

STATE OF SOUTH CAROLINA )  
 COUNTY OF BERKELEY )  
 SOUTH GODLEY ENTERPRISES, LLC, )  
 Plaintiff, )  
 v. )  
 MUNGO HOMES COASTAL DIVISION )  
 LLC f/k/a HARBOR HOMES, LLC, )  
 Defendants. )

IN THE COURT OF COMMON PLEAS  
 FOR THE NINTH JUDICIAL CIRCUIT  
 CASE NO.: 2013-CP-08-225

**RECEIVED**  
 DEC 03 2014  
 SC Court of Appeals

**ORDER GRANTING DEFENDANT'S  
 MOTION TO COMPEL ARBITRATION**

FILED  
 2014 OCT 24 PM 2:19  
 MARY P. BROWN  
 CLERK OF COURT  
 BERKELEY COUNTY, SC

THIS MATTER CAME BEFORE THE COURT for hearing on Defendant's Motion to Compel Arbitration on October 22, 2014. Present on behalf of the Plaintiff were William Howell Morrison, III, Esq. and Stafford J. McQuillin, III, Esq. Thomas F. Dougall, Esq. and William Joseph Moore, Jr., Esq. were present on behalf of the Defendant.

The matter arises out of a contract (hereinafter "Agreement") for the sale of a portion of land that is the subject of the Agreement between the parties. Plaintiff, South Godley Enterprises, LLC (hereinafter "South Godley") owns approximately 129.71 acres of land in Berkeley County. In November of 2012 South Godley and the Defendant, Mungo Homes Coastal Division, LLC (hereinafter "Mungo") entered into an agreement for the sale of an undesignated portion of the 129.71 acres for approximately 150 lots to be later designated by Mungo on a portion of the 129.71 acres. Paragraph 1 of the Agreement states that "[t]he property which is the subject of the Agreement consists of a portion of 129.71 acres, more or less, within the Cane Bay Subdivision, County of Berkeley . . ." Paragraph 1 further articulates that "[d]uring the Inspection Period, defined below, the Purchaser shall designate the

portion of the Tract to be acquired for the development of one hundred fifty (150) Lots which shall constitute the "Property."

Subsequent to the execution of the Agreement, on or about July 11, 2013, Mungo filed a Memorandum of Contract. That memorandum includes an Exhibit delineating a portion of the property as the Mungo tract. Thereinafter arose several disputes between the parties concerning the property, including the significant issue of exactly what portion of the property was subject to Mungo's right to purchase under the Contract.

At the outset, the Court notes that the parties are both experienced land developers. They are both established business entities that routinely buy and sell land. The Agreement contains boilerplate provisions routinely used by parties in land transactions. The Court further notes that neither party disputes that Paragraph 31 of the contract contains alternative dispute resolution requirements to wit: "If a dispute, controversy or claim (whether based upon contract, tort, statute, common law or otherwise) (collectively a "Dispute") arises from or relates directly or indirectly to the subject matter hereof, . . . the shall first endeavor to resolve the Dispute by participating in a mediation . . . If the mediation is unsuccessful, the matter shall be resolved through final binding arbitration . . ." (Emphasis added).

The parties initially attempted to resolve the matter through mediation; however, the mediation was unsuccessful. South Godley filed this civil law action under the causes of action of slander of title and declaratory relief as to the respective rights, liabilities, and legal relations under the terms of the Agreement. South Godley contends that the matters complained of in this civil action should not be subject to arbitration.

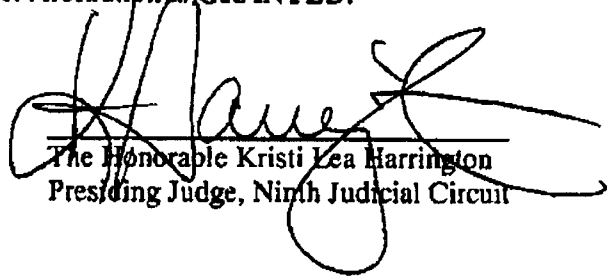
The parties defined "Dispute" in Paragraph 31 of the Agreement to include a controversy or claim (whether based upon contract, tort, statute, common law or otherwise). Such "Disputes" are subject to the alternative dispute resolution process, including binding arbitration, once the parties have

attempted to mediate the dispute. An action for slander of title arises in tort which, as stated in the Agreement, is subject to arbitration. South Godley has further requested declaratory relief pursuant to §15-53-10 *et seq.*, S.C. Code Ann. Statutory relief is also included in the definition of "Dispute" in the Agreement and, therefore, is subject to the arbitration provision.

Mungo has filed a counterclaim to the Complaint. There appear to be, and counsel has argued, numerous disputes between South Godley and Mungo as to what portion of the 129.71 acres is subject to Mungo's right to purchase and what remaining portion remains as property of South Godley. The Court finds that the disputes between the parties are clearly defined as "Disputes" in the Agreement, and that the disputes are so intertwined that any attempt to split these disputes would result in duplicative proceedings and may bring about inconsistent results. All of these "Disputes" can be effectively dealt with through the binding arbitration proceedings that the parties established to in the Agreement.

Either a judge or an arbitrator would be required to weigh the same arguments and interpret the same provisions in the Agreement between the parties, including, but not limited to, what constitutes the property subject to Mungo's right to purchase. There exists a very real possibility of inconsistent results if the "Disputes" are allowed to proceed as two separate actions. Alternative dispute resolution, such as the arbitration required by Paragraph 31 of the Agreement, will not only render a consistent ruling on all the "Disputes" between Mungo and South Godley, but it will also promote judicial economy and avoid the very real potential for inconsistent results.

Therefore, Defendant Mungo's Motion to Compel Arbitration is **GRANTED**.



The Honorable Kristi Lea Harrington  
Presiding Judge, Ninth Judicial Circuit

October 24, 2014  
Moncks Corner, South Carolina

STATE OF SOUTH CAROLINA  
 COUNTY OF Berkeley  
 IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-08-225

RECEIVED

DEC 09 2014

South Godley Enterprises, LLC

Mungo Homes Coastal Division,

SC Court of Appeals

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for :  Plaintiff  Defendant  
 or  
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court: This case came before the Court on Plaintiff's Motion to Alter, Amend, or Reconsider this Court's Order dated October 24, 2014. In the October 24<sup>th</sup> Order, the Court granted Defendant's Motion to Compel Arbitration and now hereby DENIES Plaintiff's Motion to Alter, Amend, or Reconsider its previous ruling.

ORDER INFORMATION

This order  ends  does not end the case.  
 Additional Information for the Clerk :

2014 NOV 10 PM 14:46  
 FILED  
 CLERK OF COURT  
 BERKELEY COUNTY

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge  
 SCRPC Form 4C (03/2013)

2151  
 Judge Code

11/10/14  
 Date  
 Page 1