

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
The Clubs at Cherokee Valley Property)
Owners' Association,)

IN THE COURT OF COMMON PLEAS)
)
THIRTEENTH JUDICIAL CIRCUIT)
)
C.A. NO. 2018-CP-23-05074)

Plaintiff;)

v.)

ORDER STAYING
C.A. NO. 2018-CP-23-05074
AND COMPELLING BINDING
ARBITRATION

RECEIVED

SEP 23 2019

SC Court of Appeals

SK Builders, Inc, Devoro Homes, LLC;)
Westchester Jordan's Pass, LLC; Westchester)
Ochlockonee, LLC; and RMDC, Inc.)
)
Defendants.)

This matter came before the Court on April 25, 2019 upon Defendants', Devoro Homes, LLC ("Devoro"), Westchester Jordan's Pass, LLC ("Jordan's Pass"), Westchester Ochlockonee, LLC ("Ochlocknee"), and RMDC, Inc. ("RMDC") (collectively "Defendants"), motion to compel arbitration and stay C.A. No. 2018-CP-23-05074 pending resolution of arbitration (the "Motion"). Appearing at the hearing on the Motion was Mark A. Bible, Jr., on behalf of Defendants, Greg Morton, on behalf of Defendant, SK Builders, Inc. ("SK"), and Joseph W. Rohe, on behalf of Plaintiff, The Clubs at Cherokee Valley Property Owners' Association (the "Plaintiff"). Defendant, SK, did not object to the Motion and Plaintiff contested the Motion.

On or about October 3, 2018, the Plaintiff filed a complaint in the Greenville County Court of Common Pleas, Case No. 2018-CP-23-05074 (the "Litigation") asserting three causes of action: (i) Breach of Contract, seeking recovery of money damages; (ii) Breach of Contract, seeking specific performance by Defendants; and (iii) Injunction, seeking to enjoin Defendants from alleged violations of the Covenants and the Subdivision Design Guidelines (the "Plaintiff's Claims"). In lieu of filing responsive pleadings, on or about February 22, 2019, Defendants moved to stay the Litigation and compel arbitration.

Pursuant to the Motion, Defendants sought an order from this Court staying the adjudication the Litigation in the Court of Common Pleas for Greenville County, South Carolina and compelling the same to be adjudicated in binding arbitration. The Defendants' Motion was based upon the Declaration of Covenants, Conditions, and Restrictions for The Clubs at Cherokee Valley, as duly recorded in the Office of the Register of Deeds for Greenville County, South Carolina, along with any duly executed and recorded amendments thereto (the "Covenants") and the South Carolina Uniform Arbitration Act, §15-48-10, S.C. Code of Laws Annotated (1976).

During the April 25, 2019 hearing, Defendants argued that the Covenants requires all bound parties to resolve all non-exempt claims involving the Covenants, the development which the Covenants apply, or all or any combination thereof, first through negotiation. Further, in the event the parties are unable to resolve their claims through negotiations, the Covenants required unresolved non-exempt claims to be submitted to binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association and the substantive and procedural laws of the State of South Carolina.

Defendants averred that the Plaintiff's Claims, and the defenses or counterclaims which could be asserted by the Defendants, are not exempt from mandatory arbitration and were not resolved through negotiation at the time the Plaintiff initiated the Litigation. Defendants further asserted that the Plaintiff's Claims and the Defendants' defenses and counterclaims arise out of and are solely related to the Covenants and the development which the Covenants apply. Conversely, the Plaintiff argued that the Plaintiff's Claims, as plead in the Litigation, are not subject to mandatory and binding arbitration and that the Defendants' interpretation of the Covenants' dispute and claims resolution provisions were misplaced or overly broad.

The Court finds the Plaintiff's Claims arise out of the Covenants and involve the real property comprising the development which is governed by the Covenants. The Court further finds

that the Plaintiff's Claims are subject to mandatory and binding arbitration as set forth in the Covenants. This Court recognizes that Section 13.2(a) contemplates certain exemptions, including the collection of assessments and suits "to obtain a Temporary Restraining Order." Because of the nature of the Complaint, the multiple Causes of Action, and the inter-connected relationship of the same, it would be difficult to segregate the dispute into component parts in different forums. As a matter of economy, it simply makes sense to vet these issues in one proceeding. However, as specifically allowed under the Covenants, the Plaintiff may move the Court for Temporary Injunctive Relief to maintain the status quo during the pendency of Arbitration.

NOW, THEREFORE, IT IS ORDERED that the Defendants' Motion to Stay and Compel Arbitration is hereby **GRANTED**.

IT IS FURTHER ORDERED that the parties shall resolve all claims that have been or could be asserted in the Litigation which arise from or out of the Covenants or which pertain to the construction and development of real property by the Defendants and SK, through binding arbitration pursuant to the Covenants and the South Carolina Arbitration Act, §15-48-10. Arbitration of this matter shall be construed as broadly as possible so as to encompass all claims and issues between and amongst the parties, excluding any motion for a temporary restraining order.

IT IS FURTHER ORDERED that the parties shall mutually select a third-party neutral to preside as arbitrator and the sole and exclusive decision maker as it pertains to the full adjudication of this matter. If the parties are unable to reach an agreement and select a third-party neutral to serve as arbitrator within thirty (30) days of this Order, either party may petition the Greenville County Court of Common Pleas, to select a sole arbitrator to carry out the arbitration pursuant to this Order. All fees and expenses incurred and charged by the arbitrator shall be borne

equally between the parties, with the Plaintiff bearing one-half and Defendants, including SK, bearing the other half. The arbitrator may assess, in whole or in part, his fees and expenses incurred in connection with the arbitration as a part of his award.

IT IS FURTHER ORDERED that the arbitrator shall be empowered to resolve all claims and disputes between and among the parties related to or arising out of: the Covenants, development rules, regulations, and design guidelines, the application and/or enforceability of the Covenants; development rules, regulations, and design guidelines that are in dispute, the construction and/or development commissioned and or performed by Defendants and SK, any arbitration agreement entered into by the parties, and/or the arbitration itself.

IT IS FURTHER ORDERED the laws of the State of South Carolina shall govern all claims and disputes. The final award of the arbitration shall be entered as a judgment and enforceable by a court of competent jurisdiction.

IT IS SO ORDERED, this the 30th day of July 2019.

[JUDGE'S ELECTRONIC SIGNATURE TO FOLLOW ON NEXT PAGE]



Greenville Common Pleas

Case Caption: Clubs At Cherokee Valley Property Owners Association vs. Sk Builders Inc , defendant, et al
Case Number: 2018CP2305074
Type: Order/Other

So Ordered

s/ Robin B. Stilwell 2158