

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM AIKEN COUNTY
Court of Common Pleas

SEP 04 2018

The Honorable L. Casey Manning
Circuit Court Judge

S.C. SUPREME COURT

Appellate Case No. 2018-000784
Opinion No. 2018-UP-0416 (S.C. Ct. App. Filed January 31, 2018)

Angela Cartmel.....Respondent

v.

Edward Brice Taylor.....Petitioner

RETURN OF RESPONDENT

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STATEMENT OF THE CASE

Appellant and Respondent entered in to a Residential Lease Agreement with a five year term for the property known as 2694 Camp Rawls Rd, Wagener, SC on May 9, 2014. Said agreement specifically included rent to own provisions for the property. The agreement also contained an arbitration clause buried in paragraph 61 of said agreement which states, "If any dispute relating to this lease between Landlord and Tenant is not resolved through informal discussion within 14 days from the date the dispute arises, the Parties agree to submit the issue first before a non-binding mediator and to an arbitrator in the event mediation fails. The decision of the arbitrator will be binding on the Parties. Any mediator or arbitrator must be a neutral party acceptable to both landlord and tenant. The cost of any mediations or arbitrations will be paid by the tenant". (App. p. 93), Respondent alleges that prior to taking residence at the property she informed Appellant that there was water damage around the light and over the sink located in the kitchen of the home. Appellant informed the Respondent that the damage was from the February 2014 ice storm that occurred in Aiken County and he would have it repaired along with resurfacing the cabinet doors in order to induce Respondent to enter into the agreement. Respondent took residence at said property on or about June 15, 2014.

Respondent alleges that in June of 2014 Respondent made numerous requests, orally and in writing, to repair roof leaks in a certain part of the home. Appellant made various representations regarding the leaky roof, which included contacting contractors for repairs and an alleged ongoing lawsuit against the manufacturer of the manufactured home, said representations proved false. Due to the representations of Appellant, Respondent forebear any repairs herself and therefore said representations of Appellant were to Respondent's detriment.

On or about December 14, 2014 a fire caused by said leaking roof shorting electrical wires erupted in the home causing damage to said home and Respondents property, including property located outside of said home belonging to Respondent.

Respondent filed the underlying action in the Aiken County Circuit Court alleging fraud in the inducement, fraud and misrepresentation on May 14, 2015 due to the loss of the residence. Respondent is also seeking consequential damages related to losses related to her home based business.

Appellant filed a Motion to Compel Arbitration on September 27, 2015 which was heard before the Hon. Casey E. Manning on January 25, 2016. (App. p. 33). Respondent's Memorandum of Law provided to the lower Court raised the issues of unconscionability, public policy and verbally argued the provision's inapplicability to real estate transactions at hearing. (App. PP. 39-40, 81-83). During said hearing, Appellant admitted the Agreement, and arbitration clause contained therein, made by Appellant did not comport with the South Carolina Uniform Arbitration Act and therefore arbitration was not enforceable under said act. (R. p. 77, lines 12-13). Judge Casey Manning stopped Respondents attorney in mid argument stating "That's enough, thank you Gentlemen for your lively presentation... The prevailing party may submit a form Order." (App. p. 83, Lines 8-10). Judge Casey Manning accordingly denied Appellant's motion to compel arbitration.

Appellants Motion was dismissed via Order filed with the Aiken County Clerk of Court on February 8, 2016. (App. p. 9) Appellant filed a Motion for Reconsideration which was filed with the Court February 15, 2016 and accordingly denied by the Court. (App. p. 14). Appellant appealed the decision of the lower Court, which resulted in the South Carolina Court of

Appeals affirming the decision of the lower Court on January 31, 2018 in Unpublished Opinion number 2018-UP-046.(App. p. 153).

STANDARD OF REVIEW

Arbitrability determinations are subject to de novo review. *Bradley V. Brentwood Homes*, 398 S.C. 447, 453 (2012). However, "although arbitrability determinations are subject to de novo review, the Court's factual findings will not be reversed if reasonably supported by the evidence." *Faltaous v Anderson Ocean Club Development, LLC*, 388 S.C. 45, 48 (Ct. App. 2010). "Arbitration is a matter of contract law and general principles of state law apply to the Court evaluation of the enforceability of an arbitration clause." *Simpson V. MSA of Myrtle Beach, Inc.* 373 S.C. 14,24 (2007).

