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S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Circuit Court Judge

Opinion No. 2013-UP-296 (S.C. Ct. App. filed Aug. 28, 2013)

Ralph Wayne Parsons, Jr. and Louise C. Parsons, ... Respondents,

v.

John Wieland Homes and Neighborhoods of the Carolinas, Inc., Wells Fargo Bank, N.A., and South Carolina Bank & Trust, N.A.,..... Defendants,

Of Whom John Wieland Homes and Neighborhoods of the Carolinas, Inc. is the ..... Petitioner.

BRIEF OF PETITIONER

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II. Did the Court of Appeals commit an error of law in failing to address JWH's argument that the circuit court erred in interpreting the warranty provisions incorporated into the Agreement instead of the separate arbitration provision?

III. Did the Court of Appeals commit an error of law in failing to address JWH's argument that the circuit court erred in finding that the underlying claims alleged outrageous torts which were unforeseeable to a reasonable consumer instead of analyzing the claims under the "significant relationship" test set forth in Landers?

III. Did the Court of Appeals commit an error of law in deferring to the circuit court's findings of fact where, as here, the underlying motion involved no factual dispute and where, as here, the circuit court expressly refused to make any such findings?

V. Was the petition for a writ of certiorari timely filed where rehearing was denied, the opinion was amended by the Court of Appeals without a change to the substance thereof, and the petition for a writ of certiorari was not filed until after a second petition for rehearing was denied?

STATEMENT OF THE CASE

On February 24, 2011, Respondents Ralph Wayne Parsons, Jr. and Louise C. Parsons (the "Parsonses") filed a complaint against Petitioner John Wieland Homes and Neighborhoods of the Carolinas, Inc. ("John Wieland Homes" or "JWH"), Wells Fargo Bank, N.A., and South Carolina Bank & Trust, N.A., alleging causes of action for rescission, breach of contract, breach of implied warranties, fraud, negligent misrepresentation, negligence/gross negligence, and violation of the South Carolina Unfair Trade Practices Act. **App. pp.9-18.**

These causes of action arose out of the 2007 conveyance of real property located at 4270 Rochard Lane in Fort Mill, South Carolina (the "Property") from John Wieland Homes to the Parsonses. **App. pp.9-18, pp.59-63.** The Parsonses named Wells Fargo Bank, N.A., and South

Carolina Bank & Trust, N.A., as defendants "solely by reason of their mortgages on the property that is the subject of this action and Plaintiffs' claim for rescission." **App. p.10, ¶5.**

The Parsonses allege John Wieland Homes knew or should have known that there were hazardous substances buried on the Property by a previous owner because the previous owner utilized the tract on which the Property is located as an "industrial site" and because this use included underground pipes buried on the Property. **App. pp.9-18.** The Parsonses assert John Wieland Homes breached an alleged duty to disclose these hazardous substances to the Parsonses as part of their purchase of the Property. **App. pp.9-18.** The complaint seeks to rescind the contract or obtain damages for the decline in value of the Property due to the presence of alleged hazardous substances thereon. **App. pp.9-18.**

On June 10, 2011, John Wieland Homes moved to compel arbitration pursuant to an arbitration clause incorporated into the purchase contract between John Wieland Homes and the Parsonses. **App. pp.57-58.** On September 15, 2011, the circuit court held a hearing on the motion to compel arbitration. **App. p.19.** By order filed on October 10, 2011, the circuit court ruled that the causes of action alleged by the Parsonses were not covered by the arbitration clause because the express warranties provided by John Wieland Homes, which were also incorporated by reference into the purchase contract, specifically excluded any claims not provided for in the express warranties. **App. pp.4-8.** The circuit court further held that the Parsonses alleged that JWH's conduct was so outrageous that a reasonable consumer would not have foreseen that the conduct was subject to the arbitration clause. **App. pp.4-8.**

John Wieland Homes received written notice of entry of the circuit court's order denying its motion to compel on October 13, 2011. **App. p.170.** On October 19, 2011, John Wieland Homes served and filed its notice of appeal of the circuit court's decision. **App. pp.170-172.**

Pursuant to Rule 220(b), SCACR, on June 26, 2013, the Court of Appeals issued an unpublished opinion, summarily affirming the circuit court's order on the following grounds: (1) the circuit court's findings on whether the arbitration provision applied to the Parsonses' claims were entitled to deference; (2) the arbitration provision did not apply to the Parsonses' allegations; and (3) the failure to disclose hazardous substances on the Property amounted to conduct that was unanticipated and unforeseeable by a reasonable consumer. **App. pp.261-263.**

John Wieland Homes timely served and filed a petition for rehearing and rehearing *en banc* of the June 26, 2013 opinion of the Court of Appeals. **App. pp.264-284.** On August 28, 2013, the Court of Appeals granted the petition, withdrew its previous opinion, and substituted a re-filed, unpublished opinion, again affirming the circuit court's decision pursuant to Rule 220(c), SCACR. **App. pp.285-288.** While the Court of Appeals once more ruled that the appellate court's standard of review compelled it to affirm the circuit court's decision and that the Parsonses could not be required to submit to arbitration any dispute that they had not agreed to arbitrate, the Court of Appeals refused to address the issue of whether JWH's failure to disclose hazardous substances on the Property amounted to conduct that was unanticipated and unforeseeable to a reasonable consumer. **App. pp.287-288.**

John Wieland Homes timely served and filed a petition for rehearing as to the second opinion and for rehearing *en banc*, which the Court of Appeals denied by order filed on March 14, 2014. **App. pp.289-310; pp.311-312.** Pursuant to Rule 242(b), SCACR, John Wieland Homes served and filed a petition for writ of certiorari to this Court on April 14, 2014. By order entered on July 14, 2014, this Court granted the petition.

