

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

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Respondents

vs.

JAN 07 2016

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

SC Court of Appeals

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
PETITION FOR REHEARING

Respondents respectfully move the court to DENY Appellants' motion for re-hearing filed on December 28, 2015 pursuant to S.C. Code Ann. § 15-48-200 and *Toler's Cover Homeowners Ass'n, Inc. v. Trident Const. Co., Inc.*, 355 S.C. 605, 611 586 S.E. 581, 584-85 (2003). Respondents move the court to deny the relief on the grounds that Appellants seek reconsideration of an order

that is not appealable where Appellants are not an aggrieved party as contemplated by Rule 201(b) SCACR. Appellants consented, via prayer for alternative relief, to binding arbitration in Lancaster County. Predicated on this fact alone, the lower court did not reform the parties' choice of law and forum selection clauses. *Heffner v. Destiny, Inc.*, 321 S.C. 536, 471 S.E.2d 135 (1995). [holding all orders relating to arbitration not mentioned in S.C. Code Ann. 15-48-200(a) are not immediately appealable.] Id.

BACKGROUND

Respondents are purchasers and owners of residential lots in the Riverchase Subdivision in Lancaster County and commenced lawsuits alleging that Appellants, *developers*, (a) abandoned registered offices and alternative dispute resolution procedures created in their very own covenants,¹ and (b) Appellants failed to develop the property in accordance with the community master plan. The core issue of Appellants' dispute in the case is that the developer (Appellant LGI Land SC, LLC) is named as a defendant party. At no prior point have Appellants argued the South Carolina LLC developer was under disability, or incapable of managing its own affairs. Appellants merely argue, therefore, that the lower court was incorrect and should have compelled binding arbitration in Montgomery County, Texas because the developer in this case -- a South Carolina LLC -- is *Sui Juris*. The trial court determined that the labyrinth of ADR procedures set forth in the developers' covenants was both unconscionable and void as to public policy in South Carolina, but the court later amended its Order (at Appellants' request) to compel binding arbitration in Lancaster County, South Carolina.

¹ Appellants seek to evade the fact that the registered offices of the Appellant were non-responsive and abandoned as alleged in the Complaint. The trial court did not refuse to compel arbitration, it simply refused to compel arbitration in Montgomery County, Texas where Appellants, in the alternative, prayed for binding arbitration in Lancaster County, South Carolina.

ARGUMENTS IN OPPOSITION TO REHEARING

1. The trial court neither over-looked nor misapprehended the underlying facts or law because S.C. Code Ann. §15-48-200 is not inconsistent nor would it undermine the goals and policies of the Federal Arbitration Act (“FAA”).

This case involves a South Carolina LLC (developer) attempting to draw upon unconscionable (and arguably oppressive and invalid) procedures set forth in the quagmire found within the restrictive covenants. Had the developer or other Appellants sought to honor the procedures set forth in the covenants, they would not have ignored certified notices to registered offices where they essentially went “dark”. The trial court determined all parties could reasonably have expected binding arbitration in Lancaster County. Lancaster County is where the lands are located and where, factually, development (or lack thereof) occurred or did not occur.

In the instant case §15-48-200 of the South Carolina code neither invalidated the arbitration agreements, nor undermined the goals set forth in the FAA. *Toler’s Cove Homeowners Ass’n, Inc. v. Trident Construction Co., Inc.*, 355 S.C. 605, 586 S.E. 2^d 581 (2003) (citing *Zablinsky v. Bright Acres Assocs.*, 346 S.C. 580, 590, 553 S.E.2d 110). Instead, the court’s order enforces arbitration which, pursuant to *Toler’s* and *Zablinski*, coincides with the policies of the FAA in favor of arbitration of disputes.

2. The alternative relief prayed for by Appellants was granted and Appellants are not an aggrieved party as contemplated by SCACR 201(b).

