THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Tanya A. Gee, Circuit Court Judge

Lower Court Case No. 2014-CP-40-007229
Court of Appeals Case No. 2015-002584

GROUP III MANAGEMENT, INC., Respondent,

v.

SUNCRETE OF CAROLINA, INC., d/b/a CRYSTAL POOLS, Appellant.

FINAL BRIEF OF APPELLANT

Respectfully submitted,

Alan R. Belcher, Jr., Esquire, Bar No. 71686
Elizabeth F. Wieters, Esquire, Bar No. 78064
40 Calhoun Street, Suite 550
Charleston, South Carolina 29401
Telephone: (843) 720-3460
Attorneys for Appellant Suncrete Of Carolina, Inc., d/b/a Crystal Pools

Dated: September 28, 2016

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

COURT RULES

STATEMENT OF ISSUES ON APPEAL

I. **THE TRIAL COURT ERRED IN OVERTURNING THE TRIAL COURT'S ORDER OF APRIL 23, 2015.**

II. **THE TRIAL COURT ERRED IN FAILING TO APPLY N.C. GEN. STATUTE § 6-21.6 WHEREIN THE ARBITRATOR CANNOT AWARD ATTORNEYS' FEES IN EXCESS OF $81,138.23.**

III. **THE TRIAL COURT ERRED IN FAILING TO APPLY N.C. GEN. STATUTE § 6-21.6, WHEREIN THE ARBITRATOR MUST REDUCE THE AWARD OF ATTORNEYS' FEES TO ZERO BASED UPON HIS FINDING THAT GROUP III WAS NOT THE PREVAILING PARTY PURSUANT TO NORTH CAROLINA'S PERFORMANCE AND PAYMENT ACT: N.C. GEN. STAT. § 44A-35.**

IV. **THE TRIAL COURT ERRED IN UPHOLDING THE ARBITRATION AWARD BECAUSE THE ARBITRATOR EXCEEDED HIS AUTHORITY AND MANIFESTLY DISREGARDED THE LAW.**

STATEMENT OF THE CASE

This matter arises out of a construction contract dispute between Respondent, Group III Management, Inc., ("Group III") and Appellant, Suncrete of Carolina, Inc., d/b/a Crystal Pools, ("Crystal Pools") (collectively "the Parties"). On September 19, 2013, Group III filed a Demand for Arbitration against Crystal Pools (Demand for Arbitration – R. p. 40), and subsequently, on November 11, 2013, Crystal Pools filed its Response (Response to Demand for Arbitration – R. p. 60). Arbitration Hearings were held and conducted by C. Allen Gibson ("the Arbitrator") in person on July 8, 9 and 10, 2014, in Columbia, South Carolina; and, a continuation of the hearing was held on July 14, 2014 by telephone. The parties subsequently submitted Affidavits regarding attorneys' fees on July 18, 2014 (Affidavits of Everette L. Wooten – R. p. 222 and Alan Belcher – R. p. 225), and the Hearing was declared closed on July 23, 2014.

On August 18, 2014, the Arbitrator rendered the Arbitration Award. Inclusive in the Award, and which is the crux of this appeal, the Arbitrator determined that Group III was the prevailing party and awarded it attorneys' fees in the amount of $116,165.86 (Arbitration Award

– R. p. 2).

The Arbitrator's Award sets forth the amount of the Parties' claims and counterclaims against one another. The Arbitration Award indicates that Group III asserted a remaining "claim" against Crystal Pools totaling $308,022.52. The accounting associated with the remaining amount claimed by Group III consisted of:

Cost to Repair and Complete	$508,933.52
Liquidated Damages	$ 52,464.00
Payment to Hardaway Concrete	$9,500.00
Less Contract Damages	($262,875.00)
TOTAL CLAIM	$308,022.52

Crystal Pools' counterclaim was in the amount of $84,671.98, in addition to two change orders addressed in the Arbitration Award.

The Arbitrator found that Group III's damages were considerably less than those claimed, and also found that Crystal Pools was entitled to change orders but was not entitled to any amount of the contract balance. The Arbitrator's calculations associated with the merits of the dispute, and allowing all available offsets to both Parties, determined that Group III was entitled to recover $81,138.23 from Crystal Pools, which amounted to approximately 26.5% of the total claim Group III brought at the arbitration proceedings. Crystal Pools argued that the awarding of attorneys' fees was inappropriate because, under North Carolina law, the Arbitrator cannot determine Group III to be the prevailing party in the arbitration, when it did not recover at least fifty percent (50%) of its claimed damages.

