THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea G. Benjamin, Circuit Court Judge

Appellate Case No.: 2018-001598
Civil Action No.: 2018-CP-40-00873

Jonathan Mart, on behalf of himself and others similarly situated, ... Respondent,

v.

Great Southern Homes, Inc., ... Appellant.

FINAL REPLY BRIEF OF APPELLANT

Warren C. Powell, Jr.
Chelsea J. Clark
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260
(803) 252-7693
Attorneys for Appellant

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea G. Benjamin, Circuit Court Judge

Appellate Case No.: 2018-001598
Civil Action No.: 2018-CP-40-00873

Jonathan Mart, on behalf of himself and others similarly situated, ... Respondent,

v.

Great Southern Homes, Inc., ... Appellant.

FINAL REPLY BRIEF OF APPELLANT

Warren C. Powell, Jr.
Chelsea J. Clark
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260
(803) 252-7693
Attorneys for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Regulations

Other Authority

STATEMENT OF THE ISSUES ON APPEAL

Did the lower court err in denying Appellant's Motion to Compel Arbitration and in doing so,

I. Did the lower court err in finding and holding that an arbitration agreement in the third-party StrucSure Home Warranty, which was not drafted, signed or issued by the Appellant, should be construed as incorporated into the parties' Contract for Sale for purposes of interpreting the respective arbitration clauses contained in each written document?

II. Did the lower court err in finding and holding that the parties intended that the two written agreements should be interpreted as one agreement when such would be contrary to the parties' intent as both documents contained merger clauses?

III. Did the lower court err in finding and holding that an arbitration agreement contained in the third-party StrucSure Home Warranty applied to Respondent's causes of action asserted in the Complaint when the Respondent never invoked the StrucSure Home Warranty by filing a claim on the warranty within the context of this case?

IV. Did the lower court err in finding the parties' Contract for Sale, "expressly incorporates the Express Limited Warranty into its terms"?

STATEMENT OF THE CASE

This appeal concerns an order of the Circuit Court denying a motion to dismiss and compel arbitration by Great Southern Homes, Inc. ("Appellant" or "Great Southern") in favor of Jonathan Mart ("Respondent" or "Mart"). This appeal follows directly from the lower court's order on arbitration. For that reason, the complaint remains unanswered and no facts have been established outside those that directly related to the issue of arbitration. This reply brief of Appellant is offered in response to the brief filed by Respondent in this appeal. Appellant incorporates its prior statements of the case and facts and standard of review herein by reference and proceeds directly to its reply arguments.

REPLY ARGUMENT

On a fundamental level, there is only one question before the Court in this appeal: is the homeowner's StrucSure Express Limited Warranty incorporated into the Contract for Sale between the parties? The answer to this question determines whether this case should be arbitrated or not. The lower court determined, ". . . the Contract for Sale . . . expressly incorporates the Express Limited Warranty into its terms," and with that foundation, denied Appellant's motion to dismiss and compel arbitration on the basis that the two separate contracts with arbitration provisions sharing only one common party should be construed together, resulting in no arbitration. (R. p. 010). Respondent asserts that a sales contract with Appellant for a custom-built house executed in July 2015 should be merged with an express limited home warranty from another company issued in December 2015. Respondent did not argue before the lower court that there is any defect in the two contracts, taken separately, and in fact admitted there is no assertion of anything wrong with his home. (R. p. 064, ll. 11–13). Thus, the scope of this appeal consists solely of reasons why or why not the two contracts should be viewed separately or read together in order to cancel the arbitration clauses in each contract. The four arguments presented by Appellant are subjacent to this single question. There are several reasons why the lower court erred in conflating two separate documents to evade dispute resolution process that the parties agreed to by contract.[1]

[1] Respondent has implied that Mart had no bargaining power when he signed the purchase contract in question. This allegation is unsupported by the record. Nowhere has it been proven or even suggested that Mart tried to negotiate changes to the purchase contract and failed. The contract does show that Mart requested and received several specific features for his house and that Great Southern agreed to make the contract contingent upon closing of Mart's prior property. (R. p. 143).