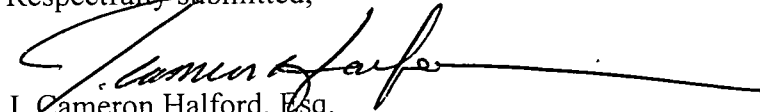
Judge Knox McMahon essentially *excised* the labyrinth of procedural *quick sand* set forth in the covenants--*a valid exercise of the court’s power to manage litigation*. There is no dispute that the case involves the sale of lots in Lancaster County. There is no dispute that the developer is a South Carolina LLC. As such, both the developer and Appellants could reasonably have

contemplated jurisdiction in Lancaster County and binding arbitration in the same locale. The trial court's determination was without legal error or abuse of discretion. It was a valid exercise of the court's inherent power to manage litigation. Appellants seek application of Tennessee precedent where S.C. Code Ann. §15-48-200, et seq and *Toler's Cove* would be controlling South Carolina precedent. Contrary to the position asserted by Appellants, the trial court did not "reform" the parties' choice of forum. Rather, the trial court enforced resolution both parties consented to and could reasonably have expected procedurally under the contracts and covenants.

CONCLUSION

For the reasons set forth above and for reasons accurately set forth in the court's last Order, the Petition for Rehearing should be denied and the case remanded to Lancaster County for binding arbitration. The trial court validly exercised its inherent powers to manage the litigation. In essence the trial court excised redundant, oppressive ADR procedures found in the developer's covenants and compelled binding arbitration [which all parties could have reasonably contemplated] in Lancaster, South Carolina. The December 10, 2015 ruling by the Court of Appeals should stand.

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@fortmillllaw.com
ATTORNEYS FOR RESPONDENTS CLARK,
PERRY, DODD AND RATAY

JOINDER BY:

Leland B. Greeley, Esq.

Leland B. Greeley by Jch w/ permission
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

CERTIFICATE OF SERVICE

I hereby certify that we are counsel for the Respondents in the above captioned matters and that we did on January 4, 2016 serve a copy of the foregoing RESPONDENTS REPLY AND MOTION TO DENY APPELLANT PETITION FOR REHEARING on counsel for Appellants, as follows, by depositing a copy of the same in the United States mail, postage prepaid, and addressed as follows:

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SC Court of Appeals

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

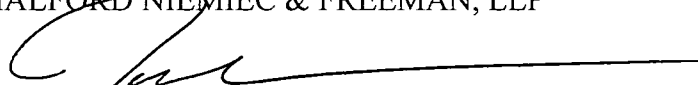
Post Office Box 11449

Columbia, South Carolina 29211

ATTORNEYS FOR APPELLANT

WOODFOREST BANK, N.A.

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

January 6, 2016
Fort Mill, South Carolina

LAW OFFICES

HALFORD, NIEMIEC & FREEMAN, L.L.P.

A Registered South Carolina Limited Liability Partnership Including Limited Liability Companies
238 ROCKMONT DRIVE
FORT MILL, SOUTH CAROLINA 29708

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SC Court of Appeals

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

J. Cameron Halford ^
Matthew R. Niemiec
P. John Freeman

cam@fortmilllaw.com
matt@fortmilllaw.com
jfreeman@fortmilllaw.com

January 4, 2016

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

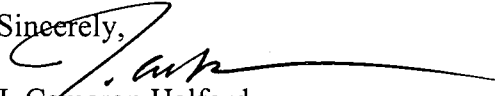
Re: Concerned Riverchase Estate Owners, et al. v. Riverchase Estates, et al.
Case Nos. 2013-CP-29-00649 and 2014-CP-29-00792
Appellate Case No.: 2015-00193

Dear Ms. Kitchings:

Enclosed please find the original and six ⁷ ~~(6)~~ copies of the Respondents' Reply to Appellants' Petition for Rehearing regarding the above-referenced matter. In this regard, I would appreciate your filing these documents and return a clocked copy to my office in the envelope provided. If you have any questions regarding the enclosed or this matter or need anything further from my office, please do not hesitate to contact my office.

With kind personal regards, I am

Sincerely,


J. Cameron Halford

JCH:tml

Enclosures

cc: Concerned Riverchase Estate Owners
w/enclosure
William Mark White, Esquire
w/enclosure
Elizabeth Van Doren Grey, Esquire
w/enclosure
Leland Greeley, Esquire
w/enclosure

^ MEDIATOR AND ARBITRATOR

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