

77102

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

Concerned Riverchase Estate Owners, Andrew Dodd,  
Heather Dodd, and Charles Ratay.....Respondents,

vs.

**RECEIVED**

AUG 31 2015

Riverchase Estates Property Owners Assoc., Inc.;  
LGI Land SC, LLC; LGI Holdings LLC; LGI Development, Inc.;  
And Lexon Insurance Company, Inc. ....

Appellants,  
**SC Court of Appeals**

AND

Concerned Riverchase Estate Owners Clark, Perry, Elder & White.....Respondents,

vs.

Riverchase Estates Property Owners Assoc., Inc.; Woodforest Bank, N.A.,  
LGI Land SC, LLC; LGI Holdings, LLC; LGI Development, Inc.; and  
Lexon Insurance Company, Inc., .....Defendants.

Of Whom Riverchase Estates Property Owners Assoc., Inc.;  
LGI Land SC, LLC; LGI Holdings, LLC; LGI Development, Inc.;  
And Lexon Insurance Company, Inc. are the .....Appellants.

Appellate Case No. 2015-00193

\_\_\_\_\_  
The Hon. R. Knox McMahon  
Lancaster County  
Trial Court Case Nos. 2013-CP-29-00649, 2014-CP-29-00792

\_\_\_\_\_  
RESPONDENTS MOTION TO DISMISS  
\_\_\_\_\_

Respondents respectfully move the court to Dismiss the Appeal filed by Appellants on two grounds. First, the Appellants have sought Appeal of a non-final order that does not affect substantial rights or "mode of trial" because Defendants *consented* to Alternative Dispute Resolution in Lancaster County. [*see, Exhibit-A*] Defendants expressly requested enforcement of binding arbitration within their June 3, 2014 Reply memorandum to the court. [*Exhibit-B, p.4 line*

(1)]. [“Based on the foregoing, the Court should reconsider the Order and enforce the mandatory arbitration provisions in either Texas *or Lancaster County, South Carolina...*”]. See also, Exhibit-A, lines 1-6).

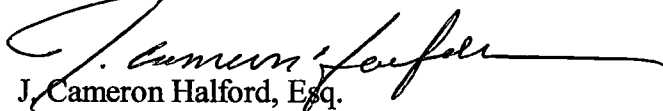
It is only in exceptional cases that the appellate court views with approval an appeal from an interlocutory order; it is usually far better for the party to await the final decree or judgment. Capel v. Moses, 36 S.C. 559, 15 S.E. 711 (1892). Ordinarily, where a judgement or order is entered by consent, it is binding and conclusive and cannot be attacked by the parties either by direct appeal or in a collateral proceeding. Johnson v. Johnson, 301 S.C. 44, 425 S.E.2d 46 (Ct. App. 1992). A consent decree or order cannot be properly regarded as a judgment of the court, but is a mere agreement between the parties, which cannot be set aside except for fraud or mistake; it is therefore, not appealable. Parsons v. Gibbes, 59 S.C. 215, 37 S.E. 753 (1901). The right of appeal from such an order is regarded as waived. (*A party cannot appeal from an order or judgment that he has requested*). Exhibit-B. Calcutt v. Calcutt, 282 S.C. 565, 320 S.E.2d 55 (Ct. App. 1984); accord Gibbes, supra.

Second, the court’s September 8, 2014 Order (modifying its previous order of April 29, 2014) granted the relief that defendants sought and was thus favorable to the defendant parties. Normally, one cannot appeal from an order favorable to him, nor can a party appeal from the granting of his own motion. Neal v. Clark, 196 S.C. 139, 12 S.E.2d 921 (1941) The court’s order of September 8, 2014 did not therefore deprive defendants to a mode of trial to which they were entitled to as a matter of right. Appellants expressly pleaded for, consented to, and were granted enforcement of binding arbitration in Lancaster County. Exhibit-B.