I. THE ONLY ARBITRATION PROVISION APPLICABLE IN THIS CASE IS FOUND IN THE CONTRACT FOR SALE.

Respondent's arguments in this case are targeted to achieve a particular result at the expense of the intent of parties expressed in the plain language of two contracts and the traditional rules of contract construction. Respondent relies on parole evidence, unproven factual assertions, and distinguishable out-of-state authority to subvert the application of the arbitration provision in the Contract for Sale between Mart and Great Southern. There are several flaws in Respondent's reasoning. The first is that Great Southern is simply not a party to the StrucSure Express Limited Warranty.

A. Great Southern is not a party to the StrucSure Express Limited Warranty.

The StrucSure Express Limited Warranty is issued by StrucSure Home Warranty, LLC, a company located in Denver, Colorado and not a party to this case. The warranty is a contract between StrucSure and Mart, backed by insurance coverage procured by StrucSure from Golden Insurance Company. (R. p. 212). A valid contract requires an offer, acceptance, and valuable consideration. *S. Glass & Plastics Co. v. Kemper*, 399 S.C. 483, 491, 732 S.E.2d 205, 209 (Ct. App. 2012) (quoting *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 406, 581 S.E.2d 161, 166 (2003)). The warranty meets these three requirements and Respondent never argued below that it does not.[2] An offer was made by StrucSure via an application, accepted by Mart through his completion of the application, and consideration was paid for the insured warranty coverage provided by StrucSure.[3] It matters not that the consideration was conveyed to StrucSure by

[2] For this reason, Appellant asserts that any lack of consideration argument Respondent might proffer as to the warranty itself is not properly before the Court, but addresses the issue even so.

[3] Although not presently in the record, given that Respondent has not previously raised this issue, Mart has availed himself of the warranty coverage to fix small items in his house completely unrelated to the present suit, suggesting that he believed the warranty is a valid contract and that he should now be estopped from asserting otherwise. *See Pearson v. Hilton Head Hosp.*, 400 S.C. 281, 290, 733 S.E.2d 597, 601 (Ct. App. 2012) (citations omitted) (in the context of arbitration a party may be estopped from asserting certain rights or facts if he has consistently maintained that

Appellant on behalf of Mart, just as it matters not when parents pay for a car their child buys or an employer pays a health insurance premium for an employee—a contract still exists. To hold otherwise would induce chaos into many everyday transactions.

However, assuming that Respondent's argument has merit, if there was no consideration for the warranty, then the warranty is simply not a valid contract and is therefore unenforceable. *Rabon v. State Fin. Corp.*, 203 S.C. 183, 186, 26 S.E.2d 501, 502 (1943) ("... no contract is complete without a valid, legal consideration"). If there is no consideration, then no one is bound by the terms of the warranty. If so, there can be no conflict between the purchase contract and the warranty and as a result the arbitration provision in the Contract for Sale applies. The intent was clearly to create separate contracts, as demonstrated by the different purposes of each document, the separate dispute resolution procedures included, and other pointed language in the contracts, discussed *infra*. There is no reason, aside from Mart's ultimate goal to avoid arbitration, to believe that the warranty was intended to be incorporated into the Contract for Sale. After all, at the time the Contract for Sale was executed, no house yet existed, and the warranty for that house had not yet been applied for.[4] (*See* R. p. 149, para. 4; R. p. 295). If—as Respondent argues—there was