FACTS

John Wieland Homes developed and sold real property, including real property located in

South Carolina. **App. pp.10-11, ¶¶7-12.** On November 27, 2002, John Wieland Homes purchased approximately 65 acres of real property in Lancaster County, South Carolina, from Springs Industries, Inc. ("Springs") for the purpose of developing and selling single-family residential lots in a community which became known as Bridgemill. **App. p.10, ¶7, p.11, ¶10-12.** Springs previously used a portion of the 65-acre tract for textile storage and fabric cutting. **App. p.114, ¶8.**

On June 30, 2007, the Parsonses executed a contract (the "Agreement") to purchase the Property from John Wieland Homes, utilizing earnest monies the Parsonses previously paid toward a separate property they had agreed to purchase from John Wieland Homes under an identical contract with an identical arbitration provision. **App. pp.59-62; p.128, ¶3; pp.129-133.**

Paragraph 21 of both agreements provides, in pertinent part:

> 21. **Warranty and Arbitration**. Purchaser and Seller hereby agree that, in connection with the sale contemplated by this agreement, Purchaser will be enrolled in the John Wieland Homes and Neighborhoods 5-20 Extended Warranty program, booklet revision date 04/06 (JWH Warranty), *the JWH Warranty being incorporated herein by reference . . . . PURCHASER ACKNOWLEDGES THAT PURCHASER HAS RECEIVED AND READ A COPY OF THE CURRENT JWH WARRANTY AND CONSENTS TO THE TERMS THEREOF, INCLUDING, WITHOUT LIMITATION, THE BINDING ARBITRATION PROVISIONS CONTAINED THEREIN. . . .*

App. p.61, ¶21; App. p.132, ¶21 (emphasis added in italics). The Parsonses initialed under this Paragraph 21 in both agreements. **App. p.61, ¶21; App. p.132, ¶21.** Both agreements provide that this Paragraph 21 survives closing or termination of the pertinent agreement. **App. p.62, ¶34; App. p.133, ¶34.**

The JWH Warranty attached to both agreements is also more or less identical. **App. pp.64-97; App. pp.139-168.** Section V, Paragraph O in the JWH Warranty provides, in relevant

part:

> **Mandatory Binding Arbitration**. Wieland and Homebuyer(s) will cooperate with one another in avoiding and informally resolving disputes between them. . . .
>
> *Any and all unresolved claims or disputes of any kind or nature between Wieland and Homebuyer(s) arising out of or relating in any manner to any purchase agreement with Wieland* (if any), this warranty, the Home *and/or property on which it is constructed*, or otherwise, shall be resolved by final and binding arbitration conducted in accordance with this provision, and such resolution shall be final. This applies only to claims or disputes that arise after the later of: (a) the issuance of the final certificate of occupancy for the Home, or (b) the initial closing of the purchase of the Home by the initial Homebuyer(s). *This specifically includes, without limitation, claims related to any representations, promises or warranties alleged to have been made by Wieland or its representatives; rescission of any contract or agreement; any tort; any implied warranties; any personal injury; and any property damage.*
>
> . . . .
>
> WIELAND AND HOMEBUYER(S) HEREBY ACKNOWLEDGE AND AGREE THAT *THE ARBITRATION PROCEDURE SET FORTH HEREIN SHALL BE THE SOLE AND EXCLUSIVE REMEDY FOR THE RESOLUTION OF ANY AND ALL DISPUTES ARISING AFTER THE INITIAL CLOSING OF THE PURCHASE OF THE HOME BY THE INITIAL HOMEBUYER(S)*. WIELAND AND HOMEBUYER(S) HEREBY WAIVE ANY AND ALL OTHER RIGHTS AND REMEDIES AT LAW, IN EQUITY OR OTHERWISE WHICH MIGHT OTHERWISE HAVE BEEN AVAILABLE TO THEM IN CONNECTION WITH ANY SUCH DISPUTES.

App. p.77, §V, ¶O (emphasis added in italics). The Parsonses signed separate acknowledgements of receipt of the JWH Warranty, once on March 22, 2006, in association with the purchase contract for the first property, and then again on June 30, 2007, the same day they executed the Agreement. **App. p.125, ¶4; App. p.127; App. p.128, ¶3; App. p.169.**

John Wieland Homes conveyed the Property to the Parsonses on October 31, 2007. **App.**

p.11, ¶13. According to the Parsonses, in July 2008, the Parsonses were performing routine irrigation maintenance for a suspected leak in their backyard when they discovered a 4-inch PVC pipe buried on the Property. **App. p.12, ¶18.** Further investigation revealed a buried 2-inch PVC pipe, and both buried PVC pipes ran the entire width of the backyard. **App. p.12, ¶18.** Beginning in mid-yard, the buried PVC pipes were encased in concrete and were attached to a metal box, also encased in concrete. **App. p.12, ¶18.** The 4-inch PVC pipe and the metal box contained a black sludge. **App. p.12, ¶18.**

The Parsonses contacted John Wieland Homes, which arranged for the removal of the pipes and the sludge. **App. p.12, ¶19.** Testing and analysis revealed that the black sludge constituted a hazardous substance. **App. p.12, ¶19.** Consequently, the South Carolina Department of Health and Environmental Control ("DHEC") was contacted in August 2008. **App. p.12, ¶20.**

In October 2008, John Wieland Homes entered into a voluntary cleanup contract with DHEC and undertook the remediation of the hazardous substances and other materials from the Parsonses' yard. **App. p.13, ¶22.** A buried 12-inch, cast iron pipe was also discovered during this process. **App. p.13, ¶22.** The tasks spelled out in the voluntary cleanup contract were carried out and paid for by John Wieland Homes. **App. p.212.**

On February 24, 2011, the Parsonses filed the present lawsuit against John Wieland Homes. **App. pp.9-18.** The substantive allegations of the Parsonses' complaint allege that John Wieland Homes breached the Agreement by "failing to accurately and fully disclose latent defects with the property"; "selling property that was environmentally contaminated"; and "selling property with known underground pipes, rendering the home worth substantially less than the Plaintiffs [sic] purchase price." **App. p.13, ¶25; App. p.14, ¶30.** As a result, the

Parsonses requested that the contract be rescinded or, in the alternative, that they be awarded damages for the alleged breach. **App. p.14, ¶¶27, 31.** The Parsonses further alleged that John Wieland Homes breached implied warranties of habitability and workmanlike construction in its conveyance of the Property to them, again requesting damages for the breach of these warranties. **App. pp.17-18, ¶¶57-60.**

The Parsonses also aver that John Wieland Homes "knew or reasonably should have known that Plaintiffs' home had been constructed upon industrial pipes, including hazardous waste and materials" prior to the sale of the Property to them; that John Wieland Homes intentionally or negligently concealed these facts from them; and that the Parsonses are entitled to recover damages for fraud, negligent misrepresentation, unfair trade practices, and negligence/gross negligence as a result thereof. **App. pp.14-17, ¶¶32-56.**

John Wieland Homes moved to dismiss the complaint and compel arbitration on the basis of the arbitration clause referenced and incorporated into the Agreement. **App. pp.57-58.** At the hearing on JWH's motion, the circuit court asked counsel for John Wieland Homes to read *only* the arbitration clause in the Agreement "[b]ecause this is just all about arbitration." **App. p.19, 24:5-10.** In addition, the court recognized: "Well, it's [referring to the Parsons' Complaint] not about contamination. It's about what was on the property." **App. pp.31:24-32:9.**

The Parsonses contended that "the contract itself specifically says it doesn't apply to this kind of claim . . . ." **App. p.38:16-18.** The Parsonses emphasized Section IV of the JWH Warranty, iterating the exclusions *from the express warranty*. **App. p.43:11-17.** John Wieland Homes, in turn, explained that the "mandatory arbitration provision in the warranty . . . is not limited to the warranty, and it specifically provides that Wieland [and] the home buyers will cooperate with one another in resolving any disputes between them, not just warranty claims."

