

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea Gist Benjamin, Circuit Court Judge

Case No.: 2017-CP-40-03697
Appellate Case No. 2018-000889

RECEIVED

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SC Court of Appeals

Amanda Leigh Huskins and Jay R. Huskins.....Appellants,

v.

Mungo Homes, LLC,.....Respondent.

INITIAL BRIEF OF RESPONDENT MUNGO HOMES, LLC

This 13th day of February 2019.

Steven R. Kropski
David W. Overstreet
Earhart Overstreet LLC
P.O. Box 22528
Charleston, South Carolina 29413
(843) 972-9404
Attorneys for Mungo Homes, LLC

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STATEMENT OF ISSUES ON APPEAL

1. Whether the Circuit Court's Order compelling arbitration of the parties' dispute is immediately appealable.
2. If the Circuit Court's Order compelling arbitration of the parties' dispute is immediately appealable, did the Circuit Court err in compelling arbitration of Appellants' claims concerning the enforceability of limited warranty provisions in the parties' contract.

STATEMENT OF THE CASE

In this appeal, Appellants Amanda Leigh Huskins and Jay R. Huskins (collectively the “Huskins”) appeal the trial court’s order compelling arbitration of their claims alleging that the limited warranty provision in a contract for the sale and construction of a home is unenforceable.

Mungo Homes, LLC (“Mungo”) and the Huskins entered into a contract titled “Purchase Agreement” (the “Contract”) for the sale and construction of a new home in Richland County, South Carolina. The Contract contains fifteen (15) separately identified paragraphs, including a “Limited Warranty” paragraph, and an “Arbitration and Claims” paragraph.

The “Arbitration and Claims” paragraph states that any “claim dispute, or other matter in question between the parties hereto arising out of this Agreement...shall be resolved by final and binding arbitration.”

The “Limited Warranty” paragraph provides that the seller (Mungo), at its expense is to provide a warranty issued by Quality Builders Warranty Corporation. All other warranties, whether express or implied related to the subject property are expressly disclaimed in all capital letters.

The Huskins filed suit alleging that the disclaimer of implied warranties in the Contract is unenforceable. Mungo moved to dismiss the lawsuit and compel arbitration asserting that the enforceability of the waiver of implied warranties is a matter to be decided through binding arbitration. The Huskins averred that their claims arising out of the “Limited Warranty” paragraph of the Contract were not subject to arbitration.

By Order filed on March 13, 2018, the Circuit Court, Hon. DeAndrea Gist Benjamin, granted Mungo’s motion. Judge Benjamin held that the Arbitration and Claims paragraph was clearly separate and distinct from the other paragraphs of the Contract, including the Limited

Warranty paragraph, and the Huskins' claims related to the enforceability of certain waivers of implied warranties were to be decided by the arbitrator. Appellants filed a motion to reconsider, which was denied by order dated April 16, 2018.

The parties have not arbitrated the claims nor have the Huskins made an arbitration demand. Appellants instead served a Notice of Appeal on May 11, 2018 seeking to immediately appeal the order of the Circuit Court compelling arbitration.

INTRODUCTION

A. The Contract

On June 29, 2015, the Huskins entered into an agreement to purchase a new construction home from Mungo. (R.) At the top of the first page of the Contract, entitled “Purchase Agreement,” and written in all underlined capital letters reads: “THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO S.C. CODE 15-48-10 et seq.” (R.)

The Contract contains 15 distinct paragraphs, separated by unique headings and written in bold, underlined capital letters reading: (1) PROPERTY; (2) IMPROVEMENTS; (3) PRICE; (4) FINANCING CONTINGENCY AND TERMINATION; (5) CLOSING; (6) CLOSING COSTS AND PRO-RATIONS; (7) CHANGE ORDERS; (8) RESTRICTIVE COVENANTS; (9) HOMEOWNERS ASSOCIATION; (10) LIMITED WARRANTY; (11) TERMITE PROTECTION; (12) DEFAULT AND TERMINATION; (13) ARBITRATION AND CLAIMS; (14) NON-RELIANCE; and (15) MISCELLANEOUS. (R.)