STATEMENT OF ISSUES ON APPEAL

- I. Is the underlying Residential Lease Agreement, with option to purchase, subject to the Federal Arbitration Act?
- II. Did the lower Court properly deny, and the Court of Appeals properly uphold Appellant's Motion in light of prevailing law?
- III. Did the Circuit Court's decision to deny arbitration in the instant case, and the South Carolina Appeals decision affirming said denial, comport with South Carolina law regarding real estate transactions and the Federal Arbitration Act?

ARGUMENT

A. The Residential Lease Agreement with rent to own provisions are not subject to arbitration under South Carolina Law.

Appellant misinterprets the nature of the underlying Lease with Option to Purchase

Contract. See *Lewis v. Premium Investment Corporation* 351 S.C. 167, 568 S.E.2d 361 (S.C., 2002) (discussing equity of redemption). In total, 18 clauses in the agreement were dedicated to the option to purchase. (App. pp. 94-96). The nature of the underlying contract was residential, "The Landlord Agrees to rent the tenant the mobile home described a 2694 Camp Rawls Rd., Wagner, Aiken, South Carolina 29164 (the property) for use as residential purposes only". (App. p. 85, para. 1) However the contract is for purchase of real property, "this is a lease to own agreement." (App. p. 85, para. 1, p. 94, para. 64-69) "Where an agreement is clear on its face and unambiguous, the court's only function is to interpret its lawful meaning and the intent of the parties as found within the agreement." *Miles v. Miles*, 393 S.C. 111, 117 (2011). Where the contract language is plain and capable of legal construction, that language alone determines the instrument's force and effect. *Jordan v. Sec. Grp., Inc.*, 311 S.C. 227, 230 (1993).

Appellant argues that the Residential Lease Agreement is a "mixed use" contract. Appellant makes this argument due to two sentences: The Tenant may also use part of the property for following home-based business: Construction of Horse Jumps. The Tenant is responsible for all permits and licenses relating to this home based business and the tenant indemnifies the Landlord of all liability..." (App. P. 41). Due to horses on the property and inherent dangers of equine activities, Appellant was merely seeking to prevent premises liability by seeking indemnification. Respondent can only surmise that Appellant seeks to create ambiguity where there is none, yet if the Appellant were correct as to ambiguity, it is of no import. Appellant drafted and presented the Residential Lease Agreement. "[E]ven if the language creates an ambiguity, a court will construe any doubts and ambiguities in an agreement against the drafter of the agreement." *Heritage Fed. Sav. & Loan Ass'n v. Eagle Lake & Golf Condos.*, 318 S.C. 535, 542 (Ct. App. 1995). "[A] provision of a contract which does not

clearly express the intention of the parties should be construed against the one for whose benefit it was inserted." *Tuten v. Bowden*, 173 S.C. 256, 263, 175 S.E. 510, 513 (1934). The Respondent nor Appellant intended to enter into a commercial contract. However, now that the Appellant is trying to benefit from a self created ambiguity, it should be construed against him.

In the instant case, there was no contemplation of a "mixed contract" and the plain and ordinary meaning of the contract is apparent, a lease and purchase of real property located in the State of South Carolina. "If the intention of the parties is clear, the courts have no authority to change the contract in any particular." *Newell & Company v. American Mutual Liability Insurance Company*, 199 S.C. 325, 332 (1942). Neither Party to the contract viewed the Residential Lease containing an option to purchase as a commercial contract as it was not contemplated. Respondent would. The Appellant in the instant action is asking the Court to do just that, change the nature and particulars of the agreement to suit their argument.

B. Intrastate real estate contracts are not subject to the FAA

Appellant seeks to bring an intrastate contract into the realm of interstate commerce by virtue of a single sentence stating "tenant may use part of the property for a home based business" in an 82 paragraph agreement involving real estate located in the State of South Carolina (App. p. 85) The only other language, and the intent readily inferred therefrom, is that appellant requests full indemnification due to the fact that Respondent is involved in the equestrian business which is inherently dangerous. There is no clause or other language indicating that the nature of the contract is anything other than a transaction for real estate which is inherently intrastate. Appellant simply asserts that any home based business must be interstate in nature because it is a home based business. (App. p. 78, lines 16 - 20) Appellants also asserts

that the Residential Lease Agreement is a "mixed use" contract to indicate the contract is commercial in nature. However, the plain reading of the contract indicates that, as its title indicates, that it is simply a residential lease/sales contract with a recitation of the renter/buyers business in order that Appellant will not be responsible for any injuries related to equine activity. "The FAA generally does not apply to real estate transactions that have no substantial or direct effect to interstate commerce..." *Bradley V. Brentwood Homes*, 398 S.C. 447, 458 (2012), quoting *Garrison v Palmas Del Mar Homeowners Ass'n*. 538 F. Supp. 2nd 468, 473 (D.P.R. 2008).

