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SC Court of Appeals

February 26, 2016

Via UPS Overnight Delivery

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

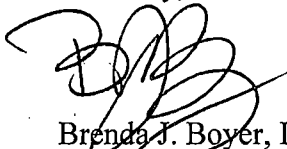
Re: James Chisolm and Beverly Ann Chisolm v. American's Home Place, Inc., et al.  
Court of Common Pleas, Jasper County, South Carolina  
Civil Action No. 2015-CP-27-209

Dear Ms. Kitchings:

On February 18, 2016, we filed an Amended Notice of Appeal and Proof of Service regarding the above referenced matter. The filing fee and a copy of the order appeal from were inadvertently left out, therefore, please find enclosed our firm's check in the amount of \$100.00 for the filing fee and a copy of said order.

If you have any questions or concerns, please do not hesitate to contact our office.

Sincerely,



Brenda J. Boyer, Legal Assistant to  
Tawny D. Mack

Enclosures

cc: Dean B. Bell, Esq. - w/o enclosures

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FEB 29 2016

**SC Court of Appeals**

**IN THE COURT OF COMMON PLEAS  
FOR THE FOURTEENTH JUDICIAL CIRCUIT**

**CASE NUMBER 2015-CP-27-209**

**STATE OF SOUTH CAROLINA**

**COUNTY OF JASPER**

**JAMES CHISOLM and BEVERLY ANN  
CHISOLM,**

**Plaintiffs,**

**vs.**

**AMERICA'S HOME PLACE, INC.; PCF  
CONTRACTING, LLC; UNDERWOOD  
MECHANICAL, LLC; BLUE MESA  
CONSTRUCTION, INC.; PALMETTO  
RESIDENTIAL ELECTRIC, LLC;  
PALMETTO HEATING & AIR OF THE  
LOW COUNTRY, INC.; and ABOVE THE  
SKY ROOFING, INC.;**

**Defendants.**

**UNDERWOOD MECHANICAL, LLC,**

**Third Party Plaintiff,**

**vs.**

**J&J PLUMBING a/k/a J&J TORRES  
PLUMBING a/k/a TORRES PLUMBING,**

**Third Party Defendant.**

**ORDER DENYING DEFENDANT AMERICA'S  
HOME PLACE, INC.'S MOTION TO STAY  
PROCEEDINGS AND COMPEL ARBITRATION**

2016 JAN 14 AM 8:31  
MARRIOTT  
CLERK OF COURT  
JASPER COUNTY SC

**FILED**

~~This matter came before the Court for hearing on October 29, 2015 on the Defendant~~

America's Home Place, Inc.'s ("AHP") Motion to Stay and to Compel Arbitration, as filed on November 16, 2015 in the above captioned matter. Present before the Court were Dean B. Bell, Esq. and Robert C. Dills, Esq. representing the Plaintiffs and Tawny D. Mack, Esq. representing the Defendant AHP. In support of the Motion, Defendant offered its Memorandum in Support, the exhibits thereto, and the pleadings in the matter. In opposition, the Plaintiffs offered their

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*[Handwritten signature]*

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BY *[initials]* DATE **JAN 15 2016**

Memorandum in Opposition, the exhibits thereto, and the pleadings in the matter.

Plaintiffs are the owners of real property located in Jasper County, South Carolina. On November 1, 2011 the Plaintiffs contracted with the Defendant AHP for construction of a new home on their property (the "Agreement"). The various other Defendants are subcontractors of AHP used for construction of the new home. This case and the several causes of action herein arise from alleged defects in the construction of the home as well as negligent and fraudulent conduct on the part of the various Defendants, including AHP.

The Defendant AHP sought to stay proceedings and to compel arbitration of all causes of action in this matter. The Defendant argues that the claims asserted in Plaintiffs' Amended Complaint are subject to mandatory arbitration under an arbitration provision set forth in the Agreement. The Defendant relies on the South Carolina Courts' preference towards arbitration of disputes, and asserts that the claims raised by the Plaintiffs are within the scope of said arbitration provision. As the basis for this argument, the Defendant points to the underlying Agreement as one for the design and construction of a new home and the claims being alleged including among them certain construction defects.

