.** See Exhibit 1.

**17.** The matters herein are in commerce.

**18.** Lend Lease had made a demand for arbitration.

**19.** Lend Lease is entitled to entry of an order staying this action pending arbitration and to an order compelling the parties to arbitration pursuant to the terms of the Subcontracts.

FIRST CLAIM FOR RELIEF (**Breach of Subcontract 1**)

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**21.** Pursuant to the terms of Subcontract 1, **Allsouth was required to perform its work in a good and workmanlike manner and to comply with the plans and specifications.**

**22.** Allsouth did not perform its work in a good and workmanlike manner and failed to comply with the plans and specifications.

**23. Allsouth thereby breached Subcontract 1, and said breach caused Lend Lease damage.**

**24. Lend Lease's damages include, but are not limited to, the cost to repair the defective work, extended overhead and general conditions and other costs incurred, or to be incurred, in making the Repairs.**

****

SECOND CLAIM FOR RELIEF (**Breach of Warranty, Subcontract 1**)

**28.** Pursuant to the terms of Subcontract 1, Allsouth guaranteed and warranted its work and agreed to correct all defective work.

**29. The work performed by Allsouth was defective, but, despite demand, Allsouth has failed and refused to correct the work or to otherwise honor its guarantee and warranty.**

**30. Allsouth has breached its guarantee and warranty in Subcontract 1, and said breach caused Lend Lease damage. 31. Lend Lease's damages include, but are not limited to, the cost to repair the defective work, extended overhead and general conditions and other costs incurred, or to be incurred, in making the Repairs.**

****

FOURTH CLAIM FOR RELIEF (**Negligence, Subcontract 1**)

**41. Allsouth performed the work required by Subcontract 1 in a negligent manner.**

**42. Said negligence caused Lend Lease damage.**

**43. Lend Lease's damages include, but are not limited to, the cost to repair the defective work, extended overhead and general conditions and other costs incurred, or to be incurred, in making the Repairs.**

Complaint, pp. 2-7 (Emphasis Supplied). With regard to its indemnity cause of action against Allsouth, Lend Lease alleged as follows:

> "35. Pursuant to the terms of Subcontract 1, Allsouth agreed to indemnify Lend Lease from any and all claims, damages, losses, and expenses, including reasonable attorneys' fees and costs arising out of Allsouth work that caused, among other things, injury or destruction of tangible property **other than the work itself**, including loss of use.
>
> 36. The work performed by Allsouth was defective, but despite demand, Allsouth has failed and refused to correct the work or to otherwise honor its guarantee and warranty.
>
> 37. As a result of Allsouth's defective work underground conduit will need to be relaid resulting in damage to surrounding tangible property **other than the work itself, thereby invoking the terms of Allsouth's indemnity**.
>
> 38. Allsouth has failed to and refused to honors [sic] its indemnity.
>
> 39. Lend Lease is entitled to a judgment against Allsouth for all damages incurred **within the scope of Allsouth's indemnity.**"

Complaint at p. 6 (emphasis supplied). The indemnification claim in the Complaint alleged language from Section 9.1 whish states as follows:

9.1 Subcontractor's Performance

Unless provided differently in Section 11, hereafter, to the fullest extent permitted by law, Subcontractor shall indemnify and hold harmless Tri-Command Military Housing LLC, Tri-Command Managing Member, LLC, Actus Lend Lease Holdings, LLC, Actus Lend Lease, LLC, J.P. Morgan Company, National Association, MBIA Insurance Corporation, and the United States of America, Department of Navy from and against all

claims, damages losses and expenses, including but not limited to attorneys' fees arising out of or resulting from the performance of the Subcontractor's Work **provided that any such claim, damage, loss or expense is attributable to** bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property **(other than the Subcontractor's Work)**..."