Appellant fails to provide any proofs that the nature of the agreement between the Parties involves interstate commerce, "The FAA provides: A written provision in ... a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract ... shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract. 9 U.S.C.A. § 2. Therefore, in order to activate the application of the FAA, the commerce involved in the contract must be interstate or foreign." *Bradley V. Brentwood Homes*, 398 S.C. 447, 455 (2012), quoting *provisions of the Federal Arbitration Act*.

"To ascertain whether a transaction involves commerce within the meaning of the FAA, the court must examine the agreement, the complaint, and the surrounding facts." *ID at 544*. "Our courts consistently look to the essential character of the contract when applying the FAA." *Thornton v. Trident Med. Ctr., LLC*, 357 S.C. 91, 96 (Ct.App.2003). Additionally, the Courts "focus upon what the terms of the contract specifically require for performance in determining whether interstate commerce [was] involved." *Id.*

"This Court has continued to adhere to the view that the development of real estate is an inherently

intrastate transaction.” *Bradley V. Brentwood Homes*, 398 S.C. 447, 456 (2012). In deciding the effect of a real estate contract on interstate commerce, the Supreme Court has looked to the law in other states where contracts, such as the agreement in the case at bar, and has adopted the following:

Notwithstanding its congenial effects on interstate commerce, the sale of residential real estate is inherently intrastate. Contracts strictly for the sale of residential real estate focus entirely on a commodity - the land - which is firmly planted in one particular state. The citizenship of immediate parties (the buyer and the seller) or their movements to or from that state are incidental to the real estate transaction. Those movements are not part of the transaction itself. All of the legal relationships concerning the land are bound by state law principles. Single residential real estate transactions of this type have no substantial or direct connection to interstate commerce. For all these reasons, logic suggests that such transactions are not among those considered as involving interstate commerce. To characterize a residential real estate [transaction] as involving interstate commerce under these circumstances would actually promote a lack of uniformity in the law, which is exactly contrary to one of the FAA's stated purpose. If the FAA applied to out-of-state purchasers of Kentucky real estate, different rules would apply in that considerable volume of transactions concerning property here. Applying Kentucky law to all Kentucky real estate transactions creates a more uniform and, therefore, a more equitable body of law.

Bradley V. Brentwood Homes, 398 S.C. 447, 457-458 (2012)

A plain reading of the agreement of the Parties agreement puts the agreement squarely in the realm of a contract for South Carolina real estate with no element of interstate commerce or contemplation thereof by the Parties.

C. Appellants argument fails under *Bradley v. Brentwood*

Character of the Agreement

In the instant case, the essential character of the contract is one for the lease and purchase of real estate in the State of South Carolina as between two residents of the State of South Carolina.

The commodity subject to the agreement is the land itself. In applying the three prongs as stated in Bradley v Brentwood, there is no instance of interstate commerce as between the Parties for the lease and purchase of real property and the false notion that a home based business must be "interstate commerce" adds nothing to change the Parties agreement or the underlying facts. Additionally, the only required performance in the agreement as it pertains to Respondent and Appellant is related to the paying of rent/payments towards equity and the upkeep of property, which does not touch or effect interstate commerce. (App. pp. 85-98) Therefore the "essential character" of the contract does not need to be sussed out through careful examination and is on it's face a residential lease agreement with rent to own provisions.

To follow the line of Appellants reasoning, the following instance would result in real estate transactions in the state of South Carolina becoming regulated by interstate commerce:

Independent tractor-trailer driver engages in a lease to own agreement in South Carolina for a home, does his bookkeeping in the home and parks his rig outside of said home (an allowance recited in the lease to own agreement) when not working. Due to negligence of landlord/seller, the home explodes and damages the rig. Tenant/buyer sues and includes the loss of the rig as consequential damages. Under Appellants theory it touches interstate commerce because the tenant/buyer drives his rig (filled with " It's a beautiful day in South Carolina" bumper stickers) across state /ines as part of his work.