Thereafter, Crystal Pools moved to vacate the Arbitration Award (Suncrete of Carolina, Inc., d/b/a Crystal Pools' Request to Modify Award – R. p. 63) arguing that the awarding of

attorneys' fees was inappropriate because under North Carolina law, the Arbitrator cannot determine Group III to be the prevailing party in the arbitration, when it did not recover at least fifty percent (50%) of its claim for damages; and, that the Arbitrator erroneously and/or inadvertently applied South Carolina law instead of the agreed upon, contractually binding application of North Carolina Law (Order Denying Request to Modify Award – R. p. 6).

On November 19, 2014, Crystal Pools filed a Motion to Vacate the Arbitration Award or in the Alternative Modify Arbitration Award (Respondent/Defendant Suncrete of Carolina, Inc. d/b/a Crystal Pools' Notice of Motion and Motion to Vacate Arbitration Award or in the Alternative Modify Arbitration Award – R. p. 72) contending that the Arbitrator erroneously and/or inadvertently applied South Carolina law instead of the parties' choice of law, same being, North Carolina law, when determining the amount of attorneys' fees. Consequently, Group III, filed a Motion to Confirm Arbitration Award (Claimant/Plaintiff Group III Mgt., Inc.'s Motion to Confirm Arbitration Award – R. p. 129). The trial court conducted a hearing on both Motions and thereafter granted the Appellant's Motion to Vacate Arbitration Award and ordered that the Arbitrator's award of attorneys' fees to the Respondent (Claimant/Plaintiff) in the amount of $116,165.86 be modified to zero dollars (Order Granting Suncrete of Carolina, Inc. d/b/a Crystal Pools' Motion to Vacate Arbitration Award signed by Judge Kinard on April 23, 2015 and entered as a judgment with the Court on May 18, 2015 – R. p. 8). Sadly, Judge Kinard passed away a day after his Order was entered with the Court.

Contemplating a second bite of the apple, on June 12, 2015, the Respondent filed a Motion to Alter or Amend Judgment Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure (Claimant/Plaintiff's Motion to Alter or Amend Judgment Pursuant to Rule 59(e) S.C.R.C.P. – R. p. 164) On October 2, 2015, a Motion hearing was held before the Honorable

Tanya A. Gee, who was assigned to the case as a successor judge. (R. p. 180, lines 3-7). Judge Gee ruled from the bench granting Group III's Motion, altering setting aside Judge Kinard's Order and upholding the Arbitrator's $116,165.86 award of attorneys' fees[1]. (R. p. 203, lines 1–2). Judge Gee's Order was filed with the Court on November 13, 2015 and received by Appellant on November 19, 2015 (Form 4 and Order Granting Group III MGT., Inc.'s Motion to Alter or Amend Judgment Pursuant to Rule 59(e) S.C.R.C.P. and Granting Group III's Motion to Confirm Arbitration Award – R. p. 19). The Appellant timely filed its Notice of Appeal with this Honorable Court on December 14, 2015 (Notice of Appeal – R. p. 27).

FACTS

On November 19, 2012, Group III and Crystal Pools entered into a construction contract agreement, wherein Crystal Pools was hired as a pool subcontractor for Group III, to construct/build a pool at the Legions Pool Complex at Fort Jackson Army Base in Columbia, South Carolina.

As Crystal Pools began building the pool, numerous questions arose as to how the pool was to be built. Crystal Pools brought its questions to Group III's attention but Group III refused to coordinate any sort of meaningful response. As such, problems and disputes continually arose, which could not be resolved, and Crystal Pools was ultimately terminated by Group III in March 2013.

[1] Judge Gee ordered the Arbitration Award dated August 18, 2014, in favor of the Respondent be confirmed and judgment entered against the Appellant in the amount of $197,304.09. The Appellant is appealing the award of attorneys' fees in the amount of $116,165.86.

APPELLANT'S ARGUMENTS

I. THE TRIAL COURT ERRED IN OVERTURNING THE TRIAL COURT'S ORDER OF APRIL 23, 2015

A. The Respondent and Appellant designated North Carolina law as the law governing their construction contract and the determination of attorneys' fees awards should be governed in accordance therewith.

