THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

vs.

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

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' REPLY TO APPELLANTS' RETURN TO MOTION TO DISMISS

Respondents respectfully submit the following Reply in response to the Appellants' Return and in support of dismissal pursuant to SCACR 240.

I. FACTS AND PROCEDURAL BACKGROUND.

Respondents purchased residential lots in Riverchase Subdivision and commenced the above captioned lawsuits alleging, *inter alia*,[1] that Appellants failed to Develop the property in accord with the original master plan for the development as set forth in the Declaration of Covenants, Conditions and Restrictions for Riverchase Estates. The CCR's are recorded in Section I recorded in Book 480, Page 89 with the Register of Deeds for Lancaster County, SC ("the "Covenants.") The Covenants set forth mandatory dispute resolution procedures which include *informal presentment,* formal response, *and non-binding mediation.* (Covenants, §§ 10.02and 10.03.) If the prescribed resolution procedures are not successful, *then either party may demand mandatory arbitration.* (Covenants, §10.05(a)). The Covenants further provide that arbitration proceedings must be conducted in Lancaster County, South Carolina. *Unless, that is*, the dispute involves the Developer LGI Land SC, LLC. *In which instance, the proceedings* ***must be*** *conducted in Montgomery County, Texas.* (Covenants, §10.05(d)). Herein lies the Achilles heel for what is ultimately Texas corporations who have, via a South Carolina LLC, engaged in developing and selling land in Lancaster County in derivation of the Covenants.

II. DISCUSSION

In asserting that Respondents failed to comply with the informal resolution, mediation and arbitration procedures required by the Covenants, Respondents seek to side step and evade the most critical issue involved in the lower court's decision on unconscionability and, later, enforcement of arbitration, e.g., Defendants' abandonment of its own SC Offices and informal

---

[1] Respondents also alleged that the Developer, LGI Land SC, LLC (a South Carolina entity) had abandoned its registered offices and had thus abandoned informal dispute resolution procedures mandated by the declarant's own covenants and as amalgamated with the other Texas defendants, abandoned informal dispute resolution procedures that begin with their own offices in South Carolina which no longer exist.

resolution procedures available through the same. These facts on the face of the complaint, properly viewed as true by the trial judge, led the court to find the provisions in the Covenants regarding Texas binding arbitration to be unconscionable and void as against public policy.

While Appellants side step the issue, the Appellants do not dispute that the registered offices for informal dispute resolution now lie addressed in Texas. They ignore that Appellants attempted, *to no avail*, to engage in informal dispute resolution set forth in the Covenants through registered offices in South Carolina that were abandoned or utterly nonresponsive. This fact underscores, precisely, the futility involved in the Covenants and why the lower court found the procedural labyrinth found within the Covenants unconscionable. The trial court's partial grant of relief in the subsequent December 18, 2014 Order grants relief being requested by Appellants' counsel. The trial court ultimately finds that all parties could have expected binding arbitration in South Carolina. The question becomes whether the trial court erred as a matter of law in exercising its inherent authority to manage litigation.

A. The trial court properly exercised its inherent authority to manage litigation by eliminating the *futility* inherent in the labyrinth of non-binding ADR procedures in the covenants.

Appellants correctly point out that the developer of Riverchase Estates is LGI Land SC, LLC. The appellants do not dispute that LGI Land SC, LLC is a South Carolina entity. It is also the Declarant under the CCR's. Nor do Appellants dispute that the SC entity was the party responsible for developing and maintaining Riverchase subdivision, its common elements, amenities and registration and "formal response" regarding informal dispute resolution. Following Appellants' logic, litigants who are ignored entirely when attempting, through counsel, to engage the developer through abandoned offices and procedures, said litigants

nonetheless must further proceed through the abysmal process of informal mediations (none of which are binding), be required to travel to foreign forums, because the developer (A South Carolina LLC entity nonetheless) is involved. The problem with this logic is it underscores why the courts of this state should not permit foreign corporations amalgamated immunity through a shell South Carolina entity.

B. Appellants are not an "aggrieved party" where the court order and the restrictive covenants mandate, ultimately, the method of alternative dispute resolution dictated by the declarant's covenants.

Appellants argue that "*to require otherwise, Appellants* ***lose*** *even if they ultimately prevail.*" The unique situation described by Appellants under Spell is ultimately self-inflicted where, again, Appellants have consented by brief and otherwise to a willingness to submit to alternative dispute resolution in Lancaster County. The trial court simply cut out the futility involved.

III. CONCLUSION

For the reasons stated above, the Motion to Dismiss should be granted and the case remanded for binding arbitration in Lancaster County, South Carolina as Ordered by the trial court dated September 8, 2014.

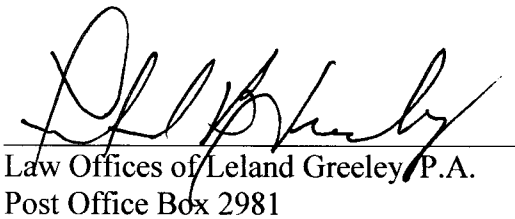
Respectfully submitted,

J. Cameron Halford /2865

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@fortmillllaw.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
S. C. Bar #: 7850

CERTIFICATE OF SERVICE

I hereby certify that I am counsel for the Respondents in the above captioned matter and that I did on October 5, 2015 serve a copy of the foregoing RESPONDENTS REPLY TO APPELLANTS' RETURN, 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.

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.

LELAND B. GREELEY

Leland B. Greeley
LELAND B. GREELEY, P.A.
128 East Main Street, Suite 102
Post Office Box 2981
Rock Hill, South Carolina 29732
803-329-0088
803-329-4310 fax
lgreeley@lbgreeleylaw.com
S.C. Bar # 7850