---

the contract should be enforced to benefit him). If Respondent is correct in his assertion that this express limited warranty is not sufficient to waive the implied warranty of habitability, then Great Southern has received no benefit from the warranty, but Mart has, which should prevent him from repudiating the agreement at this time. *Id.*, 400 S.C. at 295, 733 S.E.2d at 604 (citations omitted); (*See* Complaint, paras. 19–20 (alleging an "improper warranty scheme" that failed to comply with the requirements in *Kirkman v. Parex*, 369 S.C. 477, 632 S.E.2d 854 (2006))). A cursory examination of the warranty shows its purpose is to address claims for construction deficiencies, but Mart is not presently asserting that there is any actual defect in his house that would implicate the warranty and StrucSure is noticeably absent from this suit. Indeed, counsel for Respondent stated, "this case is not a construction defect case" at the motion hearing on arbitration. (R. p. 064, ll. 11-12). The fact that Mart did not raise the terms of the warranty until *after* Great Southern sought to enforce the arbitration provision in the Contract for Sale (which Mart appended to his complaint, unlike the warranty), suggests that he too thought it was a separate contract not applicable to claims about the Contract for Sale. (*See* R. pp. 029–038).

[4] Respondent argues in a footnote that "Great Southern could not provide a copy of the warranty to Mart for inspection if the warranty did not exist." This sentence, which is uncited, presumably

no consideration for the warranty, then there is only one valid contract and there is no reason not to enforce the arbitration agreement included in that contract, to which Great Southern and Mart are parties, as dictated by statutory law and the public policy of this state.

Appellant was never a party to Mart's warranty and has repeatedly urged that position before the circuit court in this case. (*See, e.g.*, R. p. 045, ll. 11–13; R. pp. 228–229). Great Southern was obligated to perform warranty repairs on Mart's home, but that obligation was not to Mart, it was to StrucSure. Moreover, Great Southern was not the service provider for all repairs covered by the warranty. (R. p. 006; R. p. 218 (listing the builder and the insurer depending on year and type of defect)). The warranty contract, if valid, is between StrucSure and Mart. This is abundantly clear in the warranty itself. (*See* R. p. 194). After all, StrucSure provides insurance coverage for repairs to be handled in the event a service provider like Great Southern is not able to fulfill StrucSure's obligations to a homeowner. (R. p. 217 (definition of "Insurer")). This dynamic can be likened to one where an independent contractor may sign someone up for a cable subscription with a certain provider. That independent contractor may even install a cable box in the customer's house. But the customer's contract for the cable service *is with the cable provider*, not the contractor. The independent contractor is not in privity with the customer, but with the cable provider. In precisely the same way, Great Southern arranged the StrucSure warranty for Mart, but the privity is between StrucSure and Mart, just as Great Southern is obligated to StrucSure to provide services required by the warranty. It is an error of fact and law to conclude

---

refers to language in the sales contract, which states, "A sample copy of the warranty shall be available for inspection during reasonable business hours prior to closing . . . ." (R. p. 140). The key word in this sentence is "sample." A sample copy is not the actual warranty that was created at a later date. This is reflected by Respondent's affidavit, which states that he was provided the warranty "upon closing on the purchase of the sale of my home," and by the application for the warranty, signed by Mart six months after the purchase contract was executed, concurrently with the deed and mortgage related to the closing.

that Great Southern is a party to the warranty. Perhaps even more significant, this system has worked to produce good homes for the purchaser. During two decades of constructing more than five thousand homes, Great Southern has been sued only once by a purchaser claiming his or her home was defective in any way.

B. Great Southern cannot be bound by a contract to which it is not a party.

Great Southern is not a party to the warranty between Mart and StrucSure and is not bound by its terms, for arbitration or otherwise. Mart has expressly stated that Great Southern is not a party to the StrucSure warranty in his complaint, which states, ". . . *Great Southern does not directly warrant* any part of the construction of the new homes it sells to purchases," but instead procures a warranty for the purchaser from a "a *third-party* warranty company." (R. p. 023, paras. 13–14) (emphasis added).[5] Although Great Southern vehemently disagrees with the implications of nefarious activity contained in Respondent's complaint, it does believe that Mart should not be able to both benefit from the warranty and abjure it, depending on his arguments *du jour*. This Court has previously stated that "a party should not be allowed to avoid an arbitration agreement by naming nonsignatory parties in his complaint." *Pearson*, 400 S.C. at 288, 733 S.E.2d at 600 (quoting *S.C. Pub. Serv. Auth. v. Great W. Coal (Ky.), Inc.*, 312 S.C. 559, 563, 437 S.E.2d 22, 24