The primary purpose of this appeal is to have the trial court's order reversed and have this Honorable Court affirm the Order of the Honorable J. Ernest Kinard, in so far as vacating the Arbitration award of attorneys' fees. The Respondent's Motion to Alter or Amend Judgment Pursuant to Rule 59(e) S.C.R.C.P could not be heard by Judge Kinard due to his passing. As a result of a substitute judge hearing the exact same argument presented and offered to Judge Kinard, the predecessors judge's granting of the Respondent's Motion is tantamount to appellate review of another judge's decision. Judge Kinard's Order was well-reasoned and appropriate.

In South Carolina, an arbitrator's award may be vacated when the arbitrator exceeds his or her powers and/or manifestly disregards or perversely misconstrues the law. Technical College v. Lucas and Stubbs, 286 S.C. 98, 333 S.E.2d 781 (1985); S.C. Code Ann. §15-48-130(a). In this matter, the Arbitrator manifestly disregarded North Carolina's specific law concerning "prevailing party" status and the award of attorneys' fees in at least two respects.

The Arbitrator incorrectly applied South Carolina law to the "prevailing party" calculations and analysis. Article 15.2 of the contract between the parties contains a choice of law provision that designates North Carolina law as the law governing the parties' contract (Group III MGT., INC. Subcontract for Building Construction – R. p. 206). The result of the "prevailing party" analysis under North Carolina law results in a different calculation and determination from that employed by the Arbitrator.

Under South Carolina law, a prevailing party may be entitled to attorneys' fees if a contract allows a fee award or if a fee award is mandated by statute. In South Carolina, a party need only prevail by obtaining a verdict or judgment in its favor, regardless of the disparity between the amount claimed and the actual verdict or judgment. See Heath v. County of Aiken, 302 S.C. 178, 182-83, 394 S.E.2d 709, 711 (1990) (defining "prevailing party" as: "The one who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention . . . the one in whose favor the decision or verdict is rendered and judgment entered."). Under this analysis, the Arbitrator may have ruled in favor of either party. Notwithstanding, the Arbitrator's ruling in favor of Group III coincides with the application of South Carolina law, over North Carolina law, given the amount of the Arbitrator's award.

The Appellant respectfully requests that this Honorable Court revisit the attorneys' fee award and recalculate it based upon North Carolina law. The North Carolina General Assembly and North Carolina Courts look at the award of attorneys' fees in a much more strict fashion. In North Carolina, "'as a general rule[,] contractual provisions for attorneys' fees are invalid in the absence of statutory authority. Delta Env. Consultants of N.C. v. Wysong & Miles Co., 132 N.C. App. 160, 167; 510 S.E.2d 690, 695 (1999); see also Lee Cycle Center Inc. v. Wilson Cycle Center Inc., 143 N.C. App. 1; 545 S.E.2d 745, 752 (2001).

Moreover, "the general rule has long obtained that a successful litigant may not recover attorneys' fees, whether as costs or as an item of damages, unless such a recovery is expressly authorized by statute." Delta Env. Consultants, 132 N.C. App. at 167, 510 S.E.2d at 695 (quoting Enterprises. Inc. v. Equipment Co., 300 N.C. 286, 289; 266 S.E.2d 812, 814 (1980)). Therefore, North Carolina law requires both a contract and an enabling statute for an attorneys'

fee provision to be enforceable.

Until recently, North Carolina's stance on attorneys' fees awards yielded harsh results. Even where parties to a contract agreed to a reciprocal provision that entitled the prevailing party to an award of attorneys' fees in the event of a dispute, the Courts refused to enforce the provision. However, on October 1, 2011, the North Carolina General Assembly enacted N.C. Gen. Stat. § 6-21.6. This statute was the enabling statute that allowed the imposition of attorneys' fee awards in certain, specific business contract disputes that, until that time, were unenforceable. This is the law that governs how the attorneys' fee award is to be calculated in the context of the dispute between Group III and Crystal Pools. N.C. Gen. Stat. § 6-21.6

II. THE TRIAL COURT ERRED IN FAILING TO APPLY N.C. GEN. STATUTE § 6-21.6 WHEREIN THE ARBITRATOR CANNOT AWARD ATTORNEYS' FEES IN EXCESS OF $81,138.23

N.C. Gen. Stat. § 6-21.6 allows an arbitrator to award a party attorneys' fees, but it specifically limits the amount of attorneys' fees an arbitrator or judge can award, setting the "prevailing party" analysis aside for the moment, N.C. Gen. Stat. § 6-21.6(b) states:

> Reciprocal attorneys' fees provisions in business contracts are valid and enforceable for the recovery of reasonable attorneys' fees and expenses only if all of the parties to the business contract sign by hand the business contract. In any suit, action, proceeding, or arbitration primarily for the recovery of monetary damages, the award of reasonable attorneys' fees may not exceed the monetary damages awarded.