Notwithstanding the plain language of the Complaint and the Subcontract, the circuit court compelled arbitration of the entire matter for all causes of action and for all of the alleged damages. Section 4.2.1.2 states as follows:

> Claims, disputes, or other matters in question between the parties arising out of or related to the Subcontract, not finally resolved pursuant to the above Section, shall be subject to and decided by binding arbitration as follows:
>
> Any controversy or claim arising out of, or in any way related to this Agreement shall be decided by binding arbitration, pursuant to the United States Arbitration Act (Title 9, U.S. Code), under the supervision of the American Arbitration Association ("AAA"), or privately before an arbitrator unaffiliated with AAA if the parties mutually agree, and in accordance with the Construction Industry Dispute Resolution Procedures of AAA in effect at the time the demand for arbitration is filed. A single arbitrator shall decide the dispute or claim, and he/she shall be selected pursuant to the AAA rules. Any award rendered by the arbitrator may be entered in any court of competent jurisdiction. **Except for claims by the Contractor for express and implied indemnity arising from or relating to claims for patent or latent defects in the Work performed by Subcontractor, and except for those claims waived by Subcontractor as a result of acceptance by it of progress and/or final payment, a demand for arbitration must be made within 180 days after the party knew, or should have reasonably known, of facts giving rise to the claim. If a claim is not brought within that time period, the party shall be deemed to have waived any such claims.** In no event, however, may a claim be brought after the time when institution of legal or equitable proceedings would be barred by the applicable statute of limitations.

It is undisputed that Lend Lease had actual knowledge of the facts giving rise to the claims the circuit court compelled to arbitration more than 180 days prior to demanding arbitration. It is undisputed that this is not a "broad" arbitration provision. This provision is limited by the parties' contractual agreement.

## Standard of Review

"[T]he construction of a clear and unambiguous contract is a matter of law for the court, [and the Appellate Court will] review the trial court's findings of law *de novo*." Lee v. University of South Carolina, Op. No. 27372 (S.C.Sup.Ct. filed April 2, 2014)(Shearouse Adv.Sh. No. 13) *citing* Watts v. Monarch Builders, Inc., 272 S.C. 517, 520, 252 S.E.2d 889, 891 (1979). "The determination of whether a claim is subject to arbitration is subject to *de novo* review." Landers v. Federal Deposit Insurance Corporation, 402 S.C. 100, 739 S.E.2d 209 (2013).

## Argument

**The Circuit Court erred in compelling arbitration in this action because the parties did not contractually agree to arbitrate all of the claims alleged by the Respondent. The Circuit Court erred in ignoring the plain language of the contracts and finding that all of the causes of action alleged by the Respondent were for indemnification. The Circuit Court erred in ruling on the merits of the claim.**

Lend Lease moved the circuit court to compel arbitration for all of its causes of action. The causes of action were distinct in their claims of liability and damages. As explained below, the indemnification cause of action was distinct in the type of damages alleged. Specifically, the indemnification cause of action was limited to property damage "other than the work itself." This Court was in error in sending all of the claims to arbitration because Allsouth did not contractually agree to arbitrate all of the causes of action brought by Lend Lease.

"Arbitration is a matter of contract, and a party cannot be required to submit to arbitration any dispute which he has not agreed to submit." Zabinski v. Bright Acres Assocs., 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001). Where there has been no agreement to arbitrate, a party cannot be forced into compulsory arbitration. Hilton Head

Resort Four Seasons Ctr. Horizontal Property Regime Council of Co-Owners v. Resort Inv. Corp., 311 S.C. 394, 429 S.E.2d 459 (Ct. App. 1993). "When deciding whether the parties agreed to arbitrate a certain matter ... courts generally ... should apply ordinary state-law principles that govern the formation of contracts." First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 944, 115 S.Ct. 1920, 131 L.Ed.2d 985 (1995).

"The law in this state regarding the construction and interpretation of contracts is well settled." Progressive Max Ins. Co. v. Floating Caps, Inc., 405 S.C. 35, 46, 747 S.E.2d 178, 183 (2013. "In construing a contract, it is axiomatic that the main concern of the court is to ascertain and give effect to the intention of the parties." Id. at 46, 747 S.E.2d at 184. "Parties are governed by their outward expressions and the court is not at liberty to consider their secret intentions." Id. "If its language is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required and the contract's language determines the instrument's force and effect." Id. Courts "are without authority to alter an unambiguous contract by construction or to make new contracts for the parties. A court must enforce an unambiguous contract according to its terms regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully." S.C. Dep't. of Transp. v. M & T Enters. of Mt. Pleasant, 379 S.C. 645, 655, 667 S.E.2d 7, 13 (Ct.App.2008) (citations omitted).