At issue in this appeal are the thirteenth paragraph of the Contract labeled “Arbitration and Claims” (the “Arbitration Agreement”) and the tenth paragraph of the Contract labeled “Limited Warranty.” The thirteenth paragraph, a separately labeled Arbitration Agreement, reads in relevant part:

Any claim, dispute or other matter in question between the parties hereto arising out of this Agreement, related to this Agreement or the breach thereof, including without limitation, disputes relating to the Property, improvements, or condition, construction or sale thereof and the deed to be delivered pursuant hereto, shall be resolved by final and binding arbitration before three (3) arbitrators, one selected by each party, who shall mutually select the third, pursuant to the South Carolina Uniform Arbitration Act.

(R.). The Huskins initialed directly below the Arbitration Agreement. (R.)

The tenth paragraph, separately labeled "Limited Warranty" reads:

The Seller to furnish the Purchaser, at closing, a limited warranty issued by Quality Builders Corporation, a sample copy of which is available for inspection prior to closing at the offices of the Seller during reasonable business hours, said limited warranty is hereinafter referred to as the Quality Builders Warranty Corporation Limited Warranty.

THE QUALITY UNILDERS WARRANTY CORPORATION LIMITED WARRANTY ISSUES TO THE PURCHASER IN CONNECTION WITH THIS TRANSACTION IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ANY WARRANTY OF HABITABILITY, SUITABILITY FOR RESIDENTIAL PURPOSES, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE IS HEREBY EXCLUDED AND DISCLAIMED. SELLER SHALL IN NO EVENT BE LIABLE FOR CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND. THERE IS NO WARRANTY WHATSOEVER ON TREES, SHRUBS, GRASS, VEGETATION OR EROSION CAUSED BY LACK THEREOF NOR ON SUBDIVISION IMPROVEMENTS INCLUDING BUT NOT LIMITED TO, STREETS, ROADS, SIDEWALKS, SEWER, DRAINAGE OR UTILITIES. PURCHASER AGREES TO ACCEPT SAID LIMITED WARRANTY IN LIEU OF ALL OTHER RIGHTS OR REMEDIES, WHETHER BASED ON CONTRACT OR TORT. This limited warranty will be incorporated in the deed delivered at closing.

(R.).

B. Appellant Files Suit in Circuit Court

On June 14, 2017, Appellants filed a lawsuit alleging four causes of action; (1) breach of contract, (2) unjust enrichment, (3) declaratory relief, and (4) violation of the South Carolina Unfair Trade Practices Act. (R.). Appellants' four causes of action each arise out of allegations that the Contract disclaims certain implied warranties, substituting in their place a limited warranty from a third-party company. Appellants allege the disclaimer of implied warranties provides "no reduction in price or separate benefit to the purchaser." (R.). Appellants seek a declaration that the waiver of implied warranties in the Contract is unenforceable and an award of the "fair value of the waiver of the implied warranty of habitability." (R.).

C. The Circuit Court compels arbitration

After initiating the lawsuit, Mungo moved for an order enforcing the Arbitration Agreement as all four causes of action arise directly out of the Contract. (R.). The Circuit Court heard Oral Arguments on November 8, 2017. (R.). By order filed on March 13, 2018, the Circuit Court granted Mungo's motion. (R.). The Circuit Court determined that the Arbitration Agreement should be analyzed in isolation from the remainder of the Contract, noting that the Arbitration Agreement is separately labeled, located on a different page from the "Limited Warranty" paragraph, and does not cross-reference other paragraphs of the Contract. (R.). The Circuit Court then determined that the Arbitration Agreement was not one sided or oppressive (R.), and was enforceable.

Thereafter, Appellants did not demand arbitration, but instead directly appealed the Circuit Court's order.