Simply put, if Appellant were to succeed because a Party demands consequential damages related to a loss from real estate which is business related, there would be a chilling effect on real estate law and tort law in South Carolina, taking virtually all real estate transactions into the realm of the commerce clause by virtue of actions, facts, and circumstances which are squarely outside of the Parties agreement.

C.1. The Complaint

The complaint of Respondent names four causes of action in tort; specifically, fraud and misrepresentation in the inducement, breach of contract accompanied by a fraudulent act, negligence and negligent misrepresentation. (App. pp. 15-25). The damages related to Respondent's home based business are consequential to destruction of the home due to Appellants alleged misrepresentation and fraud. (App. pp. 15 - 25). Appellant is asking the Court to rewrite the Parties Residential Lease Agreement as something contrary to the nature and plain language of the agreement and somehow bring said agreement into the realm of interstate commerce. Consequential damages are "losses that so not flow directly or immediately from the injurious act but result indirectly from the act." *Blacks Law Dictionary 416 (8th Ed. 2004)*. Therefore, the nature of the contract falls within the realm of a real property transaction and all causes of action within the complaint sound in tort regarding said contract for real property.

C.2. The Facts

The facts surrounding this action indicate that the Parties engaged in an agreement for real property in the state of South Carolina. Appellant admits that the Agreement, the maker of which is appellant, does not comport with and is not enforceable under the South Carolina Arbitration Act. Appellant drafted and proffered the Residential Lease Agreement containing provisions for the purchase of the subject property to Appellant. Appellant has suffered actual and consequential losses and has pled fraud on the part of Appellant which resulting in a fire to a structure, which was a danger to life and property. Respondent has caused an action to be filed with a Court of competent jurisdiction based on fraud in the inducement, and misrepresentation, negligence and alleges that Appellant received insurance funds for the repair of a leaky roof prior to engaging with Respondent, failed to make repairs, said failure to make repairs after notice from Respondent

caused a short in the wiring which caused the destruction of the home and Respondent's losses. (App. pp. 15-25) .There are no facts in the immediate case which involve interstate commerce.

D. Appellant failed to offer sufficient evidence that the Residential Lease Agreement is subject to the FAA

Appellant alleges that Respondent failed to bear the burden of proof that Respondent's claims are unsuitable for arbitration. "[T]he Party resisting arbitration bears the burden of proving that the claims are unsuitable for arbitration." *Hall v Green Tree Servicing, LLC, 408 S.C. 267, 268 (Ct. App. 2015)*. However, the facts of Hall V. Green Tree Servicing do not comport with the facts in the instant case. Green Tree's challenge to Hall was based on a transaction for personal property and statutory causes of action, "Respondents entered into a credit and sale contract (the Contract) with Green Tree through which the parties agreed Green Tree would finance Respondents' purchase of a mobile home. *Id.* Therefore, the challenge to arbitration does not rely on the exception to real property transactions.

Appellant also relies on *Bradley v. Brentwood Homes, Inc.* which states that if the transaction is for real property, the burden shifts: "We agree with the circuit court's conclusion that Brentwood Homes failed to satisfy its burden of proof as none of the factors relied upon to establish the involvement of interstate commerce negate the intrastate nature of the sale and purchase of residential real estate." *Hall v Green Tree Servicing, LLC, 408 S.C. 267, 268 (Ct. App. 2015)*. In the instant case, it was noted in the lower Court that Bradley was controlling and further noted that Brentwood Homes argued that references in the contract to a home warranty from an out of state vendor and financing from an out of state vendor (J.P. Morgan). (App. p. 82, lines 9-25, R. p. 10, lines 1-7) *See Bradley v. Brentwood Homes, Inc. 398 S. C. 447 (2012), Pages 456-459*. Therefore, more on point as to the findings of the lower Court in the instant case, "[b]ased on the foregoing, we conclude that Brentwood Homes failed to offer sufficient evidence

that the transaction involved interstate commerce to subject the Agreement to the FAA." *Id p. 459*. Appellant merely offers that respondent's business is interstate in nature. The Appellant is very well aware that the equine industry is vital to Aiken County and Camden County and is isolated to those horse riders using facilities at said locales. In short, fence builders in Aiken build fences in Aiken County, Aiken Contractors build barns in Aiken County, and horse jumps in Aiken County are for use in Aiken County. It is simply common sense, well known and confined to those locales where equestrian activities are located in South Carolina.