CONCLUSION

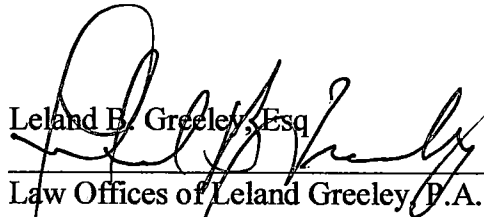
Because the trial court's order did not determine *with finality* any matter forming the whole or part of some cause of action or defense in the case Appellants were not deprived of the ability to contest the cases on the merits. They remained capable of doing so in court-ordered binding arbitration that defendants consented to after requesting the same by reply memorandum to the trial court. Respondents therefore seek that this appeal be dismissed and the case be remanded for binding arbitration in Lancaster County as ordered by the trial court on September 8, 2014.

Respectfully submitted,



J. Cameron Halford, Esq.  
Halford Niemiec & Freeman, L.L.P.  
238 Rockmont Drive  
Fort Mill, South Carolina 29708  
803-547-6618  
803-547-6638 fax  
cam@fortmilllaw.com  
ATTORNEYS FOR RESPONDENTS CLARK,  
PERRY, DODD AND RATAY

JOINDER BY:



Leland B. Greeley, Esq.  
Law Offices of Leland Greeley P.A.  
Post Office Box 2981  
Rock Hill, South Carolina 29732  
Phone: 803-329-0088  
Fax: 803-329-4310  
E-mail: lgreeley@lbgreeleylaw.com  
ATTORNEY FOR RESPONDENTS  
ELDER & WHITE

Exhibit-A  
Respondent August 28, 2015  
Motion to Dismiss

[Excerpt September 8 ,2014 Transcript]  
Lines 1-6  
Lines 10-11

1 THE COURT: Well, I looked at Mr. White's reply to the  
2 plaintiff's return to the motion to reconsider, and on the  
3 next to the last page, three or four, indicates, "based on  
4 the foregoing the Court should reconsider the order and  
5 enforce the mandatory arbitration provision in either Texas  
6 or Lancaster County along with the dismissal of certain  
7 defendants." I get -- I mean, I guess my question is, Mr.  
8 White, would the defendants be amenable to mediation in  
9 Lancaster County?

10 MR. WHITE: The defendants would certainly be amenable  
11 to mediation in Lancaster County.

12 THE COURT: Would the plaintiffs?

13 MR. GREELEY: To mediation? Of course, mediation is  
14 not binding and so that's why I think the defendants are  
15 saying that they are amenable to it.

16 MR. WHITE: Well, I will go further. If the Court asks  
17 me were the defendants willing to resolve these various  
18 motions for arbitration in Lancaster County, I don't know, I  
19 would have to speak to my client, but I would speak to them  
20 and we could render -- get a decision back to the Court  
21 rather quickly.

22 MR. GREELEY: That's fine with us. Yeah, we -- I  
23 mean --

24 THE COURT: Well, what if I just order it?

25 MR. WHITE: Well, then if you order it then they have a

Exhibit – B

Respondent Motion to Dismiss  
August 28, 2015

[Defendant Reply Memorandum Dated June 3, 2014]  
p.4 at line (1)

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF LANCASTER )  
 )  
 Concerned Riverchase Estate )  
 Owners, Clark, Perry, Elder & )  
 White, )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 Riverchase Estates Property )  
 Owners Assoc., Inc.; Woodforest )  
 Bank, N.A.; LGI Land SC, LLC; )  
 and LGI Holdings, LLC; LGI )  
 Development, Inc.; and Lexon )  
 Insurance Company, Inc., )  
 )  
 Defendants. )

IN THE COURT OF COMMON PLEAS  
 SIXTH JUDICIAL CIRCUIT

REPLY TO PLAINTIFFS' RETURN  
TO MOTION TO RECONSIDER

C.A. No. 13-CP-291649

FILED  
 COURT OF COMMON PLEAS  
 LANCASTER, SC  
 2013 JUN -3 PM 1:25

The LGI Defendants<sup>1</sup> hereby offer this Reply in response to Plaintiffs' Return to the Motion to Reconsider.