[5] In certain contexts, nonsignatories to an arbitration agreement have been compelled to arbitration. Such a circumstance does not exist in this case. Appellant has gained no benefit, direct or indirect, from the limited warranty, given Respondent's contention that the StrucSure warranty was insufficient to create a valid waiver of the warranty of habitability. In a recent opinion, the South Carolina Supreme Court distinguished *Pearson*, *supra*, noting that courts generally only compel arbitration when the signatory parties contractually agreed to arbitration. *See Richard Wilson, et al. v. Laura B. Willis, et al.*, Opinion No. 27879 (S.C. Sup. Ct. filed April 10, 2019) (Shearouse Adv. Sh. No. 15 at 8). In this case, Mart freely agreed to arbitrate disputes over the purchase contract but is trying to avoid this result by claiming Great Southern is party to the warranty for arbitration purposes, but is not a party to the warranty when it comes to his causes of action in the complaint. This strategy is not dissimilar to Mart's attempts to both gain compensation for a waiver of the warranty of habitability *and* simultaneously declare that waiver invalid.

(1993)). Mart is trying to avoid the valid, binding, and enforceable arbitration agreement in the Contract for Sale by using a contract to which Great Southern is not a party.

C. A related contract should not be read together with a purchase contract if there is any indication of intent to the contrary, as stated in *York v. Dodgeland.*

The trial court's decision to incorporate these two documents (*i.e.*, contracts not created at the same time, by the same parties) is contrary to established South Carolina law. If a subsequent contract between other parties related to the same transaction can be applied to nullify provisions in the first contract where *one* of the parties to that contract is a party to the subsequent contract, then no contract can ever be consistently binding. There would be no way to ensure that only one contract can be at play in any given transaction. The lower court's order in this case poses potentially adverse and unintended consequences when one considers the multiple agreements that may go into any purchase. For instance, when someone purchases a car there are potentially dozens of related contracts. There is the agreement between the suppliers and the manufacturer, between the manufacturer and its workers, between the manufacturer and the trucking company, the manufacturer and the advertising company, the manufacturer and the dealership, the dealership and the sales person, the dealership and the consumer, the consumer and the insurance company, the consumer and the finance company, and the consumer and the mechanic. All of those relationships center on a single car and consumer purchase but there is absolutely no way to ensure that a single arbitration agreement can be executed to cover all those relationships; moreover, there is no way to ensure that each of the individual agreements will not contain language broad enough to encompass a dispute arising from one of the other contractual relationships. Federal and state policy unequivocally favors arbitration. Arbitration is a fast and effective method of dispute

resolution that lightens the burden on courts.[6] The end result of the logic applied by the lower court and Respondent in this case would result in no effective arbitration provisions, because any given contract arbitration provision could cancel out another arbitration provision in a completely separate, but related contract between one common party *and another party* to the same ongoing chain of transactional events. This result would be in opposition to the mandates of our legislatures and courts. *See AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 345, 131 S. Ct. 1740, 1749 (2011) ("our cases place it beyond dispute that the FAA was designed to promote arbitration"); *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001) (citing *Tritech Elec., Inc. v. Frank M. Hall & Co.*, 343 S.C. 396, 540 S.E.2d 864 (Ct. App. 2000)) ("The policy of the United States and South Carolina is to favor arbitration of disputes.").