In opposition of the Defendant's motion, the Plaintiffs refer to case law established in this State which limits the reach of arbitration provisions. The Plaintiffs argue that their claims are ~~beyond the scope of the arbitration provision. Their argument centers on the belief that an~~ ordinary homeowner would not have contemplated severe defects and fraudulent or negligent conduct related to the construction of their home. I find this argument compelling.

The South Carolina courts hold that broadly-worded arbitration clauses or agreements apply to disputes only in which a "significant relationship" exists between the claims and the contract. *Zabinski v. Bright Acres Assoc.*, 346 S.C. 580, 598, 553 S.E.2d 110, 119 (2001).

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However, "arbitration is a matter of contract, and a party cannot be required to submit to arbitration any dispute that he or she has not agreed to submit." *Faltaous v. Anderson Ocean Club Dev., LLC*, 338 S.C. 45, 48, 693 S.E.2d 434, 435 (Ct.App. 2010). The Supreme Court of South Carolina has established, as a definitive rule for determining whether a significant relationship exists, that "this court will refuse to interpret any arbitration agreement as applying to outrageous torts that are unforeseeable to a reasonable consumer in the context of normal business dealings." *Aiken v. World Finance Corp. of South Carolina*, 373 S.C. 144, 644 S.E.2d 705, 709 (2007). The Court further established an explicit exclusion from arbitration for "those outrageous torts, which although factually related to the performance of the contract, are legally distinct from the contractual relationship between the parties." *Id.* at 708 ("Applying what amounts to a "but-for" causation standard essentially includes every dispute imaginable between the parties, which greatly oversimplifies the parties' agreement to arbitrate claims between them. Such a result is illogical and unconscionable.").

The arbitration provision of the Agreement between the Plaintiffs and America's Home Place attempt to cover "all claims, disputes, and other matters or questions arising out of or related to this agreement, or the breach thereof..." This is the prime example of a broadly-defined arbitration provision and, therefore, will be interpreted to apply only to those claims ~~which hold a significant relationship to the Agreement.~~ Although the performance of this contract would have such a significant relationship, I find that insufficient under the facts and circumstances of this case. It would be impermissible and contrary to public policy to hold that a citizen would hire a homebuilder to build them a new home with the knowledge and contemplation that the builder might ignore the designs and applicable building codes or industry practices in the performance of such contract. Using a "but-for" analysis regarding the

performance of a home construction would be overbroad and lead to the potential result of every imaginable dispute related to the construction being subject to arbitration, thereby forcing the homeowner to participate in arbitration when he could not possibly have contemplated such a result.

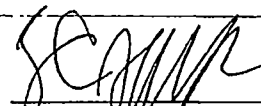
Moreover, the claims are so related as to preclude severance inasmuch as they are so interrelated that they could not be tried separately without duplicative expense and the potential of conflicting results in different forums, particularly in light of the fact that all of the various subcontractors could not be compelled into arbitration. Further, this would result in judicial inefficiency as witnesses, evidence, and resources would have to be duplicated. The issues involved in the various causes of action set forth in the Complaint are mutually dependent and interconnected based on the facts. As such, I find that the furtherance of justice and judicial economy further supports the finding and conclusion that all claims should be tried in the same forum.

**THEREFORE**, after a hearing on the matter and based on the foregoing, it is hereby **ORDERED** that the Defendant's Motion to Stay Proceedings and to Compel Arbitration is hereby denied.

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**IT IS SO ORDERED.**

Newberry  
Ridgeland, South Carolina  
January 7<sup>th</sup>, 2016



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Eugene G. Griffith, Jr.  
Presiding Judge, Jasper County

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