App. p.49:8-17. John Wieland Homes also asserted that the arbitration provision is separate from the warranty clauses, and that the arbitration provision is required to be interpreted independently of the warranty clauses. **App. p.49:8-25.**

The Parsonses further argued that an arbitration clause is unenforceable "in a situation where the action that is complained of is so egregious that no one could have foreseen that that would have been part of what they were agreeing to arbitrate." **App. p.45:2-11.** In response, John Wieland Homes distinguished cases relied upon by the Parsonses, explaining that the alleged conduct of John Wieland Homes—a failure to disclose a condition of the Property about which the Parsonses contend John Wieland Homes knew or should have known—did not rise to the level of cases where the party seeking to enforce an arbitration clause committed outrageous acts such as a "bait and switch" or the misappropriation of personal financial information or the verbal abuse and intimidation of a debtor. **App. pp.50:24-53:14.** John Wieland Homes also noted that, unlike the precedent cited by the Parsonses, the claims asserted in this case have a significant relationship to the Agreement and the condition of the Property, both of which are expressly covered by the arbitration clause. **App. pp.50:24-53:14.**

On October 10, 2011, the circuit court entered an order denying the motion to compel arbitration on two grounds. **App. pp.4-8.** First, the court held: "Because the Warranty does not apply to, and specifically excludes, the claims asserted by Plaintiffs, I find and conclude that the arbitration clause contained therein is also inapplicable." **App. p.7.** Second, the court ruled that "[n]either Plaintiffs, nor reasonable consumers, can be held to have expected the arbitration provisions at issue to apply to such a situation." **App. p.8.**

John Wieland Homes appealed this ruling, and the Court of Appeals affirmed. **App. p. 170, pp.287-288.** This Court granted certiorari review.

STANDARD OF REVIEW

"Unless the parties otherwise provide, the question of the arbitrability of a claim is an issue for judicial determination." New Hope Missionary Baptist Church v. Paragon Bldrs., 379 S.C. 620, 625, 667 S.E.2d 1, 3 (Ct. App. 2008). "However, 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." Zabinski v. Bright Acres Assocs., 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001). "Appeal from the denial of a motion to compel arbitration is subject to de novo review." New Hope, 379 S.C. at 625, 667 S.E.2d at 3.

ARGUMENT

I. The Court of Appeals, like the circuit court, committed an error of law in overlooking the plain language of the arbitration provision, which expressly and specifically includes the claims asserted by the Parsonses against John Wieland Homes.

The Court of Appeals, like the circuit court, overlooked the binding arbitration provision in the Agreement, which covers all disputes relating to the sale, including those asserted by the Parsonses. The Court of Appeals and the circuit court ignored and refused to recognize *any* clause within the parties' arbitration provision, despite JWH's continued assertions that the plain language of this provision unequivocally encompasses the Parsonses' factual allegations against John Wieland Homes.

"An arbitration clause is a contractual term, and general rules of contract interpretation must be applied to determine a clause's applicability to a particular dispute." Towles v. Un. HealthCare Corp., 338 S.C. 29, 41, 524 S.E.2d 839, 846 (Ct. App. 1999). "Whether a party has agreed to arbitrate an issue is a matter of contract interpretation and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." Landers v. Fed. Deposit Ins. Corp., 402 S.C. 100, 108, 739 S.E.2d 209, 213 (2013). "Although the intention of parties is

relevant, as a matter of policy, arbitration agreements are liberally construed in favor of arbitrability." Id. at 108-09, 739 S.E.2d at 213.

"The policy of the United States and South Carolina is to favor arbitration of disputes." Zabinski v. Bright Acres Assocs., 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001). "To decide whether an arbitration agreement encompasses a dispute, a court must determine whether the factual allegations underlying the claim are within the scope of the broad arbitration clause, regardless of the label assigned to the claim." Id. at 597, 553 S.E.2d at 118. "The heavy presumption of arbitrability requires that when the scope of the arbitration clause is open to question, a court must decide the question in favor of arbitration." Landers, 402 S.C. at 109, 739 S.E.2d at 213. "Such a presumption is strengthened when an arbitration clause is broadly written." Id. "Therefore, unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute . . . arbitration must generally be ordered." Id.

"A clause which provides for arbitration of all disputes 'arising out of or relating to' the contract is construed broadly." Id. at 109, 739 S.E.2d at 213; Am. Recovery Corp. v. Computerized Thermal Imaging, Inc., 96 F.3d 88, 93 (4th Cir. 1996). "Courts have held that such broad clauses are capable of an expansive reach." Landers, 402 S.C. at 109, 739 S.E.2d at 214. "Both the Fourth Circuit Court of Appeals and this Court have held that the sweeping language of broad arbitration clauses applies to disputes in which a significant relationship exists between the asserted claims and the contract in which the arbitration clause is contained." Id. "Thus, the scope of the clause does not limit arbitration to the literal interpretation or performance of the contract, but embraces every dispute between the parties having a significant relationship to the contract." Id. at 109-10, 739 S.E.2d at 214; J.J. Ryan & Sons, Inc. v. Rhone Poulenc Textile,

S.A., 863 F.2d 315, 321 (4th Cir. 1988).

"Certainly, arbitration is only required where the parties have contracted for it . . . ." Landers, 402 at 111, 739 S.E.2d at 214. "However, under the expansive reach of the FAA a tort claim need not raise an issue that requires reference to or the construction of some portion of the contract in order to be encompassed by a broadly-worded arbitration clause." Id. If the factual allegations in the complaint establish any link between a plaintiff's contractual claim and the plaintiff's remaining tort claims, the tort claims will be subject to arbitration. See id. at 114, 739 S.E.2d at 216 ("Similarly here, Landers' pleadings link the alleged illegal proxy solicitation to his wrongful termination and the resulting breach of the Agreement. Thus, we conclude his illegal proxy solicitation claim is significantly related to the Agreement.").