N.C. Gen. Stat. § 6-21.6(b).

This statute is plain on its face as to the amount of recoverable attorneys' fees that an arbitrator may award. There is no ambiguity in its directive. The Arbitrator's award of attorneys' fees in excess of the monetary damages awarded is a simple error in computation that, at a minimum, should be recalculated to reflect an award consistent with the plain meaning of the statute. The AAA Construction Industry Regular Track Rules under which the parties are

operating affords the Arbitrator an opportunity to address this matter and modify the award appropriately. Despite this, the Arbitrator denied the Appellant's Request to Modify the Award (Order Denying Request to Modify the Award – R. p. 6). As such, Crystal Pools respectfully requests that this Honorable Court further consider the computation of attorneys' fees awarded to Group III under subsequent subparts of this statute.

III. THE TRIAL COURT ERRED IN FAILING TO APPLY N.C. GEN. STATUTE § 6-21.6, WHEREIN THE ARBITRATOR MUST REDUCE THE AWARD OF ATTORNEYS' FEES TO ZERO BASED UPON HIS FINDING THAT GROUP III WAS NOT THE PREVAILING PARTY PURSUANT TO NORTH CAROLINA'S PERFORMANCE AND PAYMENT ACT: N.C. GEN. STAT. § 44A-35

N.C. Gen. Statute §6-21.6 instructs the arbitrator in this case to make certain baseline determinations in computing the award of attorneys' fees. Perhaps the most important consideration is found at N.C. Gen. Statute §6-21.6(c)(ll) "The extent to which the party seeking attorneys' fees prevailed in the action."

The phrase "[t]he extent to which the party prevailed in the action" is subject to a specific interpretation under North Carolina law in the realm of construction contracts. While North Carolina law lowers the bar on the "prevailing party" analysis when compared to the South Carolina standard in certain contexts, it has a precise computation that is required in dealing with the contract between Group III and Crystal Pools[2]. In North Carolina practice, judges and attorneys in construction payment matters refer to North Carolina's Performance and Payment Act: N.C. Gen. Stat. §44A-35 for the computation at arriving at a prevailing party designation. This act, in practice, does not appear to be limited to surety claims. See Terry's Floor Fashions.

[2] North Carolina law, like South Carolina law and United States Federal Law, uses a relaxed standard, similar to the universal South Carolina standard, for "prevailing party" analysis in contexts where the state or an agency of the state is a party. This relaxed standard is in keeping with the Equal Access to Justice Act 28 U.S.C.S. § 2412. For a survey of the prevailing party analysis in government and agency cases, Appellant would direct this Honorable Court to the Article: Evening The Odds: The Case For Attorneys' Fee Awards For Administrative Resolution of Title VI and Title VII Disputes., 67 N.C.L. Rev. 379 (1989).

Inc. v. Crown Gen. Contrs. Inc., 184 N.C. App. 1; 645 S.E.2d 810 (N.C. App. 2007); Brooks Millwork Co. v. Levine, 2010 N.C. App. LEXIS 959 (N.C. Ct. App. June 15, 2010); Barrett Kays & Assocs., P.A. v. Colonial Bldg. Co., 129 N.C. App. 525 (N.C. Ct. App. 1998); Mainline Supply Co. v. Hillcrest Constr. Inc., 2012 N.C. App. LEXIS 222 (N.C. Ct. App. 2012). Rather, it serves as a guide for determining which party has prevailed in its claim or defense in construction payment disputes. Id. In the dispute between the Appellant and the Respondent, the Appellant did not have lien rights because of the nature of the project. However, it would stand to reason that the "prevailing party" standard under N.C. Gen. Stat. § 44A-35 should apply to negate both parties' claim for attorneys' fees based upon the award.

