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MAR 25 2016

SC Court of Appeals

# **EXHIBIT A**

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF Aiken )  
 )  
 )  
ANGELA CARTMEL )  
 Plaintiff, )  
 vs. )  
 )  
EDWARD BRICE TAYLOR )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
SECOND JUDICIAL CIRCUIT

ORDER RECEIVED  
 MAR 25 2016  
 SC Court of Appeals

Docket No. 15-CP-02-1181

2-8-16

Hearing date: 1/25/2016  
 Plaintiff's counsel: Brad Owensby  
 Defendant's counsel: Robert V. Varnado  
 Presiding Judge: Hon. L. Casey Manning

*[Handwritten signatures and initials]*  
 Anita Knepper 1255  
 Deputy Clerk

The Parties are before the Court upon motion of Defendant to compel arbitration. Robert Varnado appeared representing Defendant Edward Brice Taylor and Brad Owensby appeared representing Plaintiff Angela Cartmel. After hearing the arguments of counsel and viewing the record before me I make the following findings of fact, conclusions of law and Order:

At issue in this case is a clause contained within a lease with option to purchase contract. Paragraph 61 of the contract states:

"If any dispute relating to this lease between landlord and the tenant is not resolved through informal discussion within 14 days from the date the dispute arises, the Parties agree to submit the issue first before a non-binding mediator and to an arbitrator in the event that mediation fails. The decision of the arbitrator will be binding on the Parties. Any mediator or arbitrator must be a neutral party acceptable to both the Landlord and the Tenant. The cost of any mediations or arbitrations will be paid by the Tenant. "

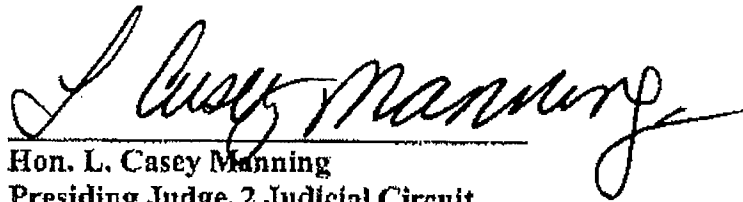
Defendant concedes that the above stated clause does not comply with South Carolina Arbitration Act. Defendant has presented an argument that the language of Paragraph 1, describing the leased property contains a clause which would render the residential lease with option to purchase as a contract subject to the interstate commerce clause and therefore subject to the Federal Arbitration Act. The pertinent language reads "[t]he tenant may also use part of the Property for the following home-based business: Construction of Horse Jumps. The Tenant is responsible for all permits and licensing related to this home-based business and Tenant indemnifies the Landlord of all liability, costs and fees associated with this business."

The Court acknowledges that the Federal Arbitration Act applies to contracts effecting interstate commerce. The issue before the Court is whether the residential lease with option to purchase agreement at issue effects interstate commerce. The intent and objective manifestation of the Parties to a contract at the time a contract is made governs its interpretation. Lewis v. Carnaggio, 257 S.C. 54 (S.C. 1971). If a contract appears ambiguous in one of its terms, the entire contract is to be viewed as a whole to determine its intent and not isolated portions. Farr v. Duke Power Co. 265 S.C. 356 (S.C. 1975). The contract at issue clearly states that it is a residential lease for real property and contains the typical clauses regarding terms of lease, an option to purchase and other clauses relating to the rights and responsibilities of landlord and tenant. The contract acknowledges that Plaintiff has a home based business, however, the clause "Tenant is responsible for all permits and licensing related to this home-based business and Tenant indemnifies the Landlord of all Liability, costs and fees associated with this business" is an indemnification clause. The Court, therefore deems the contract to be a contract for the lease/purchase of property situated within Aiken County, South Carolina. "In order to activate

the application of the FAA, the commerce involved in the contract must be interstate or foreign." Bradley v. Brentwood Homes, Inc., 398 S.C. 447, 730 S.E. 2nd 312, 316 (S.C. 2012).

"To ascertain whether a transaction involves commerce within the meaning of the FAA, the Court must examine the agreement, the complaint and the surrounding facts." *Id* at 316. In the instant case, as between Plaintiff and Defendant, the transaction does not touch or effect interstate commerce. "[A] residential real estate sales contract does not evidence or involve interstate commerce." *Id* at 317, quoting Sancii v. Robards, 289 F.Supp. 2nd 855, 860 (W.D.Ky.2003). "The sale of residential real estate is inherently intrastate. Contracts strictly for the sale of residential real estate focus entirely on a commodity - the land - which is firmly planted in one particular state." *Id* at 317. In this instance, the indemnification clause does not change the nature or character of the transaction or the contract itself, which is for the lease/sale of real property located within Aiken County and does not involve interstate commerce. Accordingly, it is **ORDERED** that Defendant's Motion to Compel Arbitration is denied.

IT IS SO ORDERED

  
\_\_\_\_\_  
Hon. L. Casey Manning  
Presiding Judge, 2 Judicial Circuit

Date:

Feb. 4, 2016