To avoid this result, this Court specifically addressed the issue of arbitration agreements linked to the same chain of facts in *York v. Dodgeland of Columbia, Inc.*, 406 S.C. 67, 749 S.E.2d 139 (Ct. App. 2013). The *York* case, cited on pages 4 and 9 of the lower court's order, stands for the principle that *any* evidence of intent to the contrary will prevent a court from amalgamating related, but separate, contracts together.[7] *Id.*, 406 S.C. at 83–84, 749 S.E.2d at 147. The lower

---

[6] Indeed, this is why the federal regulations that relate to Mart's mortgage ***require*** that the option of arbitration be provided in the express limited warranty. *See* 24 C.F.R. § 203.204(g) (2015) (regulation removed effective Mar. 14, 2019, but in effect at time of warranty in this case, which was provided to Respondent as a mortgagor for a VA loan) ("In the event of any dispute regarding a homeowner complaint or structural defect claim, Plans must . . . provide for binding arbitration proceedings . . . .").

[7] Respondent has argued that Appellant has not preserved the issue of the incorporation of the two contracts, as addressed in *York*, *supra*. (*See* Resp. Initial Br. at 13–14). This is not accurate. Appellant has consistently maintained throughout this case that there are two separate contracts with separate parties. (*See* R. pp., 042, 044, 045, 052, 084, 085). Appellant pointed out in its proposed order to the lower court that there was no incorporation and quoted the warranty, which states "this Express Limited Warranty is separate and apart from any contracts between You and Your Builder" in Section 1, paragraph 10. (*See* Def. Prop. Order, R. p. 308 (citing R. p. 194, § 1, para. 10)). Appellant addressed the issue of incorporation in its proposed order, quoting American Jurisprudence which stated:

court's ruling in this case goes directly against the precedent in the *York* case and against the common sense contract interpretation rules applied therein. *York* states that "[w]here an agreement is clear and capable of legal interpretation, the court's only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it." *Id.*, 406 S.C. at 81, 749 S.E.2d at 146 (citations omitted). Just as when construing statutes, a court must look to the plain language of a contract for the intent of the parties as it is stated and apply the contract accordingly.

The *York* court emphasized that two related contracts might be construed together unless there is *anything indicating a contrary intention. Id.*, 406 S.C. at 83, 749 S.E.2d at 147 (emphasis in original). The court recognized that the language of the two contracts in that case stated a

---

> Where a written contract refers to another instrument and makes the terms and conditions of such other instrument a part of it, the two will be construed together as the agreement of the parties. In order for an instrument to be incorporated into and become part of a contract, the instrument must actually be incorporated; it is not enough for the contract to merely mention the instrument, and the referring language in the contract must demonstrate the parties intended to incorporate all or part of the referenced instrument. Additionally, a reference in a contract to another instrument will incorporate the other instrument only to the extent indicated and for the specific purpose indicated.

(R. p. 308 (citing 17A *Am.Jur.2d Contracts* §381)). This quote addresses contrary intent like that contained in the merger clause of the parties' Contract for Sale. (R. p. 142, para. b). The issue was ruled upon by the circuit court as can be seen by the language of the order and its citation of the *York* case. (*See* R. pp. 008, 013). The circuit court rejected the above law and arguments, determining ". . . the Contract for Sale . . . expressly incorporates the Express Limited Warranty into its terms." (R. p. 010). Thus, the issue as to where the law stands under the facts of this case on the incorporation of two separate agreements is preserved for appellate review. Respondent seeks to cut the preservation onion "too thin"—that is, precluding propositions for review contained in an appellate opinion cited in the order on appeal. York stands for the simple, and possibly even axiomatic, concept that two related contracts should be reviewed for plain intent to create separate agreements within their four corners. There is not some magic word that invokes the issue of whether the two contracts should be merged—that is, after all, the primary analysis upon which this appeal turns. *See Conits v. Conits*, 422 S.C. 74, 77, 810 S.E.2d 253, 254 (2017) (quoting *Herron v. Century BMW*, 395 S.C. 461, 470, 719 S.E.2d 640, 644 (2011) (preservation issues should be viewed with practical eye and not in a rigid, hyper-technical manner).

