

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF AIKEN )

IN THE COURT OF COMMON PLEAS  
FOR THE SECOND JUDICIAL CIRCUIT  
CASE NO.: 2016-CP-02-2339

UNIVERSITY OF SOUTH CAROLINA )  
AIKEN, )

Plaintiff, )

vs. )

UNIVERSITY HOUSING SERVICES, )  
INC., H.G. REYNOLDS CO., )  
SOUTHERN WALL SYSTEMS, INC., )  
MCELROY SPECIALTY INTERIORS, )  
INC. CROFT HILL SIDING, INC., EAST )  
COAST PAINTING, INC., and JOHN )  
DOES 1 THROUGH 3, )

Defendants. )

**ORDER  
DENYING UNIVERSITY HOUSING  
SERVICES, INC. AND H.G.  
REYNOLDS COMPANY, INC.'S  
MOTION TO DISMISS OR STAY CIVIL  
ACTION FOR ARBITRAITON**

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H.G. REYNOLDS CO., INC., )

Third-Party Plaintiff, )

vs. )

WILLIAM BELL, BELL SIDING AND )  
ROOFING, WILLIAM BELL d/b/a BELL )  
SIDING & ROOFING a/k/a BELL SIDING )  
AND ROOFING, LLC, and BELL SIDING )  
AND ROOFING, LLC, )

Third-Party Defendants. )

**RECEIVED**

JUN 05 2018

SC Court of Appeals

This matter came before the Court on April 10, 2017 by motion of the Defendants, University Housing Services, Inc. and H.G. Reynolds Company, Inc. ("Moving Defendants"), wherein the Moving Defendants requested the Court dismiss or stay the above-captioned action in favor of arbitration. After considering the pleadings,

affidavits, and memoranda on file and hearing the arguments of counsel, the Court **DENIES** the motions of the Moving Defendants for the reasons set forth below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiff<sup>1</sup> is the owner of a dormitory facility known as Pacer Commons at the Aiken campus of the University of South Carolina. Plaintiff alleges, among other things, that latent construction defects and building code violations exist within Pacer Commons and have resulted in damage to the structure and certain components of the structure. Plaintiff initiated the above-captioned action against the design-build team, including the developer, general contractor and a number of subcontractors. The record before the Court demonstrates that the Aiken County Commission for Higher Education executed a lease agreement dated August 2, 2003 with Collegiate Housing Properties, Inc. for Collegiate Housing Properties, Inc. to lease the underlying real estate on which Pacer Commons would be constructed. Collegiate Housing Properties, Inc. was identified as the "Owner" for the development and construction of Pacer Commons. Collegiate Housing Properties, Inc. then entered into a "design-build" agreement dated August 13, 2003 with University Housing Services, Inc. (one of the Moving Defendants) for University Housing Services, Inc. to develop and construct Pacer Commons. It is this agreement between Collegiate Housing Properties, Inc. and University Housing Services, Inc. (two Florida corporations) that contains the arbitration provision upon which University Housing Services relies in its efforts to force the University of South Carolina to arbitrate its claims against University Housing Services.

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<sup>1</sup> The University of South Carolina Aiken has moved to amend its complaint and to, among other things, substitute the University of South Carolina as the Plaintiff. The Court orally granted this motion from the bench at the hearing on May 1, 2017 and a formal Order is forthcoming.

University Housing Services then entered into a construction contract with H.G. Reynolds Company (the other Moving Defendant) dated August 13, 2003. It is this agreement between University Housing Services and H.G. Reynolds Company that contains the arbitration provision upon which H.G. Reynolds Company relies in its efforts to force the University of South Carolina to arbitrate its claims against H.G. Reynolds Company.

The record before the Court indicates that construction of Pacer Commons was completed sometime in the fall of 2004. It wasn't until April of 2006, almost two years after completion, that the Plaintiff took title to Pacer Commons. Plaintiff was deeded the property by the Aiken County Commission for Higher Education.

Importantly, at no point in time has there ever been a contract or an agreement between the Plaintiff and University Housing Services, Inc. or the Plaintiff and H.G. Reynolds Company. Because the Plaintiff is not a party to any contract or arbitration agreement with either Moving Defendant, the Plaintiff's claims against the Moving Defendants are not subject to arbitration.

"The first step in evaluating a motion to compel arbitration is to determine whether the parties agreed to arbitrate." *Fleetwood Enterprises, Inc. v. Gaskamp*, 280 F.3d 1069 at 1073 (5<sup>th</sup> Cir. 2002). This determination involves an inquiry as to whether or not there is a valid and enforceable agreement to arbitrate between the parties. "Arbitration will be denied if a court determines no agreement to arbitrate existed." *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580 at 596, 553 S.E.2d 110 at 118 (2001). Policies favoring arbitration do not apply to the determination of whether there is a valid agreement to arbitrate between the parties. In the instant matter, there is no

compelling evidence to suggest that the University of South Carolina ever agreed to arbitrate any claims against University Housing Service or H.G. Reynolds Company. To the contrary, the record before the Court demonstrates that the University of South Carolina did not agree to arbitrate any claims it may have. The University is neither a party nor a signatory to any agreement with the Moving Defendants, much less an arbitration agreement.

Based on the foregoing, the Motions to Dismiss or Stay Civil Action for Arbitration filed by University Housing Services, Inc. and H.G. Reynolds Company, Inc. are DENIED.

IT IS SO ORDERED!

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Honorable Doyet A. Early, III  
Chief Administrative Judge

May \_\_\_\_, 2017  
Aiken, South Carolina



Aiken Common Pleas

**Case Caption:** University Of South Carolina Aiken VS University Housing Services  
Inc , defendant, et al  
**Case Number:** 2016CP0202339  
**Type:** Order/Other

So Ordered

s/D.A. Early III 2136

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