The arbitration provision in the present case plainly includes "[a]ny and all unresolved claims or disputes of any kind or nature" between the parties "arising out of or relating in any manner to" the Agreement, the warranty incorporated into the Agreement, the home, *or* the Property. **App. p.77, §V, ¶O.** In addition, the arbitration provision "specifically includes, without limitation, *claims related to any representations, promises or warranties alleged to have been made by Wieland or its representatives; rescission of any contract or agreement; any tort; any implied warranties; any personal injury; and any property damage.*" **App. p.78, §V, ¶O** (emphasis added). Thus, the broad arbitration clause in the present case expressly includes not only claims for breach of the Agreement, but also those claims premised on the other legal theories asserted in this case—i.e., claims seeking to rescind the Agreement; claims arising in tort; and claims relating to implied warranties.

While the Court of Appeals summarily and parenthetically relies upon Faltaous v. Anderson Ocean Club Dev., LLC, 388 S.C. 45, 47-48, 693 S.E.2d 434, 435 (Ct. App. 2010), the

arbitration provision in that case is not similar to the one incorporated into the Agreement. The Faltaous opinion is grounded primarily on the appellate court's conclusion that the arbitration provision at issue was narrowly limited in scope and that, by its terms, the arbitration provision failed to encompass claims arising from the subject contract.

In Faltaous, 388 S.C. at 47-48, 693 S.E.2d at 435, the Court of Appeals block-quoted and analyzed the arbitration provision within the parties' agreement, concluding:

> The introductory words to the arbitration clause are broad, stating '[a]ny and all claims.' However, following these words, *the clause is drawn specifically and limits the matters that can be arbitrated to disputes that result 'from the development, design, construction, condition, merchantability, habitability, fitness for a particular purpose or any other implied or express warranty for the common elements of or the individual units at the [condominium] . . . .' Disputes that arise out of the contract itself, as Seller's counterclaims do, are absent from the arbitration clause's reach.*

Id. at 49-50, 693 S.E.2d at 436 (emphasis and double emphasis added).

Here, neither the circuit court nor the Court of Appeals analyzed the arbitration provision at issue because they never addressed it. Further, in the present case, unlike in Faltaous, the arbitration provision is more expansive and expressly applies to disputes that relate to the Property or arise out of the Agreement, including, but not limited to the claims for rescission, tort claims, and claims relating to implied warranties. Nothing in the arbitration provision incorporated into the Agreement purports to limit the causes of action to which the provision applies. Instead, the arbitration provision broadly provides: "*Any and all unresolved claims or disputes of any kind or nature between Wieland and Homebuyer(s) arising out of or relating in any manner to any purchase agreement with Wieland* (if any), this warranty, the Home and/or *property on which it is constructed*, or otherwise, shall be resolved by final and binding arbitration conducted in accordance with this provision, and such resolution shall be final." **App.**

p.77, §V, ¶O (double emphasis added).

The arbitration provision at issue in this case indisputably contains different and more reaching terms than the arbitration provision in Faltaous. Consequently, this Court should respectfully reverse the decision of the Court of Appeals, which overlooks the express terms of the subject arbitration provision and misapplies the framework articulated by this Court in Landers.

II. The Court of Appeals committed an error of law in failing to address JWH's argument that the circuit court erred in interpreting the warranty provisions incorporated into the Agreement instead of the separate arbitration provision.

As discussed in Section I, *supra*, the arbitration provision plainly encompasses the Parsonses' claims. Nevertheless, the circuit court circumvented the arbitration provision by incorporating the exclusions to the separate warranty provision into the arbitration provision. John Wieland Homes raised this issue both in briefing to the Court of Appeals and in its petitions for rehearing. **App. pp.196-203, pp.275-277, pp.302-304.** The failure of the Court of Appeals to address this issue constitutes reversible error. The arbitrability of the claims must be determined from the terms of the arbitration provision, not the terms of the warranty provision.

The circuit court initially held that "[b]ecause the Warranty does not apply to, and specifically excludes, the claims asserted by the Plaintiffs, I find and conclude that the arbitration clause contained therein is also inapplicable." **App. p.7.** In this respect, the circuit court erred in its interpretation of the Agreement. At the risk of repeating the obvious, the warranty provision determines the scope of defects subject to the warranty, while the arbitration clause determines the scope of claims subject to arbitration.

"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." D.A. Davis Const. Co., Inc. v. Palmetto Props.,

Inc., 281 S.C. 415, 418, 315 S.E.2d 370, 372 (1984). "If the contract's language is clear and unambiguous, the language alone determines the contract's force and effect." Schulmeyer v. State Farm Fire & Cas. Co., 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003).

"Arbitration clauses are separable from the contracts in which they are imbedded." Jackson Mills, Inc. v. BT Capital Corp., 312 S.C. 400, 403, 440 S.E.2d 877, 879 (1994); see also Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395, 411 (1967) ("The Court thus holds that the Arbitration Act, designed to provide merely a procedural remedy which would not interfere with state substantive law, authorizes federal courts to fashion a federal rule to make arbitration clauses 'separable' and valid.").

Paragraph 21 of the Agreement unambiguously incorporates the "JWH Warranty" including, without limitation, the binding arbitration clause contained therein. See First Baptist Church of Timmonsville v. George A. Creed & Son, Inc., 276 S.C. 597, 599, 281 S.E.2d 121, 123 (1981) ("We think that, in the absence of a showing of fraud, mistake, unfair dealing or the like, a party to a contract incorporating an arbitration provision cannot escape the obligation of such a provision by simply declaring: 'But I did not read the whole agreement.'"). **App. p.61.**

Section V, Paragraph O in the JWH Warranty provides, in relevant part:

> **Mandatory BindingArbitration**. Wieland and Homebuyer(s) will cooperate with one another in avoiding and informally resolving disputes between them. . . .
>
> *Any and all unresolved claims or disputes of any kind or nature between Wieland and Homebuyer(s) arising out of or relating in any manner to any purchase agreement with Wieland* (if any), this warranty, the Home *and/or property on which it is constructed*, or otherwise, shall be resolved by final and binding arbitration conducted in accordance with this provision, and such resolution shall be final. This applies only to claims or disputes that arise after the later of: (a) the issuance of the final certificate of occupancy for the Home, or (b) the initial closing of the purchase of the Home by the initial Homebuyer(s). *This specifically*

> *includes, without limitation, claims related to any representations, promises or warranties alleged to have been made by Wieland or its representatives; rescission of any contract or agreement; any tort; any implied warranties; any personal injury; and any property damage.*

App. pp.77-78, §V, ¶O (emphasis added in italics).