Even if Appellant Prevailed Regarding "Mixed Use," The Arbitration Clause Violates Public Policy, is Unconscionable, Lacks Mutuality and Mutuality of Remedies

Respondents Action Sounds in Fraud and Related Torts

Appellant, which focusing on the alleged "mixed use" contract argument fails to address other considerations by the lower Court. The action at bar is one for fraud and misrepresentation, including fraud in the inducement. Respondent alleges that the Appellant misrepresented the condition of the home and did so intentionally. Due to Appellant's intentional fraudulent act, the home caught fire and Respondent suffered a loss of personal property and business earnings. (App. Pp. 16-18) The very act of misrepresenting the condition of a home, accepting insurance proceeds for repair and failing to do those repairs and a resulting fire endangering life and property are inherently fraudulent. "[G]enerally applicable contract defenses, such as fraud, duress or unconscionability, may be applied to invalidate arbitration agreements.

Doctor's Associates, Inc. v. Casarotto, 116 S.Ct. 1652, (1996).

The Respondent herein argues that public policy is offended when a contract, clear and unambiguous on its face, can be construed to reach outside of its four corners. By analogy, if a Tenant under the same circumstances were allowed, by mention in a lease agreement, to carry on a

business of selling various items via “ebay.com,” would that carry the lease out of the realm of the South Carolina Landlord Tenant Act and therefore cause the landlord to forgo an eviction hearing should Tenant fail to pay rent. Would the Landlord instead be forced to file in the Circuit Court for relief, and in accordance with other provisions of South Carolina law? Respondent believes that Appellant has parsed the lease agreement to an unacceptable extreme. To allow for such an interpretation would simply erode the nature of such agreements, create more litigation and therefore it is an offense to public policy.

Respondent made it clear in her memorandum of law to the lower Court that the arbitration provision was unconscionable and lacked mutuality; “[t]he arbitration clause also fails as it is unconscionable and lacks mutuality.” (App. p. 40). The arbitration clause itself is subject to an analysis of unconscionability. “[A]n arbitration clause is separable from the contract in which it is embedded and the issue of its validity is distinct from the substantive validity of the contract as a whole.” *Munoz v. Green Tree Fin. Corp.*, 343 S.C. 531, 540 (2001). Indeed, the arbitration clause is unconscionable as it’s terms call for both non-binding mediation and binding arbitration, with the Respondent paying for each step, even if Respondent proves her case and prevails in both instances:

If any dispute relating to the Lease between the Landlord and Tenant is not resolved through informal discussion within 14 days from the date a dispute arises, the Parties agree to submit the issue first to a non-binding mediator and to an arbitrator in the event that mediation fails. The decision of the arbitrator will be binding on the Parties. Any mediator or arbitrator must be a neutral Party acceptable to both the Landlord and the Tenant. The cost of any mediations or arbitrations will be paid by Tenant.

App. p. 85. Para. 61

Herein there is a glaring lack of mutuality as between the Tenant/Purchaser/Consumer and the Landlord/Drafter of the Contract/ Seller as the Respondent is thereby forced to; a) pay all of the costs of

discovery (both Appellant's and Respondent's), b) pay Appellants attorney's fees and Respondent's attorneys fees, c) any per diem, travel costs and ancillary costs of the mediator as well as arbitrator, d) pay the mediator's fees and the arbitrator's fees, e) pay for the Court Reporter's fees and costs of transcription. Appellant is, quite frankly, being forced to pay tens of thousands of dollars that will likely be greater than the actual damages she is seeking.

The United States Supreme Court has long held that a contract that penalizes a Party by depriving that Party of a remedy is unacceptable and therefore against Public Policy:

The rule here has long been that attorney's fees are not ordinarily recoverable in the absence of a statute or enforceable contract providing therefor. . . . In support of the American rule, it has been argued that since litigation is at best uncertain one should not be penalized for merely defending or prosecuting a lawsuit, and that the poor might be unjustly discouraged from instituting actions to vindicate their rights if the penalty for losing included the fees of their opponents' counsel.