The parties to the Subcontract did not agree to submit any claims for damages other than express or implied indemnification to arbitration after the passage of 180 days from when the party seeking arbitration knew or should have known of facts giving rise to the claim. Allsouth acknowledges that when there is a doubt regarding arbitration, that it is the policy of this state and the federal courts to resolve the doubt in favor of

arbitration. Landers, 739 S.E.2d at 213. However, here, there is no doubt. It is undisputed that Lend Lease had actual knowledge of the facts giving rise to its claim more than 180 days prior to demanding arbitration. The plain and express language of the subcontract does not allow for arbitration for any claims other than express or implied indemnity because of the "180 day provision." Therefore, the only claims subject to arbitration were for express or implied indemnity. The Circuit Court, however, compelled arbitration for all of the claims. This was in error. A plain reading of Lend Lease's Complaint and Arbitration Demand shows that Lend Lease sought to bring claims that were outside of any contractual indemnity[5] claim. The indemnity provision of the contract reads as follows:

9.1 Subcontractor's Performance

Unless provided differently in Section 11, hereafter, to the fullest extent permitted by law, Subcontractor shall indemnify and hold harmless Tri-Command Military Housing LLC, Tri-Command Managing Member, LLC, Actus Lend Lease Holdings, LLC, Actus Lend Lease, LLC, J.P. Morgan Company, National Association, MBIA Insurance Corporation, and the United States of America, Department of Navy from and against all claims, damages losses and expenses, including but not limited to attorneys' fees arising out of or resulting from the performance of the Subcontractor's Work **provided that any such claim, damage, loss or expense is attributable to** bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property **(other than the Subcontractor's Work)**..."

Lend Lease acknowledged this limited right of contractual indemnity when it made its indemnity claim, and alleged as follows:

> 37. As a result of Allsouth's defective work underground conduit will need to be relaid resulting in damage to surrounding tangible property **other than the work itself, thereby invoking the terms of Allsouth's indemnity**.

[5] The complaint does not allege a cause of action for equitable indemnity.

Importantly, the remaining causes of action, in addition to having different elements of proof[6], alleged claims for different types of damages. The breach of contract, negligence and breach of express warranty claims alleged damages for the "cost to repair the defective work." These claims are not covered by the contractual indemnification provision, and, thus, are not subject to arbitration. *See* Sherlock Homes Pub, Inc. v. City of Columbia, 389 S.C. 77, 81, 697 S.E.2d 619, 621 (Ct.App. 2010)(wherein the Court noted that a contractual indemnification claim is "subject to strict construction."). There is no claim that the indemnification provision was ambiguous. Indeed, in its complaint, Lend Lease recognized that the contractual indemnification was limited to damage to "tangible property other than the work itself."

The United States Supreme Court in KPMG, LLP v. Cocchi, 132 S.Ct. 23 (2011) held as follows:

"Agreements to arbitrate that fall within the scope and coverage of the Federal Arbitration Act (Act), 9 U.S.C. § 1 et seq., must be enforced in state and federal courts. State courts, then, "have a prominent role to play as enforcers of agreements to arbitrate." Vaden v. Discover Bank, 556 U.S. 49, 59, 129 S.Ct. 1262, 173 L.Ed.2d 206 (2009). The Act has been interpreted to require that if a dispute presents multiple claims, some arbitrable and some not, the former must be sent to arbitration even if this will lead to piecemeal litigation. See Dean Witter Reynolds Inc. v. Byrd, 470 U.S. 213, 217, 105 S.Ct. 1238, 84 L.Ed.2d 158 (1985). **From this it follows that state and federal courts must examine with care the complaints seeking to invoke their jurisdiction in order to separate arbitrable from nonarbitrable claims. A court may not issue a blanket refusal to compel arbitration merely on the grounds that some of the claims could be resolved by the court without arbitration.**"

Though KPMG, LLP was dealing with the refusal to grant arbitration, the holding remains that a Court must decipher which claims are arbitrable and which claims are

[6] The elements of negligence are : (1) a duty of care owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; and (3) damages proximately resulting from the breach of duty. Bloom v. Ravoira, 339 S.C. 417, 529 S.E.2d 710 (2000). The elements for a breach of contract are the existence of the contract, its breach, and the damages caused by such breach. Fuller v. E. Fire & Cas. Ins. Co., 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962). " The general rule is that for a breach of contract the defendant is liable for whatever damages follow as a natural consequence and a proximate result of such breach." Id.

nonarbitrable. As explained above, this analysis is centered directly on what the parties agreed in their contract. Here, the Circuit Court erred in compelling arbitration of all of the claims and in ignoring the plain language of the Subcontract.