Instead of turning to the arbitration clause contained in Section V, Paragraph O of the JWH Warranty to determine the claims subject to arbitration, the circuit court mistakenly looked to the exclusions from the express warranty, contained in Section IV of the JWH Warranty. Neither the Agreement nor the JWH Warranty states that the exclusions from the warranty also constitute exclusions from mandatory arbitration. By its terms, the arbitration provision is not solely limited to claims for breach of the express warranty. The interpretation invoked by the circuit court is not only contrary to the express terms of the parties' agreement but also results in a nonsensical meaning. Cf. Valley Pub. Serv. Auth. v. Beech Island Rural Cmty. Water Dist., 319 S.C. 488, 497, 462 S.E.2d 296, 301 (Ct. App. 1995) (explaining that the court will not adopt nonsensical interpretation of provision in contract). Under the circuit court's interpretation, only claims that are covered by the express warranty are subject to arbitration, but these are the very claims that are least likely to be subject to dispute.

The arbitration clause itself plainly provides that it applies to more expansive claims than the express warranty, as it specifically includes claims for rescission, tort claims, claims for personal injury, and claims for implied warranties, all of which are expressly excluded from the warranty. This misinterpretation of the Agreement is an error of law warranting reversal. See So. Bank Trust Nat. Ass'n v. Bell, 385 S.C. 364, 379, 684 S.E.2d 199, 207 (Ct. App. 2009) ("The construction of a clear and unambiguous contract presents a question of law for the court.").

III. The Court of Appeals committed an error of law in failing to address JWH's argument that the circuit court erred in finding that the underlying claims alleged outrageous torts which were unforeseeable to a reasonable consumer instead of analyzing the claims under the "significant relationship" test set forth in Landers.

The condition of property subject to any sale of real estate is at the heart of the transaction and, thus, (a) is foreseeable to the purchaser; and (b) bears a significant relationship with the purchase contract. The Court of Appeals refused to address this issue in its substituted opinion because the Court found it unnecessary to address the issue based on its alternative ruling. **App. p.288.** This issue was raised by John Wieland Homes in written briefing and in its petitions for rehearing. **App. pp.203-207; pp.277-280; pp.304-306.** John Wieland Homes respectfully contends that the failure by the Court of Appeals to address this issue and reverse the circuit court's decision in this respect also constitutes reversible error.

In Aiken v. World Fin. Corp., 373 S.C. 144, 151, 644 S.E.2d 705, 709 (2007), this Court held that it would "refuse to interpret any arbitration agreement as applying to outrageous torts that are unforeseeable to a reasonable consumer in the context of normal business dealings." "In establishing the line for claims subject to arbitration, this Court does not seek to exclude all intentional torts from the scope of arbitration." Id. at 152, 644 S.E.2d at 709. "For instance, the parties in the instant case stipulate that a tort claim which essentially alleges a breach of the underlying contract (e.g., breach of fiduciary duty, misappropriation of trade secrets) would be within the contemplation of the parties in agreeing to arbitrate." Id. "We only seek to distinguish those outrageous torts, which although factually related to the performance of the contract, are legally distinct from the contractual relationship between the parties." Id.; see also Partain v. Upstate Auto. Grp., 386 S.C. 488, 493-94, 689 S.E.2d 602, 605 (2010) (reiterating these rulings from Aiken).

The circuit court in the present action relied upon Aiken and Partain to conclude that the

Parsonses' claims were unforeseeable to a reasonable consumer. **App. p.8.** On appeal, John Wieland Homes initially argued that Aiken and Partain were distinguishable, and that the Parsonses failed to allege any outrageous torts unforeseeable to the reasonable consumer. **App. pp.203-207.**

For instance, the Parsonses' factual allegations rely upon a purported duty of John Wieland Homes to discover, remediate, and disclose hazardous substances on the Property. In other words, the Parsonses allege a failure to act, or omission, by John Wieland Homes with respect to the Property that is the subject of the Agreement. Unlike the allegations in the present case, Aiken and Partain include factual allegations seeking to impose liability on defendants who *intentionally committed* outrageous and unforeseeable torts. See Aiken, 373 S.C. at 147, 644 S.E.2d at 707 (involving misappropriation of personal financial information); Partain, 386 S.C. at 490, 689 S.E.2d at 603 (involving a seller's intentional "bait and switch" of an automobile).

Moreover, the decision of the Court of Appeals respectfully ignores that Aiken and Partain have been abrogated by Landers. John Wieland Homes raised this issue in a citation to supplemental authorities because the decision in Landers was issued after written briefing and oral arguments. John Wieland Homes also raised the issue in its petitions for rehearing. **App. pp.280-282; pp.306-308.** The Court of Appeals never addressed the issue.

In Landers v. Fed. Deposit Ins. Corp., 402 S.C. 100, 115, 739 S.E.2d 209, 217 (2013), the Supreme Court of South Carolina held that tort claims such as slander and intentional infliction of emotional distress are foreseeable if they have a "significant relationship" to the subject contract: "Landers has essentially pled himself into a corner with respect to each of his claims." "Indeed, he has provided a clear nexus between the underlying factual allegations of each of his claims and his inability to perform the employment Agreement and the alleged breach thereof,

such that *all of his causes of action bear a significant relationship to the Agreement.*" Id. (emphasis added). "Thus, we reverse the trial court with respect to Landers' remaining four causes of action and hold that each is to be arbitrated." Id. "In doing so, *we also reject the trial court's alternative ruling that the claims are not subject to arbitration because they were not foreseeable.*" Id. at 115-16 (emphasis added).

