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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

DEC 23 2015

Concerned Riverchase Estate Owners, Andrew Dodd, Heather Dodd and Charles Ratay Respondents, **SC Court of Appeals**

v.

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,

v.

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 Honorable R. Knox McMahon
Lancaster County
Trial Court Case Nos. 2013CP2900649, 2014CP2900792

PETITION FOR REHEARING

COMES NOW appellants Riverchase Estates Property Owners Assoc., Inc.; LGI Land SC, LLC; LGI Holdings, LLC; LGI Development, Inc. and Lexon Insurance Company, Inc.

(collectively, "Appellants") through their undersigned counsel and pursuant to Rules 221(a) and 240, SCACR, and respectfully request that the Court rehear and reconsider its Order dismissing this appeal filed December 10, 2015 ("Order").

I. Condensed Background¹

Respondents are owners of residential lots in the Riverchase Subdivision and commenced lawsuits alleging that Appellants failed to develop the property in accordance with the master plan as set forth in the Covenants. The Covenants set forth mandatory dispute resolution procedures. If the prescribed resolution procedures are not successful, then either party may demand mandatory arbitration. The Covenants further provide that arbitration proceedings must be conducted in Lancaster County, South Carolina unless they involve Developer (which is appellant LGI Land SC, LLC), in which instance the proceedings must be conducted in Montgomery County, Texas. The trial court refused to enforce arbitration in Texas as set forth in the Covenants resulting in this appeal.

II. Arguments Supporting Rehearing

The Order provides two reasons for dismissal: (1) "Appellants are not aggrieved because they requested the

¹ More detailed information is set forth in Appellants' Initial Brief. Defined terms herein shall have the meaning set forth in Appellants' Initial Brief.

relief that was granted" and (2) "the order compelling arbitration is not an appealable order under section 15-48-200 of the South Carolina Code 2005)." Appellants respectfully submit that the Court overlooked or misapprehended the underlying facts and law as follows.

1. **A Party is Aggrieved when Relief sought is denied even if Alternative Relief is granted.** The primary relief sought in the Motion to Dismiss was the enforcement of the subject arbitration clause which mandated arbitration in Montgomery County, Texas. Recognizing that arbitration in the wrong venue is preferable to a trial in that venue, Appellants argued that arbitration in Lancaster County should be entered if the lower court "refuses to reconsider its determination that arbitration in Texas is unconscionable." (Motion to Reconsider, ¶ 4.) The law does not require a party to waive appellate review of the denial of its primary remedy by seeking mitigation of a lower court's error through an alternative remedy.

"Rule 201(b), SCACR, provides that '[o]nly a party aggrieved by an order, judgment, or sentence may appeal.' We recently reiterated that '[a] party is aggrieved by a judgment or decree when it operates on his or her rights of property or bears directly on his or her interest.' 'The word 'aggrieved' refers to a substantial grievance, a denial of some personal

or property right, or the imposition on a party of a burden or obligation.'" Shaw v. City of Charleston, 351 S.C. 32, 36, 567 S.E.2d 530, 532 (Ct. App. 2002) (citations omitted).

Appellants were aggrieved by the lower court's decision and perfected this appeal to redress the lower court's refusal to enforce the arbitration clause as written. The South Carolina Supreme Court recognized that a party may be aggrieved by receiving alternative relief in Sickora v. Metro. Life Ins. Co., 278 S.C. 99, 101, 292 S.E.2d 593, 595 (1982) and allowed appellate review by holding:

The alternative relief did not prevent a review by this Court on the basic contention. If the primary relief had been granted, as it should have been, the alternative motion would have been unnecessary.

Moreover, "a party may appeal adverse portions of an otherwise favorable verdict or order." Jean Hoefer Toal, Appellate Practice in South Carolina, p. 109 (2002) citing Neal v. Clark, 196 S.C. 139, 12 S.E.2d 921 (1941).

2. Arbitration was Denied. The Order fails to recognize that this case involves the appeal of a lower court's refusal to compel arbitration in accordance with the applicable contract as opposed to an appeal of a lower court's order compelling arbitration per a contract. This distinction is critical and manifest. While it is true that a party may not take an immediate appeal from order compelling arbitration as required in a valid contract, the refusal to compel

arbitration in accordance with the terms of the governing contract is immediately appealable. The lower court in this matter refused to compel arbitration in Montgomery County, Texas as expressly required in the contract. This appeal cannot be justly discarded as an appeal of the grant of arbitration when it's the exact opposite.

While no South Carolina precedent has addressed these specific facts, the courts in Tennessee have. In the Tennessee case, the lower court compelled an arbitration but refused to compel the arbitration in the forum selected in the applicable contract. After noting that normally an order compelling arbitration is not immediately appealable, the Tennessee Court of Appeals provided an exception to this normal rule when the trial court reforms an agreement and does not enforce a forum selection clause contained therein. Recognizing the unique policy considerations present upon such an occurrence, the court ruled as follows:

Accordingly, we hold that an aggrieved party may appeal in the unique situation where the trial court orders arbitration but, sua sponte, reforms the parties' choice of law and forum selection clauses.

Spell v. Labelle, 2004 WL 892534, at *3 (Tenn.Ct.App. 2004).

"[C]ourts must rigorously enforce arbitration agreements according to their terms, including terms that specify with whom the parties choose to arbitrate their disputes, and the rules under which that arbitration will be conducted.'" Cape

Romain Contractors, Inc. v. Wando E., LLC, 405 S.C. 115, 125, 747 S.E.2d 461, 466 (2013) (citations omitted). Therefore, this Court should allow this appeal to proceed as the gravamen of this Appeal is to redress the refusal of the lower court to compel the arbitration prescribed in the contract.

WHEREFORE, the undersigned counsel for Appellants respectfully request this Court to grant this Petition for Rehearing and allow this appeal to proceed on the merits.

Respectfully submitted,

Date: December 23, 2015

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and Lexon Insurance Company, Inc. are the Appellants.

Appellate Case No. 2015-00193

The Honorable R. Knox McMahon
Lancaster County
Trial Court Case No. 2013CP2900649, 2014CP2900792

PROOF OF SERVICE

I certify that I have served the Petition for Rehearing
by depositing a copy in the United States Mail, postage

prepaid, on December 23, 2015, addressed to counsel of record
as follows:

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December 23, 2015

Via Hand Delivery

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Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
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Re: Concerned Riverchase Estate Owners, et al. v. Riverchase
Estates Property Owners Association, Inc., et al.
Appellate Case No.: 2015-00193

Dear Ms. Kitchings:

Enclosed please find an original and seven copies of the Petition for Rehearing and Proof of Service along with a check in the amount of \$25.00 for the motion fee in the above referenced matter. Please file the originals with the records of your court and return a clocked copy in the enclosed envelope.

Thank you for your assistance in this matter.

Respectfully,

SPENCER & SPENCER, P.A.



W. Mark White

enclosures

cc: Chris Wren
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