LEGAL STANDARD

Under South Carolina law, those orders related to arbitration that are immediately appealable are found in S.C. Code §15-48-200(a). All orders related to arbitration that are not mentioned in S.C. Code §15-48-200(a) are not immediately appealable. *Toler's Cove Homeowners Assoc., Inc. v. Trident Const. Co., Inc.*, 355 S.C. 605, 610, 586 S.E.2d 581, 584 (2003).

ARGUMENT

I. Orders compelling arbitration are not immediately appealable, and this appeal should be dismissed

It is well established in South Carolina that an order compelling arbitration is not immediately appealable. S.C. Code §15-48-200(a) states:

- (a) An appeal may be taken from:
- (1) An order denying an application to compel arbitration made under § 15-48-20;
 - (2) An order granting an application to stay arbitration made under § 15-48-20(b);
 - (3) An order confirming or denying confirmation of an award;
 - (4) An order modifying or correcting an award;
 - (5) An order vacating an award without directing a rehearing; or
 - (6) A judgment or decree entered pursuant to the provisions of this chapter.
- (b) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

As is clear from the plain language of the statute, while an order *denying* a motion to compel arbitration is immediately appealable, an order granting a motion to compel arbitration is not immediately appealable. S.C. Code §15-48-200. This is confirmed as the Supreme Court of South Carolina has repeatedly recognized that an order compelling arbitration is not immediately appealable. *See, Toler's Cove*, 355 S.C. at 611, 586 S.E.2d at 584; *Carolina Care Plan, Inc. v. United Healthcare Services, Inc.*, 361 S.C. 544, 558, 606 S.E.2d 752, 759 (2004).

Here, each of Appellants' first three issues on appeal exclusively address whether the Circuit Court correctly held that the Arbitration Agreement was not one-sided, oppressive or unconscionable. (App. Brief at pg. 1). These three issues are not immediately appealable as they challenge an order compelling arbitration.

Appellants' fourth issue on appeal seeks to challenge the Circuit Court's finding that the Appellants' claims challenging the "Limited Warranty" paragraph of the Contract fell within the

broad scope of the Arbitration Agreement. (Id.). This issue is likewise not immediately appealable as it challenges an order compelling arbitration of Appellant's alleged "Limited Warranty" claims.

In all respects, all four of Appellants' issues on appeal seek to immediately appeal the Circuit Court's order holding that Appellants' claims must be arbitrated. These issues are not immediately appealable.

Finally, as the Appellants have not identified *any* immediately appealable issue in their statement of issues on appeal, this appeal must be dismissed in its entirety. *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) (citing Rule 208(b)(1)(B), SCACR) ("no point will be considered which is not set forth in the statement of issues on appeal.").

II. Although the Circuit Court's order is not immediately appealable, the Circuit Court did not err in finding the Appellants' claims subject to arbitration

"The question of the arbitrability of a claim is an issue for judicial determination, unless the parties provide otherwise." *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001). "It is the policy of this state and federal law to favor arbitration[,] and any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." *Landers v. Fed. Deposit Ins. Co.*, 402 S.C. 100, 109, 739 S.E.2d 209, 213 (2013) (quoting *Am. Recovery Corp. v. Computerized Thermal Imaging, Inc.*, 96 F.3d 88, 92 (4th Cir.1996)). "[T]he party resisting arbitration bears the burden of proving that the claims at issue are unsuitable for arbitration." *Hall v. Green Tree Servicing, LLC*, 413 S.C. 267, 271, 776 S.E.2d 91, 94 (Ct. App. 2015).

Here, Appellants entered into a contract to purchase a home to be built by Mungo that contains a broad arbitration clause covering "[a]ny claim, dispute, or other matter in question between the parties hereto arising out of this Agreement." (R.). Moreover, the first page of the Contract contains the following provision in bold, underlined, capital letters: **"THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO THE S.C. UNIFORM**

ARBITRATION ACT, S.C. CODE 15-48-10 et seq.” (R.). The Arbitration Agreement is conspicuous, in compliance with South Carolina law, and broadly covers all disputes between the parties related to the Contract and the real property that is the subject of the Contract.