The Supreme Court's decision in Landers collapses the "foreseeability" determination in Aiken and Partain into the discrete issue of whether the causes of action bear a significant relationship to the contract containing a broad arbitration provision. In Carlson v. S.C. State Plastering, LLC, 404 S.C. 250, 261, 743 S.E.2d 868, 874 (Ct. App. 2013), a separate panel of the Court of Appeals relied exclusively on Landers to conclude that a broad arbitration provision in a purchase contract for real property encompassed the plaintiff's tort claims for defective construction. Moreover, a third panel of the Court of Appeals recently relied on Landers to conclude that a claim of "illegal documentation fees" against an automobile dealership fell within the scope of a broad arbitration clause. See York v. Dodgeland of Columbia, Inc., 406 S.C. 67, 96, 749 S.E.2d 139, 154 (Ct. App. 2013). Unlike the panels in Carlson and York, the decision by the Court of Appeals in the present case fails to address Landers.

As previously discussed, each of the Parsonses' claims in the present case bears a significant relationship to the Agreement. Under Landers, the claims were therefore foreseeable to the Parsonses at the time of the Agreement's execution. The Court of Appeals should thus have addressed this issue and reversed the circuit court's decision in this regard.

IV. The Court of Appeals committed an error of law in deferring to the circuit court's findings of fact where, as here, the underlying motion involved no factual dispute and where, as here, the circuit court expressly refused to make any such findings.

The substituted opinion of the Court of Appeals affirms the circuit court's decision that

the arbitration provision in the Agreement did not require the parties to arbitrate the Parsonses' claims, stating, in pertinent part:

> We affirm pursuant to Rule 220(b), SCACR, and the following authorities:
>
> 1. As to whether the trial court erred in finding the arbitration agreement did not apply to the Parsonses' claims: Bradley v. Brentwood Homes, Inc., 398 S.C. 447, 453, 730 S.E.2d 312, 215 (2012) (noting although arbitrability determinations are subject to de novo review, the trial court's factual findings will not be reversed if reasonably supported by any evidence.) . . . .

App. p.288.

Here, as to the issue of arbitrability, the circuit court was asked to determine whether the arbitration provision, construed in favor of arbitration, covered the Parsonses' allegations, without addressing the merits of those allegations. There was no room for fact-finding, and the circuit court expressly refused to find facts as to this issue. Consequently, the Court of Appeals owed no deference to the circuit court and committed an error of law in failing to apply a *de novo* review of the circuit court's arbitrability determination. See Jordan v. Holt, 362 S.C. 201, 208, 608 S.E.2d 129, 132 (2005) (reversing decision of Court of Appeals applying a purely equitable standard of review to a lawsuit seeking both legal and equitable relief).

In the present case, the Court of Appeals' reliance on Bradley v. Brentwood Homes, Inc., 398 S.C. 447, 453, 730 S.E.2d 312, 315 (2012) is misplaced. This Court's decision in Bradley addressed the single issue of whether the Federal Arbitration Act ("FAA") applied to a contract involving the sale of real property in the absence of an obligation by the seller to construct a dwelling on the property as part of the contract. Id. While the Supreme Court in Bradley articulated a deferential standard of appellate review regarding issues of fact, it has long been recognized in South Carolina that the determination of whether a transaction involves interstate

commerce is inherently factual. See Thornton v. Trident Med. Ctr., L.L.C., 357 S.C. 91, 95, 592 S.E.2d 50, 52 (Ct. App. 2003) ("In all cases, determination of whether a transaction involves interstate commerce depends on the facts of the case.").

In this case, unlike in Bradley, the circuit court did not address whether the Agreement fell within the scope of the FAA.[1] Here, the Court of Appeals was asked to review the circuit court's determination of whether the broad arbitration provision in the Agreement encompasses the factual allegations against John Wieland Homes. John Wieland Homes respectfully submits the Court of Appeals erred in failing to properly undertake that review and construe the Agreement in favor of arbitrability.

As discussed in Section I, *supra*, John Wieland Homes contends the arbitration provision in the Agreement unambiguously encompasses the factual allegations in the Parsonses' complaint, and the construction of an unambiguous contract is an issue of law, not fact. See Towles v. Un. HealthCare Corp., 338 S.C. 29, 41, 524 S.E.2d 839, 846 (Ct. App. 1999) ("An arbitration clause is a contractual term, and general rules of contract interpretation must be applied to determine a clause's applicability to a particular dispute."); S.C. Dep't of Transp. v. M & T Enters. of Mt. Pleasant, LLC, 379 S.C. 645, 655, 667 S.E.2d 7, 13 (Ct. App. 2008) ("The construction of a clear and unambiguous contract presents a question of law for the court.").

Nevertheless, even if there were an ambiguity in the arbitration provision, an appellate

[1] The FAA clearly applies because (1) the Agreement expressly includes JWH's construction of the subject home; and (2) the Agreement specifically states that the FAA applies. See Bradley, 398 S.C. at 458, 730 S.E.2d at 318 ("We emphasize that had the Agreement actually encompassed the construction of the residence, it would have been subject to the FAA as our appellate courts have consistently recognized that contracts for construction are governed by the FAA."); Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 539, 542 S.E.2d 360, 363-64 (2001) ("[T]he arbitration agreement, which applies to 'this contract and the relationships which result from this contract,' provides it shall be governed by the FAA. Arbitration agreements, like other contracts, are enforceable in accordance with their terms.").

court, like the circuit court, respectfully must construe the ambiguity in favor of arbitration, not treat the issue as factual. See Zabinski v. Bright Acres Assocs., 346 S.C. 580, 597, 553 S.E.2d 110, 118-19 (2001) ("A motion to compel arbitration made pursuant to an arbitration clause in a written contract should only be denied where the clause is not susceptible to any interpretation which would cover the asserted dispute."); Landers v. Fed. Deposit Ins. Corp., 402 S.C. 100, 109, 739 S.E.2d 209, 213 (2013) ("The heavy presumption of arbitrability requires that when the scope of the arbitration clause is open to question, a court must decide the question in favor of arbitration.").

The Supreme Court of the United States, recognizing that federal law applies to this determination, utilizes the same analysis: "The Arbitration Act establishes that, as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration . . . ." Moses H. Cone Mem'l Hosp. v. Mercury Const. Corp., 460 U.S. 1, 24-25 (1983)."). "[I]t has been established that where the contract contains an arbitration clause, there is a presumption of arbitrability in the sense that an order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute." AT & T Technologies, Inc. v. Commc'ns Workers of Am., 475 U.S. 643, 650 (1986) (citations and internal quotation marks omitted). "Doubts should be resolved in favor of coverage." Id.