1. Preemption. Plaintiffs' claim that the LGI Defendants failed to raise preemption is without merit. The LGI Defendants cited express and direct authority mandating enforcement of federal and state arbitration provisions. These arguments were noted numerous times including the following excerpts in the Memorandum in Support:

a. Both the Federal Arbitration Act ("FAA") and the South Carolina Uniform Arbitration Act ("SC Arbitration Act") mandate enforcement of arbitration provisions. . . "The policy of the United States and South Carolina is to favor arbitration of disputes." Zabinski v. Bright Acres

<sup>1</sup> Capitalized terms not otherwise identified shall have the definitions and meanings ascribed to them in the Motion to Dismiss filed by the LGI Defendants on August 12, 2013.

SPENCER & SPENCER, P.A.  
 ATTORNEYS AT LAW  
 226 E. MAIN STREET  
 P.O. BOX 790  
 ROCKHILL, S.C. 29731  
 TEL. 803 / 327-7191

00115455.WPD

Associates, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001) (Memorandum, p. 6).

b. "A written provision in any contract evidencing a transaction involving commerce to settle by arbitration shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract. 9 U.S.C.A. § 2 (2000)."<sup>2</sup> Carolina Care Plan, Inc. v. United HealthCare Servs., Inc., 361 S.C. 544, 550-51, 606 S.E.2d 752, 755 (2004) (Memorandum, p. 6).

c. "On application of a party showing an [arbitration] agreement described in § 15-48-10, and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration, but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue so raised and shall order arbitration if found for the moving party, otherwise, the application shall be denied." S.C.Code Ann. § 15-48-20(a) (Memorandum, p. 7).

d. "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." Zabinski, 346 S.C. at 596-97, 553 S.E.2d at 118-19 (citations omitted) (Memorandum, p. 7).

The LGI Defendants properly cited and relied on the more specific FAA and SC Arbitration Act statutes than the venue statute relied upon by Plaintiffs. See Spectre, LLC v. S.C. Dep't of Health & Env'tl. Control, 386 S.C. 357, 372, 688 S.E.2d 844, 852 (2010) ("Where there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect"). Moreover, application of the SC

---

<sup>2</sup> The SC Arbitration Act has almost identical language as the FAA. See S.C.Code Ann. § 15-48-10.

Arbitration Act does not even involve preemption. As noted in the Motion to Reconsider, the Court of Appeals expressly ruled that the venue statute does not apply.

2. Severability. The LGI Defendants are not precluded from arguing severability of the arbitration provision. First, the LGI Defendants expressly argued that the Covenants are severable, including in the proposed order. (*Proposed Order Granting Motion to Dismiss*, p. 4, n.2). In addition, Plaintiffs never argued that arbitration in South Carolina was unconscionable and thus unenforceable. Plaintiffs' arguments focused on unconscionability of arbitration in Texas. With the abundance of case law enforcing arbitration provisions, it was never contemplated that the Court would refuse to enforce arbitration in South Carolina. See In re Timmerman, 331 S.C. 455, 460, 502 S.E.2d 920, 922 (Ct.App.1998) ("South Carolina courts 'have adhered to the rule that where an issue has not been ruled upon by the trial judge nor raised in a post-trial motion, such issue may not be considered on appeal.' When a party receives an order that grants certain relief not previously contemplated or presented to the trial court, the aggrieved party must move, pursuant to Rule 59(e), SCRPC, to alter or amend the judgment in order to preserve the issue for appeal").

3. Conclusion. Based on the foregoing, the Court should reconsider the Order and enforce the mandatory arbitration

SPENCER & SPENCER, P.A.  
ATTORNEYS AT LAW  
226 E. MAIN STREET  
P.O. BOX 790  
ROCK HILL, S.C. 29731  
TEL. 803 / 327-7191

provisions in either Texas or Lancaster County, South Carolina along with dismissal of certain defendants.

Rock Hill, S.C.

Date: June 2, 2014

SPENCER & SPENCER, P.A.