A. The Circuit Court correctly determined that the Arbitration Agreement is not one-sided, oppressive, or unconscionable

i. The Circuit Court correctly read the Arbitration Agreement in isolation of the rest of the Contract

It is well established that where a contract contains a separate and isolated arbitration agreement, the arbitration agreement is read in isolation of the remainder of the Contract. Only the arbitration agreement itself is to be analyzed by a court, with all other issues, including the conscionability of the remainder of the Contract, to be decided by the arbitrator.

“An arbitration clause's validity is distinct from the substantive validity of the contract as a whole.” *Housing Auth. of the City of Columbia v. Cornerstone Housing*, 356 S.C. 328, 338, 588 S.E.2d 617, 622 (Ct. App. 2003) (citing *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 540, 542 S.E.2d 360, 364 (2001)); *see also Parsons v. John Weiland Homes and Neighborhoods of the Carolinas*, 481 S.C. 1, 12, 791 S.E.2d 128 (2016)(“Arbitration clauses are separable from the contracts in which they are imbedded”). “Even if the overall contract is unenforceable, the arbitration provision is not unenforceable unless the reason the overall contract is unenforceable specifically relates to the arbitration provision.” *Cornerstone Housing*, 356 S.C. at 340, 588 S.E.2d at 623. The argument that the entire Contract is invalid is for consideration at the arbitration itself, not for determination by the Court. *Id.* at 340, 588 S.E.2d at 623; *see also Green Tree Fin. Corp. v. Bazzle*, 539 U.S. 444, 453, 123 S.Ct. 2402 (2003)(noting arbitrators are well suited to address issues such as contract interpretation and arbitration procedures).

Here the Arbitration Agreement is separate and distinct from the remainder of the Contract, and the Circuit Court correctly analyzed only the Arbitration Agreement itself to assess the conscionability of the Arbitration Agreement.

Appellants, however, contend that the “Limited Warranty” paragraph of the Contract is unconscionable, and should be read together with the Arbitration Agreement. This argument is contrary to well established South Carolina law, and without merit.

In the order granting Mungo’s motion, the Circuit Court correctly identified that “the “Limited Warranty” provision is located on the second page of the Purchase Agreement whereas the “Arbitration and Claims” provision is located at the top of page three.” (R.). Likewise, the Circuit Court noted that “the arbitration provision does not [cross] reference the “Limited Warranty” provision contained in the Purchase Agreement.” (R.). Consistent with well established law, the Circuit Court correctly found that when an Arbitration Agreement is separately identified, and does not cross-reference other provisions in the Contract, the Arbitration Agreement is read in isolation. *See, One Belle Hall Property Owners Assoc., Inc. v. Trammell Crow Residential Company*, 418 S.C. 51, 56-58, 791 S.E.2d 286, 289-290 (Ct. App. 2016).

Likewise unavailing is Appellants’ argument that the Arbitration Agreement’s broad scope which encompasses “disputes relating to the Property, Improvements, or the condition, construction or sale [of the Property] and the deed to be delivered pursuant hereto” (R.) operates as a “cross-reference” to the “Limited Warranty” provision.

Appellants cite no legal authority to support this position, and furthermore, ignore the plain and unambiguous language of the Arbitration Agreement. While the Arbitration Agreement broadly covers all disputes between the parties related to the Contract or the Property, it unequivocally *does not* cross-reference the “Limited Warranty” paragraph. Accordingly, the

Circuit Court correctly rejected Appellants' argument. *C.A.N. Enters. v. S.C. Health & Human Servs. Finance Comm'n*, 296 S.C. 373, 378, 373 S.E.2d 584, 587 (1988)(courts “are without authority to alter a contract by construction or to make new contracts for the parties.”).

ii. The Arbitration Agreement is not unconscionable

In South Carolina, unconscionability is defined as “the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them, and no fair and honest person would accept them.” *Carolina Care* 361 S.C. at 554, 606 S.E.2d at 757. Specifically relating to arbitration agreements, the South Carolina Supreme Court has instructed that “unconscionability requires courts to focus generally on whether the arbitration clause is geared towards achieving an unbiased decision by a neutral decision-maker”. *Parsons*, 481 S.C. at 12, 791 S.E.2d at 134.