Similarly, if there were any question about whether the Parsonses' factual allegations fell within the scope of the arbitration provision in the Agreement, an appellate court, sitting *de novo*, must resolve the question in favor of arbitration, not defer to the circuit court as if the determination were a finding of fact. See S.C. Pub. Serv. Auth. v. Great W. Coal (Kentucky), Inc., 312 S.C. 559, 563-64, 437 S.E.2d 22, 25 (1993) ("To decide whether an arbitration

agreement encompasses a dispute a court must determine whether the factual allegations underlying the claim are within the scope of the broad arbitration clause, regardless of the label assigned to the claim. Any doubts concerning the scope of arbitration should be resolved in favor of arbitration."); Zabinski, 346 S.C. at 596, 553 S.E.2d at 118 ("[I]n 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."); AT & T Technologies, 475 U.S. at 649 ("The third principle derived from our prior cases is that, 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.").

Finally, even if there had been issues of fact to be resolved by the circuit court, the circuit court in the present proceeding expressly declined to make any factual findings. **App. p. 7, note 1.** Instead, the circuit court relied on the allegations of the Parsonses' complaint and the language of the Agreement, mistakenly focusing on the language of the exclusions to the express warranty provisions incorporated into the Agreement instead of the separate arbitration provision. **App. pp.6-7.**

Based on the foregoing, the Court of Appeals respectfully misapprehended the applicable standard of review by suggesting that it should defer to the circuit court regarding the issues on appeal. This error also warrants reversal.

V. John Wieland Homes timely served and filed its petition for writ of certiorari.

The Parsonses' challenge to the timeliness of the petition for writ of certiorari is misplaced because the South Carolina Appellate Court Rules ("SCACR"), when read as a whole, clearly permit a petition for writ of certiorari under Rule 242 only after the Court of Appeals *denies* a petition for rehearing. Instead of reading the SCACR as a whole, the Parsonses advocate

for a reading which would impermissibly create a trap for lawyers and parties. Moreover, to the extent the Parsonses rely on case law involving successive post-trial motions, these case are not applicable because a petition for rehearing, unlike a motion to reconsider, is a procedural prerequisite to filing a petition for a writ of certiorari regardless of whether the issues raised to the Court of Appeals have otherwise been properly preserved.

"In interpreting the language of a court rule, we apply the same rules of construction used in interpreting statutes." Green By & Through Green v. Lewis Truck Lines, Inc., 314 S.C. 303, 304, 443 S.E.2d 906, 907 (1994). "In construing statutory language, the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect." S.C. State Ports Auth. v. Jasper Cnty., 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006). "[C]ivil procedure and appellate rules should not be written or interpreted to create a trap for the unwary lawyer or party . . . ." Elam v. S.C. Dep't of Transp., 361 S.C. 9, 25, 602 S.E.2d 772, 780 (2004); see also In re November 4, 2008 Bluffton Town Council Election, 385 S.C. 632, 641, 686 S.E.2d 683, 688 (2009) ("[C]ourts should not interpret procedural rules to create a trap for unwary lawyers.").

"Petitions for rehearing must be actually received by the appellate court no later than fifteen (15) days after the filing of the opinion, order, judgment, or decree of the court." Rule 221(a), SCACR. The SCACR contain two express limitations on when a petition for rehearing may be filed: (1) Pursuant to Rule 221(a), SCACR, "[n]o petition for rehearing shall be allowed from an order denying a petition for writ of certiorari under Rule 242, SCACR."; and (2) Pursuant to Rule 221(c), SCACR, "[t]he appellate court will not entertain petitions for rehearing on a motion or petition unless the action of the court on the motion or petition has the effect of dismissing or finally deciding a party's appeal." Nothing in Rule 221, SCACR, or the remaining

SCACR prohibits the filing of a petition for rehearing after a previous petition has been granted and a new opinion is substituted for the former opinion.

Further, the interplay between Rules 221 and 242 supports the conclusion that a second petition for rehearing may be filed when a substituted opinion has been issued by the Court of Appeals. Rule 242(c) states, in relevant part: "A petition for writ of certiorari shall be served on opposing counsel and filed with proof of service with the Clerk of the Court of Appeals and the Clerk of the Supreme Court within thirty (30) days after the petition for rehearing or reinstatement is *finally* decided by the Court of Appeals." (Emphasis added).

Rule 221(b), which governs the procedure for the sending the remittitur, provides, in pertinent part: "If a petition for rehearing is received before the remittitur is sent, the remittitur shall not be sent pending disposition of the petition by the court." Rule 221(b) expressly directs the Court of Appeals to refrain from sending a remittitur during the 30-day time period set forth in Rule 242(b) *only* when a petition for rehearing has been denied: "**Where a petition for rehearing has been denied,** the Court of Appeals shall not send the remittitur to the lower court or administrative tribunal until the time to petition for a writ of certiorari under Rule 242(c) has expired." (Emphasis added). However, *nothing* in Rule 221 directs the Court of Appeals to refrain from sending the remittitur for the 30-day time period in Rule 242(c) when a petition for rehearing has been granted and a substitute opinion has been filed for the previous one.

Instead, Rule 221(b) suggests that the Court of Appeals *must* issue the remittitur within *15 days* of the substituted opinion: "The remittitur . . . unless otherwise ordered by the court shall not be sent to the lower court . . . until fifteen (15) days have elapsed (the day of filing being excluded) since the filing of the opinion, order, judgment, or decree of the court finally disposing of the appeal." Thus, under the Parsonses' interpretation of Rule 242(c), the Court of Appeals

would be required to send the remittitur 15 days *prior* to the expiration of the time period in which to petition for certiorari under Rule 242(c). This would lead to an absurd result. See Hodges v. Rainey, 341 S.C. 79, 91, 533 S.E.2d 578, 584 (2000) ("The goal of statutory construction is to harmonize conflicting statutes whenever possible and to prevent an interpretation that would lead to a result that is plainly absurd.").

Additionally, Rule 242(d)(2) provides, in pertinent part: "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." Where, as here, the Court of Appeals grants rehearing and substitutes a new opinion, Rule 242(d)(2) compels a petitioner, such as John Wieland Homes, to petition for rehearing to raise the Court's failure to address an issue which had previously addressed in order to preserve the issue for certiorari review.

It is important to note that, contrary to the Parsonses' assertions, petitions for rehearing are not the same as post-trial motions. A petition for rehearing, in many instances, including the present case, serves a different purpose than a post-trial motion. In particular, a post-trial motion may, at the option of the party, be filed to preserve issues or to request that the circuit court reconsider its decision. See Elam v. S.C. Dep't of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) ("[O]ur rules contemplate two basic situations in which a party should consider filing a Rule 59(e) motion. A party *may* wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.").

