

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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MAY 30 2018

APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

L. Casey Manning, Circuit Court Judge

Unpublished Opinion No. 2018-UP-0416  
Filed January 31, 2018  
Rehearing Denied March 26, 2018

Appellate Case No. 2016-000635  
Lower Court Case No. 2015-CP-02-1181

ANGELA CARTMEL

Respondent,

v.

EDWARD BRICE TAYLOR

~~Appellant.~~  
Petitioner

RETURN OF RESPONDENT

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## STATEMENT OF THE CASE

Appellant and Respondent entered into 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.<sup>1</sup> The agreement also contained an arbitration 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 medications or arbitrations will be paid by the tenant".<sup>2</sup> 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 contracting for repairs and an alleged ongoing lawsuit against the manufacturer of the manufactured home. Due to the representation 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 Circuitry 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

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<sup>1</sup> APP. PP. 41

<sup>2</sup> APP. PP. 49

was heard before the Hon. Casey E. Manning on January 25, 2016.<sup>3</sup>

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.<sup>4</sup> After hearing the arguments of counsel, reviewing the Courts record and applicable case law, Judge Manning accordingly dismissed Appellants Motion via Order filed with the Aiken County Clerk of Court on February 8, 2016.<sup>5</sup> Appellant filed a Motion for Reconsideration which was filed with the Court February 15, 2016 and accordingly denied by the Court.<sup>6</sup> The instant appeal followed which as decided in favor of Respondent and filed on January 31, 2018.<sup>7</sup> Appellant now seeks Writ of Certiorari.

## ARGUMENT

### **This Honorable Court Should Refuse to Issue a Writ of Certiorari**

### **The Court of Appeals Did Not Err In Interpreting the Lease with Option to Purchase Agreement**

Appellant in the instant action is premising his argument , it would appear, on the nature of the agreement underlying this action. Appellant refers to as a “mixed use” agreement. In alleging that the agreement underlying this dispute is not a residential lease or lease to own agreement, Appellant is attempting to take an agreement which per it’s title and very terms was contemplated as and solely functions as a lease with option to purchase for residential property. Appellant sees no need to venture too far into this argument, other than state that on it’s face, said agreement is what any reasonable person would conclude. It is a residential lease with an option to purchase. Appellant now alleges that the following language makes the lease

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<sup>3</sup> APP. PP. 33

<sup>4</sup> APP. PP. 77, LINES 10-17

<sup>5</sup> APP. PP 9

<sup>6</sup> APP. PP. 14

<sup>7</sup> APP. PP. 153

agreement something else: “The tenant may use part of the property for the following home based business: Construction of Horse Jumps. ... and tenant indemnifies Landlord of all liability, costs and fees.”<sup>8</sup> This clause does not comport with any other purpose than an indemnification clause indemnifying the Landlord from suit should premises liability arise.

The Court of Appeals recognized this distinction by stating “[t]he cardinal rule of contract interpretation is to give legal effect to the Parties intentions as determined by the contract language. Where the contract’s language is clear and unambiguous, the language alone determines the contracts force and effect. A contract is read as a whole document so that one may not create ambiguity by pointing out a single sentence or clause.”<sup>9</sup> The Court of Appeals further concluded “[o]ur Courts consistently look to the essential character of the contract when applying the FAA.”<sup>10</sup>

In the instant case, Appellant is asking the lower Court, the Court of Appeals and this Honorable Court to disregard well established law regarding the interpretation of contracts and hold that two sentences in which the Landlord is seeking indemnification, which incidental to the transaction, render the agreement to be something other than a residential lease with option to purchase. The Court of appeals squarely, and rightly, refused to take such an expansive leap.

This Honorable Court should not accept certification of this action based on the fact that the underlying agreement is what it purports to be, a residential lease with an option to purchase.

**THE AGREEMENT FALLS SQUARELY WITHIN BRADLEY V BRENTWOOD  
HOMES**

Recognizing that the underlying agreement involves the use and development of real

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<sup>8</sup> APP. PP. 41, PARA. 1

<sup>9</sup> APP. PP. 154, QUOTING MCGILL V MOORE, 381 S.C. 179,185 (2009)

<sup>10</sup> APP. PP. 154, QUOTING THORTON V TRIDENT MED. CTR., LLC, 357 S.C. 91, 96 (CT. APP. 2003)

property, the Court of Appeals was correct in applying *Bradley v Brentwood Homes*. “This Court has continued to adhere to view that the development of real estate is an inherently intrastate transaction.”<sup>11</sup> To ascertain whether the transaction involves commerce within the meaning of the FAA (Federal Arbitration Act), the Court must examine the agreement, the complaint and the surrounding facts.”<sup>12</sup> The Appellant has failed to establish any effect, nexus or connection with interstate commerce other than the attempt to recharacterize the nature of the agreement itself. The Court of Appeals correctly examined the agreement, the complaint and surrounding facts and determined that the agreement does not involve commerce within the meaning of the FAA.

Respondent, as the lower Court and Court of Appeals have acknowledged, entered into a residential lease agreement with an option to purchase. Said agreement plainly states that “[t]he landlord agrees to rent to the tenant the mobile home, municipally described as 2694 Camp Rawls Rd. Wagener, SC, 29164, (the “property”) for **residential purposes only**. The property is more fully described as follows: This is a rent to own contract for a five year lease.”<sup>13</sup> Therefore, *Bradley v Brentwood Homes* is wholly applicable and the following speaks directly to the action at bar:

Notwithstanding its congenial effects on interstate commerce, the sale of residential real estate is inherently intrastate. Contracts strictly for the sale of real estate focus entirely on a commodity – the land – which is firmly planted in one particular state. The citizenship of the immediate parties (the buyer and seller) or their movements to and from that state are incidental to the real estate transaction. Those movements are not part of the transaction itself. All of the

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<sup>11</sup> *BRADLEY V. BRENTWOOD HOMES*, 398 S.C. 447, 456 (2012)

<sup>12</sup> ID AT 456

<sup>13</sup> APP. PP. 85, PARA. 1

legal relationships concerning the land are bound by state law principals. Single residential real estate transactions of this type have no bearing on interstate commerce. For all these reasons, logic suggests that such transactions are not among those involving interstate commerce. To characterize a residential real estate (transaction) as involving interstate commerce under these circumstances would actually promote a lack of uniformity of the law, which is exactly contrary to one of the FAA's stated purposes.

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

#### CONCLUSION

The Court of Appeals did not give "short shrift" to Bradley v Brentwood Homes.<sup>14</sup> The appellant readily admits that the lease to own agreement did not comport with the South Carolina Arbitration Act, therefore it is not subject to arbitration under South Carolina law. As noted in Bradley, the FAA does not apply to South Carolina real estate transactions as they are inherently intrastate. As the underlying agreement fails to touch interstate commerce, arbitration under the FAA cannot be enforced by the Courts. This Honorable Court should refuse certification of this action and remand the action back to the Court of Common Pleas in the 2<sup>nd</sup> Circuit.



Brad Owensby, for Respondent  
5/24/18

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<sup>14</sup> APP. PP. 157

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RESPONDENT

v.

EDWARD BRICE TAYLOR

~~APPELLANT~~ Petitioner

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CERTIFICATE OF SERVICE

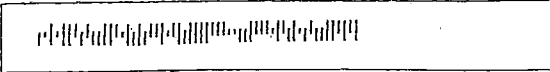
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I certify that I have served the Respondent's Return upon Appellant's Counsel via United States Postal Service, addressed to:



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