Here, there was no “element of surprise in the inclusion of the challenged clause,” the arbitration provision was clearly conspicuous, and there is no merit to the suggestion that no reasonable person would enter into the Arbitration Agreement. *See generally, Holler v. Holler*, 364 S.C. 256, 269, 612 S.E.2d 469, 476 (Ct. App. 2005). Appellants initialed directly below the Arbitration Agreement. (R.). Furthermore, the heading “ARBITRATION AND CLAIMS” is in bold, underlined, and capital letters and the front page of the contract states “THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO S.C. CODE 15-48-10 ET SEQ.” *See*, S.C. Code §15-48-10 (under the SCUAA, an agreement containing the required notice is presumptively valid).

Moreover, as the Circuit Court recognized, the Arbitration Agreement unequivocally provides for an unbiased decision by a neutral decision-maker, is mutual, and does not limit the remedies available by law. This indicates a non-oppressive or one-sided arbitration agreement.

(R.). The Arbitration Agreement calls for binding arbitration before a three-arbitrator panel; one selected by the Plaintiff, one selected by the Defendant, and one selected mutually by the parties' respective arbitrators. (R.). Likewise, the Arbitration Agreement applies equally to any and all claims asserted by the Appellants just as it applies to any and all claims asserted by Mungo. The Circuit Court correctly found that Arbitration Agreement is not one-sided or oppressive. (R.).

Appellants further contend that a "general presumption of unequal bargaining power between a new home buyer and a residential builder" results in an unenforceable Arbitration Agreement. However, this argument is again unsupported by legal authority and simply misstates the law. Such a presumption is contrary to South Carolina law as it would put the arbitration agreement on unequal footing with any other contract clause. A "presumption of unequal bargaining power" is not a "generally applicable contract defense." See, *Concepcion*, 563 S.C. at 339, 131 S.Ct. at 1746.

More importantly, Appellants' exact argument was expressly rejected by the Supreme Court of South Carolina. *Parsons*, 481 S.C. at fn 6, 791 S.E.2d 128 (rejecting the dissent's proposition that the Supreme Court's judicial notice "that a modern buyer of new residential housing is normally in an unequal bargaining position as against the seller" can be applied to an arbitration agreement in a contract for the construction of a new home). Accordingly, there is no judicially noted presumption of unequal bargaining power between a new home buyer and the homebuilder when reviewing the enforceability of an arbitration agreement.

Finally, the provision in the Arbitration Agreement requiring a demand for arbitration within ninety (90) days of the date a claim arises does not render the arbitration agreement against public policy. As the Circuit Court noted, this action was filed on June 14, 2017. (R.). Mungo filed this motion to compel arbitration on July 20, 2017--well within the ninety (90) requirement.

(R.). Moreover, contrary to Appellants' contention, this provision does not purport to create an unlawful statute of limitations, rather, it provides a deadline on when arbitration of claims must be demanded.

Nonetheless, assuming, *arguendo*, that the subject provision did attempt to alter the statute of limitations, the provision has no bearing on the enforceability of the Arbitration Agreement. Rather, even if the subject provision is struck from the Arbitration Agreement, the substance of the Arbitration Agreement is wholly unaffected. S.C. Code §15-3-140 states:

No clause, provision or agreement in any contract of whatsoever nature, verbal or written, whereby it is agreed that either party shall be barred from bringing suit upon any cause of action arising out of the contract if not brought within a period less than the time prescribed by the statute of limitations, for similar causes of action, shall bar such action, but the action may be brought notwithstanding such clause, provision or agreement if brought within the time prescribed by the statute of limitations in reference to like causes of action.

S.C. Code §15-3-140. In other words, a contractual provision purporting to shorten the statute of limitations is void *ab initio*. Thus, it is treated as if it was never part of the Contract.