A petition for rehearing, on the other hand, constitutes a procedural prerequisite to obtaining certiorari review. See Toal, et al., Appellate Practice in South Carolina p.277 (2nd ed.

2002) ("A petition for certiorari may not be filed until the decision of the Court of Appeals is final, specifically, not until the petition for rehearing has been acted on by the Court of Appeals"); see also Rule 242(c) ("A decision of the Court of Appeals is not final for the purpose of review by the Supreme Court until the petition for rehearing or reinstatement has been acted on by the Court of Appeals.").

Likewise, even accepting the Parsonses' misplaced analogy between post-trial motions and petitions for rehearing, the cases on which they rely are distinguishable where, as here, the Court of Appeals issued a substituted opinion. See Coward Hund Const. Co., Inc. v. Ball Corp., 336 S.C. 1, 2, 518 S.E.2d 56, 57 (Ct. App. 1999) (recognizing second motion for reconsideration did not toll time to appeal where circuit court *denied* first motion); Quality Trailer Products, Inc. v. CSL Equip. Co., Inc., 349 S.C. 216, 220, 562 S.E.2d 615, 618 (2002) (recognizing motion to reconsider which includes identical grounds as previous motion for judgment notwithstanding the verdict did not toll time to appeal where circuit court *denied* JNOV motion).

In the present matter, the Court of Appeals *granted* Petitioner's initial petition for rehearing, explaining: "The attached opinion is *substituted* for the previous opinion, which is *withdrawn*." **App. pp.285-86** (emphasis added). In fact, on its face, the substituted opinion of the Court of Appeals indicates that the previous opinion has been "Withdrawn, Substituted and Refiled." **App. p.287.** Further, while the Court of Appeals initially affirmed the circuit court on three grounds **(App. pp.261-263)**, the substituted opinion changed the reasoning behind its decision with respect to the third ground by refusing to address the issue **(App. pp.287-288)**; see Covar v. Sallat, 22 S.C. 265, 272 (1885) (recognizing that, when the appellate court fails to address some of the arguments raised in the appeal, "a *prima facie* case for rehearing has been made."); see also Elam, 361 S.C. at 20, 602 S.E.2d at 778 (successive Rule 59(e) motion

permissible when first motion results in "substantial alteration of the original judgment.").

Finally, it should be noted that John Wieland Homes petitioned for rehearing *and* for rehearing *en banc* in the Court of Appeals. **App. pp.264-284; App. pp.308-310.** Pursuant to Rule 219(b), SCACR, the parties must be advised when a suggestion for rehearing *en banc* has been rejected. In the present matter, JWH's counsel did not receive notification of *any* action on the suggestion until March 14, 2014, when the Clerk of Court for the South Carolina Court of Appeals notified JWH's counsel, by letter enclosing the decision on JWH's petition for rehearing of the substituted opinion, that the petition for rehearing *en banc* had been distributed to the judges, but that it had been rejected.[2]

For the foregoing reasons, John Wieland Homes timely served and filed the petition for certiorari.

CONCLUSION

As set forth *supra*, the Court of Appeals misapplied the applicable standard of review, ignored any reference to or interpretation of the arbitration provision at issue, and failed to recognize that the circuit court applied exclusions from the separate warranty provision in interpreting the arbitration clause.

Furthermore, the Court of Appeals failed to address JWH's contention that the circuit court erred in finding that, given the underlying transaction in this case, it was foreseeable to a reasonable person that the Parsonses' claims would be subject to the arbitration provision in the

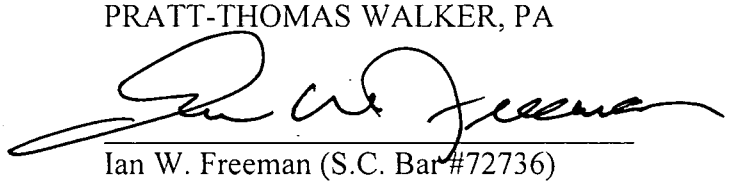
[2] Simultaneously with this brief, John Wieland Homes is moving to supplement the Appendix to include the Affidavit of Daniel S. McQueeney, Jr., counsel for John Wieland Homes, who explains that, in an abundance of caution, before filing a petition for rehearing of the substituted opinion, he contacted the Clerk's office at the Supreme Court of South Carolina and was informed that the Supreme Court does *not* accept petitions for certiorari until *after* a petition for rehearing has been *denied* by the Court of Appeals. Moreover, the Affidavit includes an attached letter from the Clerk of the Court of Appeals, informing John Wieland Homes, for the first time on March 14, 2014, that the petition for rehearing *en banc* had been rejected.

Agreement. In this respect, this Court's recent decision in Landers abrogates the analytical framework in Aiken and Partain, collapsing an arbitrability determination into the single issue of whether the claims bear a significant relationship to the underlying contract. Landers requires that the circuit court's decision on this issue be reversed.

For the foregoing reasons, John Wieland Homes respectfully requests that this Court reverse the Court of Appeals and remand this matter to the circuit court to order arbitration.

Respectfully Submitted,

PRATT-THOMAS WALKER, PA



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August 13, 2014
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED
AUG 15 2014
S.C. Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas

S. Jackson Kimball, Circuit Court Judge

Opinion No. 2013-UP-296 (S.C. Ct. App. filed Aug. 28, 2013)

Ralph Wayne Parsons, Jr. and Louise C. Parsons, ... Respondents,

v.

John Wieland Homes and Neighborhoods of the Carolinas, Inc., Wells Fargo Bank, N.A., and South Carolina Bank & Trust, N.A.,..... Defendants,

Of Whom John Wieland Homes and Neighborhoods of the Carolinas, Inc. is the ..... Petitioner.

PROOF OF SERVICE

I hereby certify that a true and correct copy of the Brief of Petitioner John Wieland Homes and Neighborhoods of the Carolinas, Inc. was served on this 13th day of August, 2014 via U.S. mail, postage prepaid, upon the following counsel of record:

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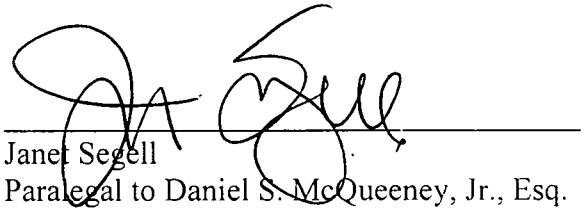

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