Pursuant to N.C. Gen. Stat. § 44A-35, "a "prevailing party" is a party-plaintiff or third-party-plaintiff who obtains a judgment of at least fifty percent (50%) of the monetary amount sought in a claim . . . ." N.C. Gen. Stat. § 44A-35 Attorneys' Fees. To reiterate, the Respondent obtained an award of only 26.5% of its claim. Under this computation, the Respondent cannot be the prevailing party. As such, based upon the Arbitrator's Award, neither party can receive "prevailing party" status in this matter, and the award of attorneys' fees must be modified to zero.

IV. THE TRIAL COURT ERRED IN UPHOLDING THE ARBITRATION AWARD BECAUSE THE ARBITRATOR EXCEEDED HIS AUTHORITY AND MANIFESTLY DISREGARDED THE LAW

A. The Arbitration award of attorneys' fees should be vacated because it exceeded the Arbitrator's authority by failing to carry out the plain language of the parties' contract.

Although courts generally do not inquire whether an arbitrator's award is correct or reasonable, "whether the arbitrator[] did the job [he was] told to do" is subject to judicial review. Richmond, Fredricksburg & Potomac R.R. v. Transp. Commc'n Int'l Union, 973 F.2d 276, 281 (4th Cir. 1992) (quoting Bd. of Locomotive Eng'rs v. Atchison, Topeka & Santa Fe Ry. Co., 768

F.2d 914, 921 (7th Cir. 1985)) (internal quotation marks omitted). To merit judicial enforcement, an arbitration award must have a basis that is at least rationally inferable, if not obviously drawn, from the plain language of the contract subject to arbitration. Norfolk & W. Ry. v. Transp. Commc'ns Int'l Union, 17 F.3d 696, 700 (4th Cir. 1994).

The United States Supreme Court has elaborated on the role of an arbitrator and the bounds of his powers: "an arbitrator is confined to interpretation and application of the [arbitration] agreement . . . his award is legitimate only so long as it draws its essence from the [arbitration] agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award." United Steelworkers of Am. v. Enter. Wheel & Car Corp., 363 U.S. 593, 597 (1960). The Fourth Circuit has further held that "an award that ignores the plain and unambiguous language of the arbitration contract does not 'draw its essence' from the agreement, and may therefore be overturned[.]" Norfolk, 17 F.3d at 700 (4th Cir. 1994).

In the case at hand, the Arbitrator's Award as to attorneys' fees should be overturned because the Arbitrator ignored the plain, unambiguous language of the parties' contract as to their choice of North Carolina. Although Judge Gee was correct in stating the general rule that courts will not disturb an arbitrator's award for legal misconstruction or misapplication, she overlooked "one of the few and narrow responsibilities" of the courts with respect to arbitration awards "to overturn a decision that, under the plain language of the arbitration agreement, exceeds the jurisdiction of the arbitrator[]." Norfolk, 17 F.3d at 700 (citing United Paperworkers Int'l Union v. Misco, Inc., 484 U.S. 29, 28, 38 (1987)).

Here, the Arbitrator's error was not a misapplication of law or misconstruction of the contract; it was a failure to apply its plain language. Article 15.2 of the Subcontract for Building

Construction states, "[t]his Agreement shall be governed by the law of the State of North Carolina." The Arbitrator's application of South Carolina law was outside the bounds of the parties' contract and arbitration provision; therefore, the Arbitrator's Award was beyond his jurisdiction and must be vacated and corrected to reflect North Carolina law.

B. The Arbitrator manifestly disregarded the law by applying South Carolina law to a contract provision undisputedly governed by North Carolina law.

An arbitrator's award warrants vacatur when the arbitrator exceeds his powers by manifestly disregarding the law. 9 U.S.C. § 10(a)(4); Technical College v. Lucas and Stubbs, 286 S.C. 98, 108-09 333 S.E.2d 781, 787 (1985). Manifest disregard operates as "an independent ground for review or as a judicial gloss on the enumerated grounds for vacatur set forth at 9 U.S.C. § 10." Wachovia Sec., LLC v. Brand, 671 F.3d 472, 483 (4th Cir. 2012). A party moving for vacatur of an arbitrator's award on the grounds of manifest disregard must show: "(1) the applicable legal principle is clearly defined and not subject to reasonable debate; and (2) the arbitrator[] refused to heed that legal principle." Wachovia, 671 F.3d at 483 (quoting Long John Silver's Rests., Inc. v. Cole, 514 F.3d 345, 349 (2008)) (internal quotation marks omitted).