Here, even if these two sentences are removed from the Arbitration Agreement, the obligation of the parties to submit all claims to arbitration is left wholly intact. As the Appellants only challenge the last two sentences of the Arbitration Agreement, striking this provision would not "rewrite" the Arbitration Agreement. Indeed, the Arbitration Agreement would still read as a full and complete mutual obligation to submit all claims to arbitration. *See generally, One Belle Hall*, 418 S.C. at 63-64, 791 S.E.2d at 293, *cf Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 33-34, 644 S.E.2d 663, 673 (2007)(declining to sever unconscionable terms of an arbitration agreement because only a disintegrated fragment of the agreement would remain).

Accordingly, even accepting Appellant's strained interpretation of the Arbitration Agreement as true, the Arbitration Agreement is not presumptively unenforceable as the statutes of limitations set forth in S.C. Code §15-3-20 et seq. applies to this action. The two sentences identified by the Appellants have no bearing on the parties' mutual agreement to submit claims to binding arbitration.

In summary, the Appellants failed to identify facts showing that they will not be able to assert their claims in an unbiased arbitration before unbiased arbitrators. Given South Carolina's heavy presumption in favor of arbitrability, the Circuit Court correctly decided the current motion in favor of arbitration. *See, Landers v. Fed. Deposit Ins. Corp.*, 402 S.C. 100, 109, 739 S.E.2d 209, 213 (2013) (quoting *Am. Recovery Corp. v. Computerized Thermal Imaging, Inc.*, 96 F.3d 88, 94 (4th Cir. 1996) (quoting *Peoples Sec. Life Ins. Co. v. Monumental Life Ins. Co.*, 867 F.2d 809, 812 (4th Cir. 1989))).

B. The Circuit Court correctly held that the Appellants' "Limited Warranty" claims were subject to arbitration

"Arbitration is a matter of contract[,] and a party cannot be required to submit to arbitration any dispute which he has not agreed to submit." *New Hope Missionary Baptist Church*, 379 S.C. at 627, 667 S.E.2d at 4. "A clause which provides for arbitration of all disputes 'arising out of or relating to' the contract is construed broadly." *Landers v. FDIC*, 402 S.C. 100, 109, 739 S.E.2d 209, 213-14 (2013) (citing *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 87 S.Ct. 1801, 18 L.Ed.2d 1270 (1967)).

Courts have consistently held that broad arbitration clauses "appl[y] to disputes in which a significant relationship exists between the asserted claims and the contract in which the arbitration clause is contained." *Id.* at 109, 739 S.E.2d at 214. "Thus, the scope of the clause does not limit arbitration to the literal interpretation or performance of the contract but embraces every dispute

between the parties having a significant relationship to the contract.” *Id.* (alterations and internal quotation marks omitted). Accordingly, the “court must determine whether the factual allegations underlying the claim are within the scope of the broad arbitration clause, regardless of the label assigned to the claim.” *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 597, 553 S.E.2d 110, 118 (2001).

In her order, Judge Benjamin held that all four causes of action initiated by the Appellants were subject to mandatory arbitration under the broad Arbitration Agreement. This includes Appellants’ claim that the Limited Warranty contained within the Contract is unenforceable. (R.).

Appellants now argue that the Circuit Court’s decision to read the Arbitration Agreement in isolation of the rest of the Contract meant that the Circuit Court decided “Limited Warranty” claims fell outside of the Arbitration Agreement, and thus, may be pursued outside of arbitration. However, the Circuit Court did not hold that “Limited Warranty” claims fell outside of the Arbitration Agreement. Notably, Appellants fail to identify any portion of the Circuit Court’s order suggesting as much.

Although the Circuit Court examined the Arbitration Agreement in isolation of the “Limited Warranty” paragraph for purposes of her conscionability analysis, she did not determine that “Limited Warranty” claims were not encompassed by the broad arbitration provision. Indeed, the Circuit Court’s order is unambiguous and clear; all causes of action asserted by the Appellants must be submitted to binding arbitration.

As Appellants’ claims regarding the validity of the “Limited Warranty” provision arise out of the Contract, the Circuit Court correctly determined that Appellants’ challenges to the “Limited Warranty” paragraph are to be determined through arbitration.