specific intent of separateness. The same analysis applies in this case, even if assuming *arguendo* that the warranty is somehow applicable. The Contract for Sale includes the following language that prevents modification by any other document, including the warranty: "This contract embodies the entire Agreement between Seller and Purchaser with respect to the property. No amendment or modification of this Contract (including Contracts for charges in construction "extras") shall be valid unless contained in a writing executed by both parties." (R. p. 142, para. b). No such amendment or modification has been presented to the Court. Further, the warranty states: "This Express Limited Warranty is separate and apart from any contracts between You and Your Builder, including any sales agreements." (R. p. 194, § 1, para. 10). There can be no doubt of the intention of separateness in these agreements given this language. There is also no doubt that the Contract for Sale was completed six months prior to the issuance of the warranty, leaving no question of which is the primary agreement that would require the type of amendment or modification described in the Contract for Sale.

There is a valid purchase contract with a valid arbitration provision between the parties of this case. This should be the end of the analysis required. However, Respondent has introduced a separate contract for the purposes of stymying arbitration. But that second contract is between different parties, has a different purpose, is not implicated by Respondent's causes of action, states an intent of separateness on its face, and was created six months after the primary contract in question. Respondent seeks to entangle the two separate contracts by using distinguishable out-of-state cases when a South Carolina case addresses the specific issue at bar: where two contracts say they are separate, they are separate.

As pointed out in Appellant's brief, these two documents have different purposes. The Contract for Sale was to journalize the parties' agreement to purchase and sell under given terms. The StrucSure Home Warranty was to provide the homeowner a detailed description of the

remedies under the warranty for a number of complaints, including but not limited to, defects in the home. It is true that, once the homeowner files a claim under the warranty, he or she is protected from multiple arbitrations by the warranty's arbitration provision. Here, however, the warranty never comes into play because there was no construction defects claimed in Mart's complaint. In such a case, there is no need to address the similarities and differences between two arbitration provisions, because only one provision applies.[8]

II. TWO SEPARATE CONTRACTS REQUIRE TWO MEETINGS OF THE MINDS, NOT ONE.

Respondent has cited *Parsons v. John Wieland Homes & Neighborhoods of the Carolinas, Inc.*, 418 S.C. 1, 791 S.E.2d 128 (2016), as support for its position that the StrucSure warranty is part of the Contract for Sale. Respondent has mischaracterized the facts and twisted the reasoning of the *Parsons* case, wherein the South Carolina Supreme Court in fact *compelled arbitration*, to suit his contrary agenda in this case. In the *Parsons* case, a home builder developed a neighborhood on the site of a prior textile manufacturing site. *Id.*, 418 S.C. at 4–5, 791 S.E.2d at 129–30. The developer attempted to clean all remnants of the industrial facility from the site, but a homeowner eventually located pipes and a concrete box containing a hazardous substance. *Id.* The developer paid for and cooperated with state regulators to clean up the waste. *Id.* The home owners nevertheless sued the developer under various contract and tort theories. *Id.* The contract in the *Parsons* case differed in several noticeable ways from the Contract for Sale in this case. Particularly, the purchase agreement between the developer and the home buyer required acknowledgement of the receipt of a warranty booklet and acceptance of its terms. *Id.*, 418 S.C. at 4, 791 S.E.2d at 129. The contract specifically required acknowledgement of the acceptance of

[8] Respondent relies on *Grant v. Magnolia Manor-Greenwood, Inc.*, 383 S.C. 125, 678 S.E.2d 435 (2009), to dispute the *York* case, but the later *York* case itself distinguished the *Grant* case, leaving little reason to address that here. *See York*, 406 S.C. 67, 82–83, 749 S.E.2d 139, 146–47.

the arbitration agreement in the warranty booklet. *Id.*, 418 S.C. at 4, 7–8, 791 S.E.2d at 129, 131–32. The Supreme Court compelled arbitration based on the arbitration agreement in the warranty booklet *because the homebuyer had specifically accepted that agreement in, and as part of, the purchase contract.* In this case, the Contract for Sale only states that a warranty will be provided in the future. It does not state that the homebuyer accepts the terms of the warranty. It does not state that the arbitration provision in the warranty applies to the purchase contract. It does not state that the warranty is incorporated by reference. The importance of these three things cannot be emphasized enough in applying the *Parsons* case to the present action before the Court of Appeals.