The circuit Court also erred in ruling that all of the claims were "lie in indemnity and fall within the indemnity exception of the arbitration clause." Order dated 2/9/2012, p. 7. By making this ruling the Court necessarily ruled on the merits of the claims by expanding the contractual indemnification provided for in the Subcontract. Essentially, by expanding the terms of the Subcontract into a right to arbitrate all of the claims because of all of the claims were for "indemnification," the Court expanded the scope of the indemnification agreed upon by the parties. This was in error. *See* Zabinski, 553 S.E.2d at 118 ("in deciding whether the parties have agreed to submit a particular grievance to arbitration, a court is not to rule on the potential merits of the underlying claims.").

## Conclusion

For the aforementioned reasons, the Orders of the Circuit Court compelling arbitration should be reversed.

SMITH, BUNDY, BYBEE & BARNETT, P.C.

W. W. Bundy, Jr., Esquire
M. Brent McDonald, Esquire
Post Office Box 1542
Mt. Pleasant, South Carolina 29465-1542
Telephone: (843) 881-1623
Attorneys for Appellants

Mt. Pleasant, South Carolina
April 14, 2014

**THE STATE OF SOUTH CAROLINA**
**IN THE COURT OF APPEALS**

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APPEAL FROM THE CHARLESTON COUNTY COURT OF COMMON PLEAS
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Lend Lease (US) Public Partnership, LLC, f/k/a Actus Lend Lease is the ...Respondent,

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Allsouth Electrical Contractors, Inc. is the .....Appellant.

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**PROOF OF SERVICE**

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I certify that I have served the Initial Brief of Appellant along with the Designation of Matter to be Included in the Record on Appeal on Respondent Lend Lease (US) Public Partnership, LLC, by depositing a copy of it in the United States Mail, postage prepaid, on April 14, 2014, addressed to its attorney of record, Edward James "Trip" Coyne, III, Esquire, Williams Mullen, P.C., 300 N. Third Street, Suite 420, Wilmington, NC 28401

Smith, Bundy, Bybee, & Barnett, PC
W. H. Bundy, Esquire
M. Brent McDonald, Esquire
Post Office Box 1542
Mount Pleasant, SC 29465-1542
843-881-1623
Attorneys for Appellant

Mt. Pleasant, South Carolina
April 14, 2014

SMITH, BUNDY, BYBEE & BARNETT, P.C.
ATTORNEYS AT LAW
1037 CHUCK DAWLEY BOULEVARD
SUITE 100, BUILDING F
POST OFFICE BOX 1542
MOUNT PLEASANT, SC 29465
(843) 881-1623
FAX (843) 881-4406
FED. ID # 57-0988087

ELLISON D. SMITH, IV
W.H. BUNDY, JR.
RICHARD D. BYBEE
STAN BARNETT

M. BRENT MCDONALD

M. BRENT MCDONALD
bmcdonald@s3blaw.com
Direct Line (843) 513-1032

April 14, 2014

**VIA HAND DELIVERY**

The Honorable Jenny Abbott Kitchings
Clerk of Appeals Court of South Carolina
1015 Sumter Street
Columbia, SC 29201

Re: Lend Lease (US) Public Partnership, LLC f/k/a Actus Lend Lease, LLC vs. Allsouth Electrical Contractors, Inc.
Case No: 2013-002679

Dear Ms. Kitchings:

Please find enclosed for filing with the South Carolina Court of Appeals the following:

1. The original and one copy of the Initial Brief of the Appellant;
2. The original and one copy of the Designation of Matter of the Appellant; and
3. The original and one copy of the Proof of service of the above.

Please file the originals and return a file stamped copy of each to our Courier.

I thank you for your attention to this matter.

Sincerely yours,

M. Brent McDonald
P.O. Box 1542
Mt. Pleasant, SC 29464
(843) 881-1623
Attorney for Appellant

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MBM/sfr
Enclosures
cc: Edward James "Trip" Coyne, III, Esq.
Williams Mullen, P.C.
300 N. Third Street, Suite 420
Wilmington, NC 28401