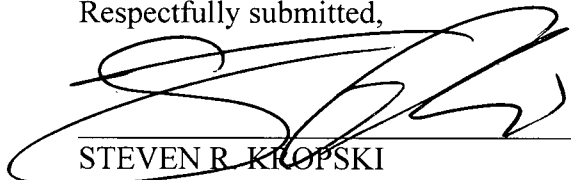
CONCLUSION

Appellants have failed to identify any issue that would support an immediate appeal of the Circuit Court's order enforcing the Arbitration Agreement. Accordingly, this appeal should be dismissed in its entirety.

Moreover, the claims asserted against Mungo arise directly out of a Contract that requires all such claims be submitted to binding arbitration. The Arbitration Agreement is separate, distinct and inconspicuous. Likewise, the Arbitration Agreement is not one-sided, oppressive or unconscionable. Accordingly, Appellants' claims must be pursued through arbitration.

Although this appeal should be dismissed as not immediately appealable, on the merits, the Circuit Court correctly compelled arbitration.

Respectfully submitted,



STEVEN R. KROPSKI
DAVID W. OVERSTREET
Earhart Overstreet, LLC
P.O. Box 22528
Charleston, South Carolina 29413
(843) 972-9404

Attorneys for Respondent Mungo Homes

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CERTIFICATE OF SERVICE

I certify that on the date indicated below, I served the *Initial Brief of Respondent Mungo Homes, LLC*, as well as *Respondent Mungo Homes, LLC's Designation of Matters to be Included in the Record on Appeal* upon Appellants by U.S. Mail on February 13, 2019, postage paid, addressed to their attorneys of record as follows:

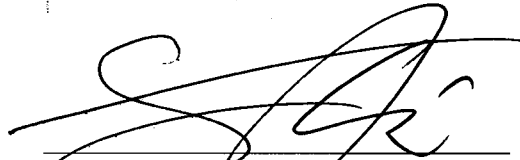
Charles A. McDonald, Esq.
Belser & Belser, P.A.
P.O. Box 96
Columbia, SC 29202

Beth B. Richardson, Esq.
Robinson, Gray, Stepp, Laffitte, LLC
P.O. Box 11449
Columbia, SC 29211

Terry E. Richardson, Jr., Esq.
Matthew A. Nickles, Esq.
Brady R. Thomas, Esq.
Richardson, Patrick, Westbrook, &
Brickman, LLC

P.O. Box 11449
Barnwell, SC 29812
Attorneys for Appellant

This 13th day of February 2019

A handwritten signature in black ink, appearing to read 'S. Kropski', written over a horizontal line.

Steven R. Kropski
Earhart Overstreet LLC
P.O. Box 22528
Charleston, South Carolina 29413
(843) 972-9404
Attorneys for Mungo Homes, LLC



Earhart Overstreet

ATTORNEYS AT LAW

Main: 843.972.9400
www.earhartoverstreet.com
PO Box 22528, Charleston, SC 29413

Steve@earhartoverstreet.com
Direct: 843.972.9404

February 13, 2019

The Honorable Jenny Abbott Kitchings
Clerk of Court for the South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: Amanda Leigh Huskins and Jay R. Huskins v. Mungo Homes, LLC.
Appellate Case No.: 2018-000889
EO File No.: 110-0137

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FEB 15 2019
SC Court of Appeals

Dear Ms. Kitchings:

Enclosed for filing please find the original Initial Brief of Respondent, Respondent's Designation of Matters to be Included in the Record on Appeal, and proof of service of the same.

By copy of this correspondence, I have served the same upon all counsel of record. If you have any questions or concerns, please do not hesitate to contact me. Thank you in advance for your attention to this matter.

Sincerely;

STEVEN R. KROPSKI

SRK/rle

Enclosures

cc: Beth B. Richardson, Esq.
Terry E. Richardson, Jr., Esq.
Matthew J. Nickles, Esq.
Brady R. Thomas, Esq.
Charles H. McDonald, Esq.



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