

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early III, Circuit Court Judge

Case No. 2016-CP-02-02339

University of South Carolina Aiken, Plaintiff,

v.

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,

And

H.G. Reynolds Co., Inc., Third-Party Plaintiff,

v.

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,

Of which University Housing Services, Inc., and H.G. Reynolds Company, Inc. are the Appellants,

And

Of Which University of South Carolina Aiken is the Respondent.

Appellate Case No. 2018-001039

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This agreement (the "Agreement") is entered into between the Plaintiff/Respondent University of South Carolina¹ ("USC"), Defendant/Appellant University Housing Services ("University Housing Services") and Defendant/Appellant H.G. Reynolds Company, Inc. ("H.G. Reynolds"), who agree as follows:

WHEREAS, USC is a Plaintiff in Civil Action No. 2016-CP-02-02339 commenced in the Court of Common Pleas for Aiken County, South Carolina ("Civil Action");

WHEREAS, University Housing Services and H.G. Reynolds are Defendants in the Civil Action;

WHEREAS, University Housing Services and H.G. Reynolds filed motions to compel arbitration of the claims brought by USC in the Civil Action. The Circuit Court denied the motions to compel arbitration; and University Housing Services and H.G. Reynolds appealed the decision of the Circuit Court to the Court of Appeals. The appeal is Appellate Case No. 2018-001039.

WHEREAS, USC, University Housing Services and H.G. Reynolds have agreed to settle Appellate Case No. 2018-001039 and will enter into a settlement agreement, based on the terms of the Agreement, that is approved by the Court of Appeals pursuant to Rule 261(b), SCACR.

WHEREAS, USC, University Housing Services and H.G. Reynolds agree that any claims and defenses among the parties to this Agreement arising out of or relating to the Civil Action shall be decided by final and binding arbitration pursuant to S.C. Code § 15-48-10 et seq. The parties to this document agree further as follows:

¹ References to the University of South Carolina or USC include the University of South Carolina-Aiken.

1. Selection of Arbitrators - USC, University Housing Services and H.G. Reynolds shall select three (3) neutral arbitrators in accordance with S.C. Code § 15-48-30 and the SC Court-Annex ADR Rules.

2. Location of Arbitration - The arbitration hearing will be conducted in Aiken County, South Carolina at a mutually agreeable location to the parties to the Agreement and with input from the arbitrators. The cost of any location for an arbitration hearing shall be borne equally between USC, University Housing Services and H.G. Reynolds.

3. Dates of Arbitration - The date(s) of the arbitration hearing will be set by mutual agreement of USC, University Housing Services and H.G. Reynolds, and the arbitrators, but no sooner than twelve (12) months following a preliminary scheduling order conference before the arbitrators.

4. Discovery - Discovery shall be limited to the following:

- The parties will exchange all documents relevant to the claims and defenses in the Civil Action that are not privileged. A log shall be prepared for documents withheld by a party as privileged.
- The parties will exchange reports, if any, of experts and produce any other documents relied on by an expert or to be used by an expert or a party in the arbitration hearing.
- USC shall be allowed to take up to ten (10) depositions of lay witnesses.
- University Housing Services and H.G. Reynolds shall be allowed to take up to ten (10) depositions of lay witnesses.

- USC, University Housing Services and H.G. Reynolds may take depositions of experts who a party to the Agreement may have testify at the arbitration hearing. The limitation of ten (10) depositions for lay witnesses does not include or apply to depositions of such experts. USC, University Housing Services and H.G. Reynolds shall each bear the costs of their own expert(s), including, but not limited to, an expert's appearance for a deposition.
- USC shall give University Housing Services and H.G. Reynolds reasonable access to the subject building for investigations by any expert retained by either University Housing Services or H.G. Reynolds for the arbitration.
- The foregoing does not limit other discovery that may be authorized by S.C. Code § 15-48-80 et seq., that may be mutually agreeable to the parties to the Agreement or that may be authorized by the arbitrators.

5. Fees and Expenses of Arbitrators - All fees and expenses incurred and charged by the arbitrators shall be borne equally between the parties herein with USC bearing a one-third share, University Housing Services bearing a one-third share and H.G. Reynolds bearing a one-third share.

6. Claims/Defenses - USC, University Housing Services and H.G. Reynolds agree that the Civil Action will be stayed as between them for arbitration; and the scope of arbitration will be all claims and defenses arising out of or relating to the Civil Action between the parties to the Agreement.

7. Issuance of Award - The arbitrators shall, if at all possible, issue their award in the arbitration proceeding within thirty (30) calendar days of the conclusion of the hearing. The form of the award shall be a reasoned award unless the parties agree otherwise.

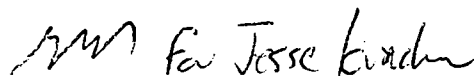
8. Entire Agreement – The Agreement and S.C. Code § 15-48-10 et seq. set forth all of the agreements between USC, University Housing Services and H.G. Reynolds relating to this arbitration, and all other agreements, understandings, representations and statements, oral or written, are merged herein.

9. The Agreement does not prejudice USC from litigating its claims in the Civil Action against the remaining Defendants named in the Civil Action - other than or excluding University Housing Services and H.G. Reynolds.

10. Severability - In the event any one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and the Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.


11. Successors and Assigns - The Agreement shall be binding upon and inure to the benefit of the parties to the Agreement and their respective successors and assigns.


The undersigned agree to the terms of the Agreement on behalf of their respective clients.

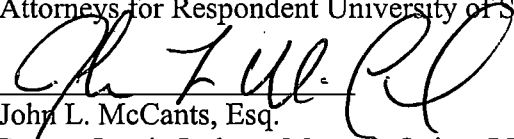


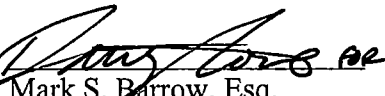
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Appellate Case No. 2018-001039


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April 9, 2019

Hand Delivery

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
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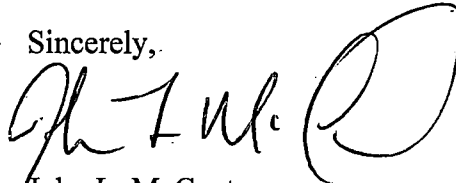
Re: University of South Carolina Aiken v. University Housing Services, Inc., et al.
Civil Action No.: 2016-CP-02-02339
Appellate Case No.: 2018-001039

Dear Ms. Kitchings:

I represent Appellant University Housing Services, Inc. I am enclosing an original proposed consent order and accompanying settlement agreement that provides for the dismissal of the appeal on certain terms and conditions agreed to by the parties. If the proposed consent order, together with the settlement agreement, are satisfactory and meet with the approval of the Court of Appeals, the parties request that the ordered be executed and filed along with the settlement agreement. Should a difference course of action be required, please do not hesitate to contact counsel.

Should you otherwise have any questions, please do not hesitate to contact counsel.

Sincerely,


John L. McCants

Counsel of Record on Next Page:

Ltr. to The Honorable Jenny Abbott Kitchings
March 29, 2019
Appellate Case No.: 2018-001039

cc.

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