In the case at hand, this two-part test is satisfied. First, the applicable legal principle is the determination of attorneys' fees by prevailing party status pursuant to North Carolina General Statutes § 6-21.6(b). Reapplication of North Carolina law is not subject to reasonable debate because the parties contractually designated North Carolina as the governing choice of law in Article 15.2 of their contract.

Second, the Arbitrator refused to heed the application of North Carolina law by applying South Carolina law when determining an award of attorneys' fees. Even though the Arbitrator does not state which state's law he applied in the Arbitration Award or Order Denying Request

to Modify Award, it is clear that he failed to apply North Carolina law because under North Carolina law, he could not have awarded attorneys' fees in any amount exceeding $81,138.23. The pertinent North Carolina statute states that, "[r]eciprocal attorneys' fees provisions in business contracts are valid and enforceable for the recovery of reasonable attorneys' fees . . . . In any suit, action, proceeding, or arbitration primarily for the recovery of monetary damages, the award of reasonable attorneys' fees may not exceed the monetary damages awarded." N.C. Gen. Stat. § 6-21.6(b) (emphasis added). Because the Arbitrator awarded Group III $81,138.23 in monetary damages, any award of attorneys' fees could not have exceeded this amount as a matter of law.

If the Arbitrator had applied North Carolina law on prevailing party status, he would have determined that the Respondent was entitled to zero dollars in attorneys' fees because it was not a prevailing party. Under North Carolina law, a prevailing party is "a party plaintiff . . . who obtains a judgment of at least fifty percent of the monetary amount sought in a claim[.] N.C. Gen. Stat. § 44A-35. Here, the Respondent obtained an award of $81,138.23, which is 26.5% of the $308,386.52 claim asserted. As a result, Group III does not have prevailing party status within the meaning of North Carolina law, and therefore, are not entitled to an award of any attorney fees.

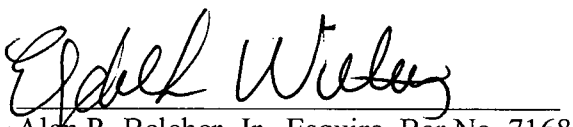
The Arbitrator could not have arrived at his attorneys' fees award of $116,165.86 unless he failed to apply North Carolina law, which evinces manifest disregard. As a result, the Court should vacate the Arbitrator's award of attorneys' fees.

CONCLUSION

The Arbitration Award of August 18, 2014, contains an egregious error in that Arbitrator, C. Allen Gibson, misapplied the law wherein he erroneously and/or inadvertently applied South

Carolina law instead of the agreed upon, contractually binding, application of North Carolina law in rendering his decision with regard to attorneys' fees. The Appellant respectfully requests this Honorable Court to reverse the November 13, 2015 Order rendered by the Honorable Tanya A. Gee, and vacate/dismiss the Arbitrator's award of attorneys' fees in the amount of $116,165.86.

Respectfully submitted,



Alan R. Belcher, Jr., Esquire, Bar No. 71686
Elizabeth F. Wieters, Esquire, Bar No. 78064
40 Calhoun Street, Suite 550
Charleston, South Carolina 29401
Telephone: (843) 720-3460
Attorneys for Appellant Suncrete Of Carolina, Inc., d/b/a Crystal Pools

Dated: September 28, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Tanya A. Gee, Circuit Court Judge

Lower Court Case No. 2014-CP-40-007229
Court of Appeals Case No. 2015-002584

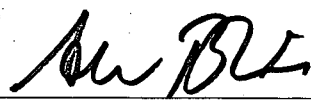
GROUP III MANAGEMENT, INC., Respondent,
v.

SUNCRETE OF CAROLINA, INC., d/b/a CRYSTAL POOLS, Appellant.

CERTIFICATE OF COMPLIANCE

I hereby certify that the Final Brief of Appellant in this matter complies with Rule 211(b), of the South Carolina Appellate Court Rules and the April 15, 2014 Order of the South Carolina Supreme Court regarding personal data identifiers.

Respectfully submitted,



Alan R. Belcher, Jr., Esquire, Bar No. 71686
Elizabeth F. Wieters, Esquire, Bar No. 78064
40 Calhoun Street, Suite 550
Charleston, South Carolina 29401
Telephone: (843) 720-3460

Attorneys for Appellant, Suncrete Of Carolina, Inc., d/b/a Crystal Pools

Dated: October 12, 2016