By: 

W. Mark White  
W. Chaplin Spencer, Jr.  
226 East Main Street  
P.O. Box 790  
Rock Hill, SC 29731  
803/327-7191 - Telephone  
803/327-3868 - Telecopy  
markwhite@spencerfirm.com

ATTORNEYS FOR LGI DEFENDANTS

SPENCER & SPENCER, P.A.

ATTORNEYS AT LAW

226 E. MAIN STREET

P.O. BOX 790

ROCK HILL, S.C. 29731

TEL. 803 / 327-7191

CERTIFICATE OF SERVICE

I hereby certify that we are counsel for the Respondents in the above captioned matters and that we did on August 28, 2015 serve a copy of the foregoing RESPONDENTS NOTICE OF MOTION AND MOTION TO DISMISS on counsel for Appellants, as follows, by depositing a copy of the same in the United States mail, postage prepaid, and addressed as follows:

Mark W. White, Esq.  
W. Chaplain Spencer, Jr., Esq.  
226 E. Main Street  
Post Office Box 790  
Rock Hill, South Carolina 29731  
ATTORNEYS FOR APPELLANTS  
LGI LAND SC, LLC; LGI HOLDINGS, LLC; LGI DEVELOPMENT, INC.  
AND LEXON INSURANCE COMPANY, INC.

**RECEIVED**


AUG 31 2015

SC Court of Appeals

Elizabeth Van Doren Grey, Esq.  
Beth B. Richardson, Esq.  
1310 Gadsden Street  
Post Office Box 11449  
Columbia, South Carolina 29211

ATTORNEYS FOR APPELLANT  
WOODFOREST BANK, N.A.

HALFORD NIEMIEC & FREEMAN, LLP

  
\_\_\_\_\_  
J. Cameron Halford  
238 Rockmont Drive,  
Fort Mill, South Carolina 29708  
803-547-6618  
803-547-6638 fax  
[cam@fortmilllaw.com](mailto:cam@fortmilllaw.com)

LAW OFFICES  
**HALFORD NIEMIEC & FREEMAN LLP**  
*A Registered South Carolina Professional Association Including  
Limited Liability Companies*  
238 ROCKMONT DRIVE  
FORT MILL, SOUTH CAROLINA 29708

---

TELEPHONE: 803-547-6618  
FACSIMILE: 803-547-6638

J. Cameron Halford, LLC  
Matthew R. Niemiec, LLC  
P. John Freeman, LLC

August 28, 2015

**RECEIVED**

AUG 31 2015

SC Court of Appeals

Jenny Abbott Kitchings, Clerk of Court  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

Re: Concerned Riverchase Estate Owners, et al. v. Riverchase Estates, et al.  
Case Nos. 2013-CP-29-00649 and 2014-CP-29-00792  
Appellate Case No.: 2015-00193

Dear Ms. Kitchings:

Enclosed please find an original and seven (7) copies of the Respondents' Motion to Dismiss along with the Certificate of Service regarding the above-referenced matter. In this regard, I would appreciate your filing these documents and returning a clocked copy to my office in the envelope provided. I have also enclosed my check in the amount of \$25.00 for the cost of filing. If you have any questions regarding the enclosed or this matter, please feel free to contact my office.

With kind regards, I remain

Respectfully,

  
J. Cameron Halford


JCH:tml

Enclosures

cc: Leland Greeley, Esquire  
w/enclosure  
Mark W. White, Esquire  
w/enclosure  
Elizabeth Van Doren Gray, Esquire  
w/enclosure  
Beth Richardson, Esquire  
w/enclosure



**1** US POSTAGE & FEES PAID 062S0008987736  
13 OZ FIRST-CLASS FLATS RATE FROM 29708




stamps.com  
08/28/2015

**USPS FIRST CLASS MAIL®**

Halford, Niemiec & Freeman  
238 Rockmont Drive  
Fort Mill SC 29708

C076

SHIP TO: Jenny Abbott Kitchings, Clerk of Court  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia SC 29201-3769



**RECEIVED**

AUG 31 2015

SC Court of Appeals