Respondent's reasoning skips straight to the language in the StrucSure warranty's arbitration provision without giving context to that language by identifying the purpose of the warranty, whether it is incorporated by reference in the purchase agreement, or whether Great Southern was even a party to the warranty. The warranty in the *Parsons* case was explicitly and expressly acknowledged, accepted, and incorporated by reference into the purchase agreement. *None* of these things happened in this case and it is error to apply the *Parsons* case just on the ground that a home warranty was also involved. Additionally, it is important to bear in mind the statutory law, case law, and public policy buttressing the Supreme Court's decision in *Parsons* to reach exactly the opposite result Respondent advocates in this case and compel arbitration. *See Parsons*, 418 S.C. at 7, 791 S.E.2d at 131 (citing *Landers v. Fed. Deposit Ins. Corp.*, 402 S.C. 100, 109, 739 S.E.2d 209, 213 (2013)), for the "heavy presumption" in favor of arbitration). The policy in favor of arbitration becomes even more apparent in cases that implicate interstate commerce, like this one. *See KPMG LLP v. Cocchi*, 565 U.S. 18, 21, 132 S. Ct. 23, 25 (2011) (citations omitted) ("The [FAA] reflects an 'emphatic federal policy in favor of arbitral dispute resolution.'").

In this case, Respondent is attempting to avoid arbitration he freely agreed to in the purchase contract for the home he bought, while admitting that there are no actionable construction deficiencies in the home. Both he and Great Southern were signatories to the contract and are presumed to have read and agreed to the terms therein. *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 541, 542 S.E.2d 360, 365 (2001) (citing *Hood v. Life & Cas. Ins. Co. of Tennessee*, 173 S.C. 139, 175 S.E. 76 (1934)) (enforcing an arbitration agreement in part because "a person who can read is bound to read an agreement before signing it"). There is no cogent allegation that the arbitration provision in the Contract for Sale, standing on its own, lacks material terms, is unconscionable, or otherwise fails to demonstrate a meeting of the minds. Moreover, the contract states that it cannot be modified without a written, executed amendment. No such amendment exists. The warranty is not between Great Southern and Mart, but even if it was, it contains plain-language intent to remain a separate agreement. Further, it does not meet the qualifications to be an amendment to the purchase contract. Additionally, the warranty, which did not exist at the time of the purchase contract, was not incorporated by reference or otherwise accepted in the Contract for Sale. Respondent's allegations that there failed to be a meeting of the minds is an engineered house of cards designed to prevent the enforcement of his contractual obligations and thwart the laws and public policy of this state.

CONCLUSION

For the foregoing reasons, Appellant requests that the Court reverse the order of the trial judge and remand this case to be dismissed or stayed and referred to arbitration in accordance with the contract between the parties.

[signature page to follow]

Respectfully submitted,

BRUNER, POWELL, WALL & MULLINS, LLC

Warren C. Powell, Jr., Bar No. 4525
Chelsea J. Clark, Bar No. 102211
Post Office Box 61110 (29260)
1735 St. Julian Place, Suite 200 (29204)
Columbia, South Carolina
(803) 252-7693
Attorneys for Appellant

Columbia, South Carolina
June 11, 2019

CERTIFICATE OF COUNSEL

The undersigned certifies that this final reply brief, having been edited only to complete the record citations and correct any obvious errors or misspellings, complies with Rule 211(b), SCACR, pursuant to Rule 211(a), SCACR.

Warren C. Powell, Jr., Esquire