Fleischmann Distilling Corp. v. Maier Brewing Co., 386 U.S. 714, 717-18

(1967) (citations omitted)

It would follow, in the instant case that Appellant is attempting to do just that, to pay for the costs of litigation, all attorneys fees and costs, even if she prevails. This lacks any mutuality of remedy by it's very terms and is unconscionable. This Court has held that an arbitration clause, in and of itself is not lack of mutuality, "[w]e interpret the trial court's ruling to be that mutuality of remedy was required, i.e., the consideration given for one party's obligation to arbitrate must be the other party's obligation to arbitrate." *Lackey v. Greentree Financial Corp., 330 S.C. 388, 397 (1998)*. However, this is not merely an agreement to arbitrate which is buried, not underlined or in bold font which violates the South Carolina Arbitration Act, it grants Appellant, as drafter, a free legal defense with all attorney's fees and costs borne by the Appellant. In *Herron v. BMW*, this Court found that a provision prohibiting a class action law suit failed as against public policy. *Herron v BMW, 387 S.C. 525, 693 S.E.2d 394 (2010)*. However, 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 Plan, Inc. v. United HealthCare Servs., Inc.*, 361 S.C. 544, 554 (2004). Respondent was given no meaning full choice in this matter, the Appellant has attempted to force the Tenant/Buyer into an untenable position wherein "win, lose or draw" all of the costs, including attorneys fees, are borne solely by Respondent. "Unilateral attorney's fees clauses are unfair and should be disfavored for three reasons. First, the clause is commonly inserted into contracts when the contracting parties are of unequal bargaining power, and the clause is always in favor of the stronger party. Second, the clause has a significant, oppressive effect against the disadvantaged party in the event of litigation. Third, it is against public policy to allow such clauses." *Jeffrey C. Bright, Unilateral Attorney's Fees Clauses: A Proposal to Shift to the Golden Rule*, 61 *DRAKE L. REV.* 85, 108 (2012).

A. CONCLUSION

The Circuit Court committed no error of law in reaching it's decision and the Court of Appeals Properly Upheld the Lower Court's Deceision.

The lower Court heard the arguments of Appellant regarding the nature of the contract. In determining the applicability of the FAA, the Court considered the nature of the underlying contract, "[t]he Court acknowledges that the Federal Arbitration Act applies to contracts effecting interstate commerce. The issue before the Court is whether the residential lease with option to purchase agreement at issue effects interstate commerce. " The intent and objective manifestation of the Parties to a contract at the time a contract is made governs it's interpretation." (*App. p. 10, quoting Lewis v. Carnaggio*, 257 S.C. 54 {S.C.1971}). "If a contract appears ambiguous in one of it's terms, the entire contract is to be viewed as a whole to

determine it's

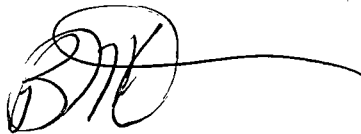
intent and not isolated portions. (*App. p. 10, quoting Farr v. Duke Power Co. 265 S.C. 356 (S.C. 1975)*). The contract at issue clearly states that it is a residential lease for real property and contains the typical clauses regarding terms of lease, an option to purchase and other clauses relating to the rights and responsibilities of landlord and tenant. The contract acknowledged that Plaintiff has a home based business, however, the clause "Tenant is responsible for all permits and licensing related to this home-based business and Tenant indemnifies the Landlord of all Liability, costs and fees associated with this business" is an indemnification clause." (R. p. 10).

Respondent argues that Appellant cannot succeed in arguing that a typical Residential Lease Agreement can become a "mixed use." It flies in the face of the rules governing contracts, real estate purchases and denies the intent of the Parties to the contract. Furthermore, it causes Appellants desire for indemnification under the rental agreement to become "interstate commerce" simply so that Appellant may avoid having to face a lawsuit thereby creating a pandoras box wherein similar claims would stifle and weaken existing law by changing the very intent and meaning of agreements by making them something they are not.

The import of the lower Court's interpretation of was not lost on the Court of Appeals. Each Court has reasonably interpreted the contract of the Parties and concluded that the underlying agreement is a Residential lease Agreement with rent to own provisions included therein. The only legal inference to be drawn therefrom is that the FAA does not apply to the instant case and in light of holdings regarding the enforcement of the FAA to real estate contracts, the transaction is intrastate and the FAA is inapplicable. In rendering their decisions, the lower Court took heed to the underlying law and legal principals surrounding the Residential Lease Agreement. The Court of Appeals acknowledged the same and utilizing the breadth of

the FAA, the parties contract, the nature of the Complaint and the surrounding facts as laid out in Respondent's Complaint. Neither Court had to reach the unconscionability, public policy and mutuality issues raised in Appellants Memorandum of Law as the nature of the agreement itself negated the analysis. The lower Court ruling as well as the ruling to the Court of Appeals should be upheld.

Respectfully Submitted

A handwritten signature in black ink, appearing to be 'BMO', with a long horizontal line extending to the right.

Bradford M. Owensby

8/27/18